

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Munib Akhtar

Mr. Justice Athar Minallah

Civil Appeal No.766 of 2021 & CMA No.7807 of 2021

(Against judgment dated 24.05.2021 of the Lahore High Court,
Multan Bench passed in Civil Revision No.431-D of 2007)

Ghulam Sarwar through his LRs.

...Appellant

vs

Province of Punjab through

District Collector, Lodhran

...Respondents

For the Appellant: Sh. Zameer Hussain, ASC

For the Respondents 1-3: Mr. Sanaullah Zahid, Addl. A.G. Punjab

Date of hearing: 15.11.2024

ORDER

Munib Akhtar, J.: This appeal is late by about three weeks. It is supported by an application (CMA No.7806/2021) seeking condonation of delay. We have gone through the same with the assistance of learned counsel. It is important to keep in mind that it is the appellant's own case, repeatedly stated by learned counsel, that an appeal lay as of right in the facts and circumstances of the case. The office has computed that the appeal is time-barred by 22 days. Learned counsel has contended that paras 3 and 4 of the application show sufficient cause for condonation of delay and in this regard has placed reliance on a decision of a learned five member Bench of the Court reported as *Khushi Muhammad through LRs and others v Mst. Fazal Bibi and others* PLD 2016 SC 872.

2. We have considered the submission and the reason shown. Insofar as the cited decision is concerned, that clubbed a number of appeals since the same questions of law were involved. The essential point was that in each case an appeal had been preferred before a wrong appellate forum (by way of first appeal) and thereafter, when it was returned and presented before the correct forum, the s. 5 application seeking condonation of delay sought also to invoke s. 14 to show that there was sufficient cause within the meaning of law. Thus, the questions requiring resolution related to the interplay of ss. 5 and 14 and more precisely as to whether any element of s. 14 could be regarded for purposes of showing sufficient cause within the meaning of s. 5. The questions raised are set out at pg. 884, and the conclusions reached on the same in the case law summarized at pg. 899 (para 16). Elaborating on the same, and as relevant for present purposes, it was held that while s. 14 (which, if applicable, excludes altogether the period involved from the computation of limitation) applied only to suits as such and not to appeals, the principles thereof could nonetheless in appropriate cases be invoked for purposes of s. 5 (in relation to appeals) to determine whether sufficient cause was disclosed. It was emphasized that the various elements of s. 14 had to be rigorously pleaded and established in the application under s. 5, and even then the court had discretion whether or not to accept the reliance sought to be so placed. The factual aspect of each case

that was before the Court was then considered from pg. 915 onwards. As is clear, in each case the litigant, in filing his first appeal, invoked the wrong appellate forum and thereafter presented the appeal before the correct forum supported by an s. 5 application that was leavened, as it were, by recourse to s. 14. The two appellate forums involved were the District Court and the High Court. As is at once obvious no question of forum is at all involved here as was the situation in the cited decision. Here, there is only one forum, i.e., this Court, the question being merely whether a leave petition was to be filed or an appeal lay as of right. We may note in passing that it appears that here no leave petition was filed; only the instant appeal was presented. It is of course well settled that any case, whether of this Court or of a High Court, that establishes binding precedent turns on facts proved or admitted. The facts and circumstances in which this Court delivered the cited decision were, with respect, materially different from what is now before the Court. The cited decision provides no assistance to the appellant.

3. In our view, in the end the matter boils down to this: whether the confusion of learned counsel consulted by the appellant constituted sufficient cause within the meaning of law? In para 3 of the application it is stated that initially the legal advice received was that a leave petition ought to be filed. In para 4 it is stated that thereafter the legal advice was that an appeal lay as of right. It was this confusion or conflict in legal advice that led to the delay in the filing of the appeal. In our view, wrong legal advice such as appears to be involved in the present case does not constitute sufficient cause within the meaning of law. Since it is the appellant's own position that an appeal lay as of right with the present appeal being barred by time, the delay cannot be condoned. The application is dismissed, with the result that the appeal also stands dismissed.

Judge

Judge

Islamabad
15th November, 2024
M. Azhar Malik/*
Approved for reporting