JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.46/2025

Waqas Mahmood
Versus
Bilal Mir

Petitioner by:	M/S Ch. M. Sarmad Abbas Gujjar & Rana Ghulam Murtaza Advocates.
Respondent by:	Ch.Jamshed Jameel Advocate
Date of Hearing:	14.11.2025

Khadim Hussain Soomro, J: - Through this Civil Revision, the petitioner has impugned the order dated 17.01.2025, passed by the learned Addl District Judge-West, Islamabad, whereby an application for leave to defend was allowed.

2. Precisely stated, the facts of the case are that the petitioner instituted a summary suit under Order XXXVII, Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking recovery of Rs. 11,800,000 on account of a dishonoured cheque, along with the prevailing bank mark-up from the date of dishonour till passing of the decree. The aforesaid suit was filed on 25.05.2024 and entrusted to the learned Additional District and Sessions Judge (West), Islamabad, for disposal.

3. The case of the petitioner, as set out in the plaint, is that the respondent approached the petitioner with a request to purchase a double-storey house measuring 10 marlas situated in Block "L", Phase- VIII, Bahria Town, Rawalpindi, for a total sale consideration of Rs. 15,000,000. Owing to a relationship of trust, the petitioner accepted the offer and purchased the said house on 01.01.2021, paying a substantial amount of Rs. 11,800,000 in the presence of witnesses. A payment receipt dated 01.01.2021 was duly issued by the respondent, and a formal sale agreement was executed between the parties on 05.01.2021, acknowledging the said payment. Under the terms of the sale agreement, the respondent was obligated to complete construction using AA+ grade materials and to hand over and transfer possession of the house to the petitioner on or before 01.01.2024, whereas the petitioner was to pay the remaining amount of Rs. 3,200,000 at the time of transfer.

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4. In October 2023, the petitioner contacted the respondent for possession and transfer of the property. The respondent, however, continued to delay the matter on various pretexts and subsequently demanded additional money. It was then mutually agreed between the parties that the respondent would return the amount of Rs. 11,800,000 to the petitioner on or before 01.01.2024. In this regard, the respondent issued cheque No. 47992794 dated 01.01.2024 in the sum of Rs. 11,800,000 drawn on Bank Alfalah, Peshawar Road Branch, Rawalpindi, in the presence of witnesses, namely Awais Mehmood and Sidra Arshad. Subsequently, the respondent requested the petitioner to withhold presentation of the cheque, stating that he was now in a position to pay Rs. 4,500,000, for which he issued two cheques: cheque No. 72161358 dated 04.12.2023 for Rs. 4,000,000 and cheque No. 72161359 dated 04.12.2023 for Rs. 500,000. The respondent again sought time to arrange funds for the said cheques, assuring payment by 05.01.2024, but failed to honour his commitment. Upon presentation, the cheques were dishonoured due to insufficient funds. When confronted, the respondent initially promised to return the amount within a few days but thereafter refused, allegedly intimidating, harassing, and threatening the petitioner. Consequently, the petitioner lodged FIR No. 223 dated 16.03.2024 under Section 489-F PPC at Police Station Kohsar, Islamabad. It is the petitioner's stance that the respondent issued the cheque knowingly and dishonestly without having sufficient funds in his account, thereby attracting criminal and civil liability.

5. At the very outset, learned counsel for the petitioner submits that the learned trial Court failed to appreciate the returned notice/summon which reflects that it was served upon the respondent/defendant on 01.06.2024; that the learned trial Court has miserably failed to appreciate the fact that the father of respondent/defendant appeared before learned trial Court on 26.06.2024 in result of proper service of summons to respondent/defendant on 01.06.2024; that the learned trial court has miserably failed to apply the judicious mind while deciding the application for leave to appear and defend the suit and the learned trial court has also failed to appreciate that the Article 159 of Limitation Act, 1908 provides ten days limitation period for filing of application for leave to appear and defend the suit after proper service of summons.

6. Conversely, learned counsel for the respondent submits that the respondent was in custody, and notice was served in jail without a copy of the plaint, and at that time lacked means or opportunity to engage counsel. He informed his father of the proceedings, who thereafter appeared and sought time to arrange legal assistance. Subsequently, counsel was engaged and an

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application for leave to defend was filed. It is argued that the delay was neither deliberate nor mala fide, but attributable to circumstances beyond the respondent's control, thus meriting equitable protection.

7. I have heard the arguments of learned counsel for the parties and have perused the record with their able assistance.

8. The record reveals that the suit was instituted on 25.05.2024, admitted, and notice was ordered for 26.06.2024. The notice placed at page 60 of the Court file demonstrates that service was effected through the Superintendent Jail upon the respondent on 01.06.2024, a fact that is neither denied nor contradicted. The Superintendent Jail's report at page 61 of the record unequivocally confirms proper service of notice. A conjoint reading of the notice and the jail report does not indicate, nor even suggest, that the notice was issued without a copy of the plaint or its annexures. The assertion of incomplete service is, therefore, bereft of substantive basis.

9. According to the trial court order sheet dated 26.06.2024, the father of respondent No.1 appeared on his behalf and sought time to engage counsel, whereafter the matter was adjourned to 29.06.2024. On 29.06.2024, another request for adjournment was made, and the case was adjourned to 09.07.2024. On the same date, learned counsel Taimoor Aslam Khan Advocate filed his Vakalatnama on behalf of the respondents and sought time to file an application for leave to defend, which request was accepted, and the matter was fixed for 09.07.2024. The record further reflects that no application for leave to defend was filed till 09.07.2024, and the same was eventually filed on 11.07.2024, after a lapse of 40 days from the date of service. Perusal of the impugned order reveals that the delay in filing the leave to defend was condoned without any formal application under Section 5 of the Limitation Act, 1908.

10. Before discussing the scope of Article 159 of the Limitation Act, it is considered appropriate to enumerate certain salient principles which, over time, have been conclusively settled by the superior Courts for the proper interpretation and application of the law of limitation. These principles collectively reinforce the view that limitation is a strict statutory mandate, not a matter of judicial discretion.

11. First, the law of limitation is a statute of repose, intended to ensure finality in litigation, to quieten title, and to bar stale and time-worn claims. It regulates existing rights by prescribing the period within which they may be enforced and

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does not itself create substantive rights. It cannot extinguish vested rights or curtail remedies unless its conditions are satisfied strictly in accordance with the statutory text. Equitable, ethical, or moral considerations cannot be invoked to circumvent its mandatory provisions, and justice, equity, and good conscience do not override its express language. Flowing from this foundational principle, the barrier of limitation cannot be crossed on the basis of hardship, sympathy, or any assumed inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake, personal hardship, or poverty of a litigant does not save limitation. The statutory time bar is absolute unless the law itself provides an exception. The US supreme Court has discussed the importance of limitation law in Gabelli Vs. Sec. & Exch. Comm'n, 568 U.S. 422 (2013). The court opined that the limitation law's foundation lie in the jurisprudential pursuit of *certainty, repose, and finality*. Principles essential to maintaining the stability of rights and the orderly resolution of disputes. The law of limitation mandates that claims must be asserted within a designated temporal framework, ensuring that individuals and society are not perpetually exposed to unresolved liabilities or indeterminate litigation. It shields courts and litigants alike from stale assertions, safeguards evidence from deterioration, and curtails the weaponization of legal processes for strategic delay or harassment.

12. In this context, it is well settled that although exceptions or exemptions within a limitation statute may admit of a somewhat liberal interpretation, the substantive provisions prescribing limitation periods must be approached with strict construction. Limitation, by its very nature, embodies the ancient philosophical idea that law serves not merely to adjudicate disputes but to maintain order, repose, and certainty in human affairs. When limitation is raised as a defence, the court is required to inquire whether the claim falls squarely within the period ordained by the statute, for no relaxation can be permitted unless the claimant brings the matter unmistakably within the statutory boundaries. This approach reflects the deeper jurisprudential understanding that while equity follows the law, it does not displace it. Thus, there exists no scope for judicial discretion to dilute a clear statutory command, regardless of any hardship that may arise in an individual case. Courts are not guardians of abstract benevolence; rather, they are custodians of legal order, and equity cannot be invoked to subvert a legislative bar. In this jurisprudential setting, a statute of limitation is not to be looked upon with disfavour or treated as a morally questionable defence. It is an expression of the legal system's commitment to certainty and the belief, echoed since Roman times, that the repose of society requires that stale and forgotten claims must eventually be laid to rest. The plea of limitation is founded upon sound public policy; it is neither unjust nor unconscionable, but often a rightful and principled defence. The

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judicial function is confined to determining the legal validity of the plea, not to passing moral judgment upon it. It must also be remembered that the law of limitation does not create rights where none exist; its purpose is to interpose a statutory bar after a fixed period upon the enforcement of an existing right. In doing so, it restricts the remedy but leaves the underlying right untouched, thereby advancing the philosophical ideal of legal certainty. Moreover, the limitation law is an artificial mechanism conceived to bring an end to disputes and to prevent the indefinite prolongation of controversies. It aligns with the classical maxim that the law helps the vigilant, not those who sleep upon their rights. The statute, therefore, must be construed strictly, with a preference for the diligent suitor rather than the negligent litigant, for the law cannot reward indolence nor assist those who, through complacency or neglect, allow time to extinguish their remedy.

13. Finally, a reading of the Preamble and Section 5 of the Limitation Act makes clear that the underlying purpose of the statute is to induce claimants to act promptly and assert their rights without undue delay. Unexplained delay by persons who ought to be aware of their legal position and who have access to legal assistance cannot be encouraged or condoned. The statutory framework thus obliges claimants to act within the prescribed period in order to maintain order and certainty in legal affairs.

14. Now turning to Article 159 of the Limitation Act, 1908, which mandates filing within ten days from the date of service of summons. It is a well-settled principle of law that where the legislature has prescribed a specific period of limitation, the same cannot be extended or enlarged by the court unless sufficient cause for the delay is demonstrated strictly within the parameters of Section 5 of the Limitation Act, through an independent application. In the present case, the record unambiguously shows that the appellant did not file any application under Section 5 of the Limitation Act seeking condonation of delay. The application for leave to appear and defend the suit was preferred after the statutory period of ten days had expired, without any formal request for condonation.

15. The scheme of the Limitation Act 1908, particularly Section 5, reflects a jurisprudential balance between two competing principles. On the one hand stands the cardinal philosophy of limitation law, which seeks certainty, repose, and finality in legal affairs by prescribing rigid timelines. On the other hand lies the equitable recognition that human affairs are not always orderly, and that genuine circumstances may sometimes prevent a diligent litigant from acting within time. Section 5 is the statutory bridge between these two foundational ideals. Yet, this

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provision does not embody an unrestrained equitable jurisdiction. It is not an open charter for indulgence. Rather, it is a carefully structured legal mechanism through which the legislature permits courts, in narrowly circumscribed situations, to mitigate the rigour of limitation while maintaining fidelity to the broader statutory scheme. The power under Section 5 is not inherent; it is a conditional legislative dispensation, activated only when the litigant formally approaches the court through a written application that sets out the facts constituting sufficient cause. This application is not a mere procedural formality. It is the philosophical and legal foundation upon which judicial discretion may rest. Without such an invocation, the jurisdiction of the court remains dormant and cannot spring into life through sympathy, conjecture, or judicial benevolence. In legal philosophy, discretion divorced from principle becomes arbitrariness. Section 5 embodies this very concern by insisting that judicial discretion must be anchored in pleadings, reasons, and a factual matrix supplied by the party seeking condonation. The court cannot assume sufficient cause nor create it on behalf of a litigant. The absence of a Section 5 application, therefore, is not a simple omission; it is a jurisdictional vacuum. Where the legislature has declared that a certain act must be done within a prescribed time and has simultaneously prescribed the only lawful route for seeking enlargement of that time, the court cannot travel beyond that design. To do so would offend not only the statutory text but the deeper jurisprudential principle that law must govern discretion, not the other way around.

16. In the present case, no application under Section 5 was filed before the trial Court. The indispensable statutory condition for activating the equitable jurisdiction was entirely absent. A court cannot assume jurisdiction where the legislature has withheld it, nor can it exercise an equitable power in the absence of the very foundation upon which that power rests. Judicial discretion cannot operate in a vacuum. It must be triggered through a formal prayer, supported by reasons and material. The omission to file such an application strikes at the root of jurisdiction. The court could not, therefore, lawfully enlarge the limitation period for filing the application for leave to appear and defend the suit. Where the law requires that rights must be asserted within a specific time and that delay can be condoned only through a prescribed process, the courts are bound to honour that legislative architecture. To hold otherwise would not only undermine the statutory command but would erode the jurisprudential integrity that limitation law seeks to preserve. In such a situation, the court is not merely unable to intervene; it is forbidden from doing so.

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17. In view of the foregoing discussion, the instant civil revision is allowed. Consequently, the impugned order is hereby set aside. The learned trial Court is directed to proceed further with the matter strictly in accordance with law and to make all endeavours to decide the same expeditiously, keeping in view the statutory framework and principles governing summary proceedings.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Announced in open Court on 16th day of December, 2025

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Approved for Reporting

S.Akhtar

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