

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION NO.174-Q OF 2021**

(Against Judgment dated 26.04.2021 passed  
by the High Court of Balochistan, Quetta in  
Civil Revision No.380/2017)

Mst. Musarat Parveen

...Petitioner

Versus

Muhammad Yousaf and others

...Respondents

For the Petitioner : Mr. Abdullah Khan Kakar, ASC

For the Respondents : N.R.

Date of Hearing : 11.05.2023

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J:-** This Civil Petition for leave to appeal is directed against the Judgment dated 26.04.2021 passed by the High Court of Balochistan Quetta in Civil Revision No.380/2017 whereby the Revision petition filed by the petitioner was dismissed.

2. The short-lived facts of the case are that predecessor of respondents No. 1-a to 1-f/ plaintiff instituted a suit for declaration, specific performance, permanent injunction and consequential relief against the petitioner/defendant with averment that predecessor of respondents No. 1-a to 1-f /plaintiff purchased Plot bearing Khasra No.2, Qita measuring 39 Rod 19 poles situated at Mahal Chashma Hudda, Mouza Hudda, Tappa Saddar, Tehsil and District Quetta against consideration of Rs. 4,12,000/- from the petitioner through respondent No.2 namely Irshad Hussain (Husband of Petitioner) *vide* sale agreement dated 21-10-2002. Suit filed by the predecessor of respondents No. 1-a to 1-f was decreed by the Trial Court *vide* judgment and decree dated 18-03-2017. Application under Section 12 (2) CPC filed by the petitioner for setting aside the judgment and decree dated 18-03-2017 was dismissed and the objections filed by

the petitioner on the execution were overruled. Being aggrieved, the petitioner filed appeal which was dismissed being time barred. Civil Revision filed by petitioner was also dismissed.

3. We have heard the learned counsel for the petitioners and also carefully examined the available record and the judgments of the lower fora which have concurrent findings. In fact the petitioners were non-suited in the appeal on the pure question of limitation, which aspect has been properly dealt with by the learned High Court. For ease of reference, the relevant paragraphs 3 and 4 of the impugned judgment are reproduced hereunder: -

"3. Heard and perused the record. The record reflects that the trial court vide judgment and decree dated 18th March, 2017 decreed the suit of the plaintiff. Despite knowledge instead filing appeal the petitioner filed application under Section 12 (2) CPC despite the fact that the petitioner is party to the suit. Section 12(2) CPC could apply where the decree has been obtained on the ground of fraud and misrepresentation. The purpose of Section 12 (2) CPC is that where decree obtained with collusion by the parties the aggrieved person challenged the validity of the decree by application under Section 12 (2) CPC instead of filing separate suit. The petitioner is already party to the suit, contested the same. The parties started litigation long ago meaning thereby that the petitioner had knowledge of the suit. The trial court has rightly dismissed the application under Section 12 (2) CPC being not maintainable.

4. Section 5 and 14 of the Limitation Act would come into play only if the delay appears to be condonable. The petitioner has not explained the delay of filing appeal before appellate court. The Honorable Supreme Court in case of Karamatullah (1999 SCMR 1892) held that time consumed in pursuing appeal before wrong forum cannot be condoned under Section 5 of the Limitation Act, because the applicant has failed that he prosecuted his remedy before wrong forum in good faith. The party who seeks condonation of delay would have to explain delay of each and every day, because of delay valuable right would accrue in favour of opposite party with the passage of time which should not be disturbed. Reliance is placed on *Fazal Hameed v Muhammad Fayyaz Khan*, 2013 CLC 403, in which it was held:

"6. It is settled, law that condonation of delay is the discretion of the Court to condone or not to condone the delay after its satisfaction that there was sufficient cause for condonation of delay. It is the duty and obligation of the Court to exercise its discretion keeping in view the principle of equity and fair play in judicial manner and has no power to exercise discretion arbitrarily. It is settled law that object of law of limitation is to help vigilant and not to the indolent. Law of limitation is required to be construed strictly and that delay of each day has to be explained". Reference is made to PLD 2011 SC 657 where in it is held: ---

"Aggrieved person has to pursue his legal remedies with diligence and if a petition or a suit etc. is filed beyond limitation each day's delay has to be explained. Where vague explanation was given without even specifying the date of knowledge, nor any explanation tenable in law was provided to justify condonation, delay condoned was violative of law and, was not sustainable".

Reference is also made to PLD 2011 SC 174 where the august Supreme Court dismissed the appeal by holding: ---

No mention of any sufficient cause in application for condonation of delay which was evasive and vague, no explanation had been given as to why appellant waited till 4-6-2005 for filing of appeal after order dated 9-5-2005 passed by Supreme Court..... Appeal was not promptly and immediately instituted and there was no explanation for each and every day's delay. Supreme Court declined to condone delay".

4. Perusal of record reveals that petitioner had failed to appear before the Trial Court wilfully despite being provided with more than enough opportunities. Appeal of petitioner was hopelessly barred by time and failed to explain the delay so caused in filing of appeal reasonably. The contention of the petitioner that delay occurred because the petitioner filed an application under Section 12 (2) CPC before the Trial Court due to which she could not file appeal within time is not sustainable as petitioner had knowledge and was party to the suit. This Court in case of Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others (2012 SCMR 377) held that the two expressions "due diligence" and "good faith" in section 14 of Limitation Act, 1908 do not occur in section 5 of the Limitation Act, 1908 which enjoins only "sufficient cause". The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but

foundationally of the "Law" itself. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. In the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held by this Court that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact, this law has been premeditated to dissuade the claims which have become stale by efflux of time.

5. The learned counsel for the petitioner was unable to point out any error, perversity, or legal or jurisdictional defect in the impugned judgment calling for interference by this Court. Accordingly, this petition is dismissed and leave to appeal is declined.

Judge

Judge

Islamabad  
11.05.2023  
Aitezaz/Khalid  
Approved for reporting.