IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITIONS NO.1877-L AND 1878-L OF 2016
(Against the Judgments dated 09.02.2016 passed by the Lahore High Court, Lahore in R.F.A.No.459 & R.F.A.No.460/2011)

Faqir Muhammad ...Petitioner
(in both cases)

VERSUS

Khursheed Bibi and others (in C.P. No.1877-L/2016)

Jamila Begum (decd.) thr. L.Rs. and others (in C.P. No.1878-L/2016)

...Respondents

For the Petitioner: Mrs. Kausar Iqbal Bhatti, ASC/AOR

For Respondents: Mian Shahid Iqbal, ASC

Date of Hearing: 26.09.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. These Civil Petitions for leave to appeal have been brought to challenge the Judgments dated 09.02.2016 passed by the learned Division Bench of the Lahore High Court, Lahore ("**High Court**") in R.F.A.No.459/2011 and R.F.A.No.460/2011, whereby both the appeals were dismissed being barred by time with the findings that the petitioner/appellant completely failed to show his *bona fide* of due care in prosecuting the case and also remained unsuccessful in explaining the delay incurred in filing the appeals.

2. According to the minutiae of the case, both respondent No.1 (Khurshid Bibi) in C.P.No.1877-L/2016 and respondent No.1 (Jamila Begum) in C.P.No.1878-L/2016, separately filed Civil Suit No.451-1/2009 and Civil Suit No.1930-1/2003 respectively, for declaration in the Court of the Civil Judge 1st Class, Faisalabad with the assertion that the suit properties mentioned in their Civil Suits were originally owned

and possessed by their uncle, Ghulam Muhammad. Both the plaintiffs in the aforesaid Civil Suits claimed that they are the nieces of Ghulam Muhammad, who died issueless and gifted the property to them. It was further alleged that Ghulam Muhammad was in possession of the property since the creation of Pakistan and raised construction thereon. The present petitioner (Faqir Muhammad) was a defendant in the suits who alleged in the written statement that Ghulam Muhammad, as a result of agreement to sell dated 13.10.1986 with Shah Muhammad and Ghulam Rasool, received sale consideration of Rs.300,000/- and delivered possession to them. He further alleged that the gift mentioned in the plaints was against the law and facts. The learned Trial Court settled the issues in both the suits, and by means of separate judgments of even date, decreed the suits and accepted the gifts only to the extent of the superstructure. However, on account of Issue No.3 in both suits, which pertained to the valuation of suit, the learned Trial Court held that the value of the property in question was between Rs.40,00,000/- to Rs.45,00,000/-; hence the respondents No.1/plaintiffs were directed in the judgments to pay court fees in the sum of Rs.15,000/- within 45 days, failing which the plaints shall be rejected.

3. Being aggrieved and dissatisfied with the judgment and decree, the petitioner filed First Appeals before the District & Sessions Judge, Faisalabad ("**D&SJ**") on 06.07.2010, based on the same valuation that was originally worked out by the respondents No.1/plaintiffs according to the Suits Valuation Act, 1887 ("**Suits Valuation Act**") in the plaints. The appeals remained pending for a considerable time; however, during the midst of the proceedings, the Appellate Court allowed the petitioner to file amended memos of appeal, and finally, on 17.05.2011, the Additional District & Sessions Judge, Faisalabad ("**ADJ**") passed the following order in both appeals separately:

> "Partial arguments heard. It has been transpired from the title of the appeal that valuation of suit for the purposes of court and jurisdiction was fixed as Rs.40/45,00,000/-. An appeal in a suit having valuation more than Rs.25,00,000/- is to be filed before the Honourable Lahore High Court, Lahore. This court has no pecuniary jurisdiction to adjudicate upon the appeal in hand, hence it is returned to the appellant for its institution in the competent court. File of this Court be consigned to the record room, whereas, record of learned trial court be sent back along with copy of order of this court."

4. The learned counsel for the petitioner argued that the appeals filed before the ADJ remained pending for a considerable period and were

thereafter returned due to a lack of pecuniary jurisdiction. She further argued that the suit was originally valued at Rs.200/- according to the Suits Valuation Act, however, during the proceedings, the learned Trial Court reached the conclusion that the value of the property was more than Rs.40,00,000/-, and therefore, in the judgments, the respondents No.1/plaintiffs were directed to pay the court fees to make the deficiency good. Based on the original valuation, the appeals were filed before the D&SJ, which remained pending for a considerable period and, within one month of their return, the appeals were filed in the High Court. However, despite showing sufficient cause, the learned High Court dismissed the applications for condonation along with the main appeals.

5. The learned counsel for the respondents argued that the appeals were filed in the wrong forum with *mala fide* intention, despite knowledge that the value was enhanced through the judgments passed by the Trial Court. However, he could not deny that the original valuation of suit was calculated as Rs.200, which remained the same until the date of the judgments without any amendment in the plaints. It was also not denied that the appeals remained pending for a considerable time without any objection.

6. Arguments heard. The record divulges that the appeals were filed by the petitioner on 06.07.2010, while the memos of appeal were returned to the petitioner on 17.05.2011 for institution in the competent Court. Thereafter, the petitioner presented the Regular First Appeals in the High Court on 13.06.2011, along with the application for condonation of delay. What comes into sight is that the application moved by the petitioner for condonation of delay was dismissed on a hyper-technical ground without adverting to the fact that, although the direction to make good the deficiency of court fees was passed in the judgments when the learned Trial Court rendered its findings on the valuation of the property, there was no direction to amend the plaints with regard to the value of the property in accordance with the Suits Valuation Act, hence the Trial Court's valuation was not reflected in the plaints which created considerable confusion. There is no doubt that, in order to safeguard the interest of the State with regard to the payment of court fees, the direction was issued to pay the court fees within 45 days, but this was done without any direction for the amendment of the plaints for the purposes of valuation to complement the provisions of the Suits Valuation Act.

7. According to Order XLI, Rule 1 of the Code of Civil Procedure, 1908 ("**CPC**"), every appeal is required to be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf, along with a copy of the decree appealed from. It is also a requirement of law that the memorandum of appeal should set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively. Under Rule 3 of Order XLI, CPC, it is envisaged that where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there; and where the Court rejects any memorandum, it shall record the reason for such rejection and if the memorandum of appeal is amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment. Under Rule 9 of the same Order, it is further provided that where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

8. A survey of the aforesaid provisions cited from the CPC emphasizes the onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court (clerk of court/chief ministerial officer) who has been authorized and assigned the task to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it; and if the Court concludes at the time of admission that the appeal has been filed at the wrong forum, whether due to a lack of territorial or pecuniary jurisdiction, or some other ancillary or incidental reasons, the memo of appeal should be promptly returned to the appellant to elect the right remedy and forum to avoid rendering the decision of the Court *coram non judice* at the end of the day. The available record indicates that the appeals were admitted by the learned ADJ for regular hearing on 06.07.2010 and the operation of the impugned judgment of the Civil Court was also suspended until the next date of hearing which demonstrates that neither the relevant

Court Staff invited the attention of the Court with regard to the valuation of suit added on in the judgments, nor did they raise any objection to the pecuniary jurisdiction, nor did the Appellate Court itself scrutinize the judgment and decree to determine its own jurisdiction. Instead the matter remained pending for a considerable period of time and the proceedings continued without any demur up to 17.05.2011 when the learned ADJ concluded that he had no pecuniary jurisdiction to adjudicate upon the appeals and returned the memos of appeal to the petitioner for institution in the High Court. The examination and evaluation of jurisdiction at the initial stage is also significant pursuant to the well-settled explication of law that the parties cannot, by mutual consent, take away the jurisdiction vested in any Court of law, nor can they confer jurisdiction to any Court not vested in it by law.

9. In the application moved under Section 5 of the Limitation Act, 1908 ("**Limitation Act**"), the petitioner highlighted all the circumstances and events necessitating the condonation of delay in good faith and clearly pleaded that the proceedings continued without any objection and on 17.05.2011 the learned Appellate Court realized that it lacked the requisite pecuniary jurisdiction. It was further averred that the petitioner had not filed the appeals in the wrong forum deliberately, rather the original valuation of the suit was fixed at Rs.200/-, and neither the Court pointed out any defect of jurisdiction, nor did the other side raise any objection. Despite furnishing a reasonable explanation to justify the delay, the learned High Court dismissed the application without adverting to the *bona fide* of the petitioner to prosecute the appeals diligently. So far as the defect of choosing or opting for the wrong forum to present the appeals is concerned, the circumstances reveal that the petitioner was not solely responsible, rather it was due to the inadvertence of the Court staff that the question of pecuniary jurisdiction was not highlighted at the very initial stage in order to cure the defect within the period of limitation allowed for filing the appeals. Without a doubt, it is the responsibility of the appellant and, more importantly, of their counsel, being a legal expert, to oversee and ensure after due diligence that the appeal is being preferred before the right forum without any deficiency or oversight of jurisdiction and advise the client accordingly, but at the same time, it is also the bilateral and collaborative responsibility of the concerned Court staff not to sit as a silent spectator, but to also examine the memo of appeal diligently and conscientiously at the time of its first presentation in the Court (i.e.

before the stage of admission) and raise objections immediately in writing, if any, with regard to jurisdiction and then invite the attention of the Court so that if the Court, after a preliminary hearing of the advocate or appellant, deems it fit to return the memo of appeal for presentation before the competent Court, the exercise should be done immediately rather than devastating or wrecking the residual period of limitation to approach the right forum which had virtually expired or lapsed. In this regard, wherever and whenever needed, the proper training of the Court's staff is also indispensable, being a cardinal limb of the doctrine of safe administration of justice. Sometimes, due to trivial errors or omissions on the part of Court staff, serious prejudice may be caused to the litigants, which is also a violation of the doctrine of due process and opposed to the right of fair trial enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Moreover, it is also a well settled elucidation of law that an inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim *"actus curiae neminem gravabit"*, recognized by both local and foreign jurisdictions which articulates that no man should suffer because of the fault of the Court or that an act of the Court shall prejudice no one. This maxim is rooted in the notion of justice and is a benchmark for the administration of law and justice to ensure that justice has been done with strict adherence to the law and for undoing the wrong so that no injury should be caused by any act or omission of the Court. The proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it is essential to comply with them on grounds of public policy [Ref: Imtiaz Ahmad v. Ghulam Ali and others (**PLD 1963 SC 382**)].

10. At this juncture, we cannot lose sight of the judgment rendered by this Court in the case of Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others (**PLD 2016 SC 872**), wherein a question was posed regarding whether the time spent in pursuing an appeal before a wrong forum can be condoned and/or excluded from the prescribed period of limitation with further observation that an appellant who approaches the wrong forum (one lacking jurisdiction) should not be given the premium of his own negligence; ***especially in cases where the institution of an appeal before the wrong forum is tainted with mala fide intention (emphasis supplied).*** To answer this proposition of fact and law, this Court framed a specific question as under:

"Question No.3:- Where an appeal which has been entertained by the staff of the court or the court itself which has no pecuniary jurisdiction and is ultimately returned to the appellant or is dismissed, whether this protects the appellant from the bar of limitation and/or constitutes a sufficient cause for the condonation of delay on the principle of actus curiae neminem gravabit".

To address the aforementioned question, this Court stated in Paragraph 39 of the judgment as under:-

> "39. The noted maxim which connotes "an act of the court shall prejudice no man" is founded upon justice and good sense; and affords a safe and certain guide for the administration of law and justice. It is meant to promote and ensure that the ends of justice are met; it prescribes that no harm and injury to the rights and the interest of the litigants before the court shall be caused by the act or omission of the court. This rule of administration of justice is meant for the benefit of both sides of litigants before the court and it would be illogical to conceive that the rule would or should be applied for the advantage of one litigant to the prejudice and disadvantage of the other. It is the duty of the court to act as a neutral arbiter between the parties and to provide justice to them through strict adherence to law and keeping in mind the facts of each case. The rule is neither meant to provide a premium to the negligent litigant who finds himself on the wrong side of limitation for unfounded reasons and nor to impair the rights of the other side. The principles of proportionality and balancing have to be kept at the forefront by the court whilst applying this rule. ***The Court must see what fault, if any, has been committed by the court on account of which a litigant has been made to suffer; then the court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Act as explained above.*** ***(Emphasis supplied)*** In our candid opinion the principle actus curiae neminem gravabit has no application where a litigant approaches a wrong forum and such appeal is entertained by the staff of the court or by the court or even admitted to regular hearing. Thus no condonation of delay can be availed by the appellant on the basis of this principle".

11. In the dictum rendered by this Court in the *Khushi Muhammad (supra)*, it was opined that the principle "*actus curiae neminem gravabit*" has no application where a litigant approaches a wrong forum even if it is entertained by the Court staff. Thus no condonation of delay can be availed on this principle, but in unison as a rider and precondition it has been made obligatory that the Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit

of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act as explained above.

12. In the instant case, it is resonating beyond any shadow of doubt that neither any request was made by the petitioner on its own motion at any belated stage for returning the memos of appeal for presentation in the competent forum nor is it evident from the record that he filed the appeals before the wrong forum due to *mala fide* intention. On the contrary, it is evident from the record that the Appellate Court at the final stage of the case when the appeals had, in all respects, ripened for hearing and its logical finale, returned the memos of appeal on its own motion, after a considerable period, for presentation in the High Court and consigned the files to the record room. So in all fairness, according to the dictum laid down in the case of *Khushi Muhammad (supra)*, the learned High Court was required to consider the fault committed by the Court on account of which the petitioner has been made to suffer and whether the benefit of the principle *"actus curiae neminem gravabit"* should be extended or not, and whether the petitioner has made out the case for condonation with sufficient cause or failed to make out a case in terms of Section 5 of the Limitation Act. The ground reality is that the petitioner was pursuing the matter diligently and, keeping in mind the original valuation of the suit in the plaints, the appeals were filed before the D&SJ, apparently due to a *bona fide* mistake. No doubt, the scope and niceties of Sections 5 and 14 of the Limitation Act are distinct in application and concentration but the purpose is almost the same. Section 5 of the Limitation Act is germane to the extension of period in appeal or application/revision or review of the judgment, or for leave to appeal, or any other application to which this Section is made applicable by or under any enactment and the aforesaid genre of proceedings may be admitted after the period of limitation prescribed, provided the Court is satisfied that the appellant or applicant has brought to light sufficient cause for not preferring the appeal or application within the prescribed period of limitation. On the other hand, Section 14 of the Limitation Act pertains to the exclusion of time of proceeding *bona fide* in a Court without jurisdiction, and, in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause

of action and is prosecuted in good faith in a Court which, due to the defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Each case has to be decided on its own facts and in the present case, what we have perceived is that the application for condonation of delay was dismissed without any convincing justification, therefore, in the interest of justice and fair play, we feel it appropriate to hold that the petitioner should not have been knocked out on a hyper-technical ground rather, in order to advance the cause of justice, the Regular First Appeals should have been heard on merits.

13. The aforesaid Civil Petitions were converted into Civil Appeals and allowed *vide* our short order dated 26.09.2023 in the following terms:

> "For the reasons to be recorded later, these petitions are converted into appeals and allowed. The impugned judgment is set aside and the matter is remanded back to the High Court, where Regular First Appeals No.459 and 460/2011 are deemed to be pending before the High Court and the same are to be decided on merits in accordance with law."

14. Above are the reasons assigned in support of our short order.

Judge

Judge

Judge

Islamabad
26th September, 2023
Khalid.
Approved for reporting.