

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal 82 of 2018

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Asma Hassan & Another
vs.
Askari Bank Limited

For the Petitioner: Mrs. Shabana Ishaque, Advocate
For the Respondent: Mr. Mohammad Ishaq Ali, Advocate
Date of Hearing: 22.02.2019
Date of Announcement: 13.03.2019

ORDER

Agha Faisal, J: The focus of this order is the determination whether the subject appeal, filed after the thirty day limitation period yet during the Court's summer vacation, was barred by time.

2. Briefly stated, the appellants preferred the subject appeal against the judgment dated 10.04.2018 ("**Judgment**") delivered by the learned Banking Court IV at Karachi in Suit 36 of 2013 ("**Suit**") and the decree prepared in pursuance thereof dated 30th May, 2018 ("**Decree**"). Upon presentation of the present appeal the office had raised an objection with regard to the limitation. The appellant had addressed the said objection at the time that by submitting that the appeal was within time as the same was presented during summer vacations. However, subsequent thereto the appellants preferred an application being CMA 3400 of 2018 ("**Limitation Application**") seeking an order of this Court to override / disallow the objection with respect to limitation.

3. The record, admitted by all the parties, stipulates that the appellant applied for certified copies of the judgment and decree on 10.04.2018 and the requisite certified copies were made available on 07.06.2018. The limitation period prescribed vide Section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001 ("**Ordinance**") is 30 days from the date of the judgment/decree. The present appeal was presented on 19.07.2018, hence, the office raised objection with respect to the appeal apparently being barred by limitation. Since the issue of limitation was moot, therefore, it was considered appropriate to address the same at the first instance.

4. Mrs. Shabana Ishaque advocated the case of the appellants and submitted that the date upon which the certified copies of the judgment and decree were made available to the appellant and also the date upon which the present appeal was preferred fell within the tenancy of the summer vacation of this High Court and that by virtue of section 4 of the Limitation Act, 1908 ("**Act**") no limitation can be said to apply during the period when the Court is in vacation, therefore, the appeal was filed within time. Learned counsel relied upon *Umar Baz Khan vs. Syed Jehanzeb and Others* reported as *PLD 2013 SC 268* to argue that a matter could not be dismissed on the ground of laches if it defeated the cause of justice. The judgment in the case of *Khushi Muhammad & Others vs. Mst. Fazal Bibi and Others* reported as *PLD 2016 SC 872* was relied upon to argue that time spent when proceedings were filed before the wrong forum was duly excusable. The ratio of *Haider Ladhu Jaffar and Another vs. Habib Bank Ltd and Others* reported as *2014 CLC 725*, *Ikramullah and Others vs. Said Jamal* reported as *1980 SCMR 375*, *Mst. Almay vs. Hashmatay* reported as *1989 MLD 3831*, *Abdus Sattar and Others vs. Nawab Din and Others* reported as *1989*

SCMR 1204, Fazal Karim and Another vs. Ghulam Jilani and Others reported as *1975 SCMR 452* and *Nazar Muhammad vs. Murad Ali and Others* reported as *PLD 1960 (W.P.) Lahore 757* was cited to argue that the appeal was within time by virtue of section 4 of the Act as it was filed during the summer vacation of this Court.

5. Mr. Mohammad Ishaque Ali, Advocate for the respondent, vehemently contested the arguments advanced on behalf of the appellants and submitted that the present appeal was admittedly time barred and that no cogent grounds were apparent from the Limitation Application to circumvent the mandatory requirements of limitation. Learned counsel drew attention to the office objection raised in the present matter and specifically sought our focus upon the reply submitted in regard thereof wherein it was specifically stated by the appellant that the appeal was within time. Learned counsel argued that if the appeal was within time then there was no occasion to file the Limitation Application and that the very institution of the Limitation Application exemplifies the fact that delay in filing of the present appeal has been admitted by the appellants and that condonation of the Court is required in respect hereof. Learned counsel then took us through the contents of the Limitation Application and the affidavits filed along therewith and submitted that notwithstanding the fact that the affidavits were those of the counsel, and not of the appellants themselves, even otherwise no cogent ground was raised therein to justify the unmerited delay in institution of the present appeal. Learned counsel sought the dismissal of the Limitation Application and consequently the dismissal of the present appeal and in such regard relied upon the judgment of the honorable Supreme Court in the case of *Ghulam Qadir and Others vs. Sh. Abdul Wadood and Others* reported as *PLD 2016 SC 712* to bulwark

his contention that limitation was part of positive law which had to be construed and applied as per the settled principles and was required to be given due effect as per the mandate of the law.

6. We have heard the respective learned counsel and have also appreciated the record and authority arrayed before us. It may be prudent to initiate the determination by demarcating the date from where limitation is to accrue. Section 12 of the Act stipulates that when computing the period of limitation prescribed, the time requisite for obtaining a certified copy thereof shall be excluded. It is apparent from the record that the application seeking certified copy of the judgment was preferred on the very date when the judgment was announced however the copies of the judgment and decree were made available on 07.06.2018. Therefore, it would follow that the period of limitation began to accrue with effect from the 07.06.2018, when the requisite copies of the judgment and decree were made available. Section 22 of the Ordinance prescribes a 30 days period of limitation prescribed, which expired on 06.07.2018, by which time the appeal had admittedly not been instituted. We are cognizant of the office objection with regard to limitation raised at the time of presentation of the present appeal, being 19.07.2018, and it is within our notice that the appellant had addressed the office objection at the said time by stipulating that the appeal was within time as the same was presented during summer vacations. The cited statement of the appellants is annotated to the Court file itself and the same was also admitted by the learned counsel for the appellants during the course of the hearing. While the reply to the office objection was given at the time of institution of the present appeal, the Limitation Application was preferred in November, 2018, four months after having claimed that the appeal was within time.

7. The narrative given in the Limitation Application does not justify the delay in institution of the present appeal, if such a delay was held to have occurred. The reliance of the learned counsel for the appellants upon the authority cited appears to be unmerited as the issue herein is limitation and not laches; there was no time sought to be excluded in filing of proceedings before an improper forum; and it was never the case of the appellants that the appeal was filed on the first day that the Court opened. Therefore, the authority cited on behalf of the appellants is duly distinguishable herein. On the contrary we concur with the argument of the respondent, bulwarked with pronouncements of the Supreme Court, that limitation was part of positive law which had to be construed and applied as per the settled principles.

8. It is gleaned from the record that the date upon which limitation began to accrue, being 07.06.2018, was during the summer vacation of the Court. While the thirty day limitation period expired on 06.07.2018, it is manifest that the present appeal could have been instituted on the first day that the Court opened, hence in August 2018. However, the appellant did not institute the present appeal on the first day that the Court reopened and instead preferred it during the summer vacation but after expiration of the thirty day period. The singular point for determination before us is whether an appeal that could have been instituted upon the opening day of Court and be deemed to have been filed within time be filed post the expiration of the limitation period at an earlier date while the Court was in vacation.

9. This question came before the honorable Supreme Court and was deliberated upon in exhaustive detail in the judgment rendered in

Province of Punjab vs. Muhammad Saleem reported as *PLD 2014 Supreme Court 783* ("**Muhammad Saleem**") and it was maintained as follows:

"Therefore a litigant whose period of limitation for a matter shall expire during the summer vacation when the courts are closed has a statutory (vested) right to file his appeal etc. on the re-opening of the court. Section 4 *ibid* is very clear in this behalf and permits no ambiguity and doubt. So such litigant shall be well within his right and shall be absolutely safe to wait till the re-opening of the court, though limitation of his case/cause shall expire during the period when the court is closed. The situation highlighted above not only is meant to secure the right *ibid*, but it also gives rise to a reasonable and legitimate expectation to a litigant for the exercise of the right on the re-opening by awaiting till that date. However a condition may emerge that during the period while the courts are still closed and the limitation has expired in between that period, on account of some acute urgency a litigant may be compelled and forced to file a suit/ appeal for enabling him to ask for and seek some interim relief; i.e. in the nature of temporary injunction; stay order; an order to prevent the execution of; order against decree; dispossession from the suit property; warrants of arrest; attachment of property; appointment of receiver; appointment of commission etc. in the matter; which interim relief is imperative and of utmost expediency and if not asked for and obtained shall cause him (the litigant) an irreparable, irreversible loss and injury. Thus in the above scenario where a litigant though has the right to file the suit/appeal etc. on the re-opening of the court (under Section 4 *ibid*) but for compelling reasons as mentioned in the preceding part is obliged to file the *lis* during the summer vacation, whether his afore-stated right, which is statutory and vested, shall be obliterated, destroyed or in other words whether he shall be deprived and divested of the right on account of such institution in the circumstances? The answer is in the negative. As it shall not only stultify his right to approach the court on its re-opening, rather it shall not be lawful to conceive that the said right in the given circumstances would extinguish. Furthermore this shall also be against the rule of reasonable and legitimate expectation as highlighted earlier. It shall also be ludicrous to conceive the legislative intent behind Section 4 to the effect, in that, expecting a litigant to sit idle, and watch colossal, irreparable and irretrievable loss being caused to him in the first place and to refrain himself from securing and exercising his right of appeal for the purpose of obtaining interim relief, only with the object of saving himself from the bar of limitation and protecting his right of limitation as per section 4 *ibid*. In the given situation when the District Courts were/are admittedly closed for ordinary and routine work, and only urgent matters are entertained and allowed hearing by the duty Judge(s), and the urgency is pressed by the litigant to approach the court for securing some interim relief, it shall for all intents and purposes be deemed that the suit/appeal has been filed on the date of the re-opening of the court, and the bar of limitation shall not attract to

such case, rather the benefit of Section 4 shall automatically extend to such litigant. This resolution of the proposition in hand is duly and aptly applicable to the case of the appellant.”

10. The present appeal was filed during the vacation period and was accompanied by applications seeking an urgent hearing and also interim relief. The ratio of *Muhammad Saleem* is attracted in the present facts and circumstances, hence, the benefit of section 4 of the Act shall subsist in favor of the appellants. In view of the forgoing the office objection, with regard to limitation, is overruled and the present appeal is determined to have been preferred within time. As a consequence hereof the Limitation Application has become infructuous and is disposed-of as such. The office is directed to fix the present appeal, along with remaining applications, for determination upon merit.

J U D G E

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