JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 73 OF 2025

BAHRIA TOWN (PVT) LIMITED

VS

YASIR ALI ETC.

Petitioner by : **Syed Moazzam Ali Shah and Mr. Tanveer Ahmed Sial, Advocates.**

Respondents by : **Mr. Asif Irfan, Advocate for the Respondents No.2 to 4 and 6 to 8.**
Respondent No.5 ex-parte.

Date of hearing : **17.07.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Civil Revision Petition, filed under Section 115 of the Code of Civil Procedure, 1908 ("**CPC**"), Bahria Town (Pvt) Limited ("**Petitioner**") has assailed the Order dated 25.02.2025 ("**Impugned Order**") passed by the learned Additional District & Sessions Judge-V (East), Islamabad, whereby the Application for condonation of delay submitted by the Respondents No. 1 to 8, has been allowed.

2. The brief facts giving rise to the instant Revision Petition are that Mst. Ansar Farooq (widow), Nadeem Akhtar Abbasi, Yasir Ali, Asad Ali, and Mst. Farhat Sheraz filed a Suit for Declaration, Possession, Permanent and Mandatory Injunction against the Petitioner before the learned Senior Civil Judge, Islamabad-East ("**Trial Court**"), with the prayer to pass the following decrees in their favor:

(i) A decree for declaration to the effect that the plaintiffs is lawful owner in possession of suit land and the defendants have no concern whatsoever with the same. Further declaration to the effect that the proposed act of the defendant are illegal, unlawful, malafide, arbitrary, unjust, unauthorized, ineffective and inoperative upon the rights of the plaintiff and therefore, constitute an invasion over the rights of the plaintiffs.

(ii) A decree for permanent injunction from restraining the defendant encroaching upon interfering in the peaceful possession of plaintiffs, giving power of attorney general or special to anybody else, entering into agreement to sell, selling, alienating, gathering, construction material,

raising any construction or changing the nature of the suit land and restoring the possession of suit land in favour of the plaintiffs in record as well as at spot in any manner whatsoever.

The Petitioner contested the suit by filing a written statement. The learned Trial Court framed the issues and directed the parties to produce their evidence. Respondents/Plaintiffs appeared through an attorney, namely Yasir Ali, as PW-1 and submitted his affidavit as Ex.P-1/1-2. Raja Shahid Mehmood appeared as PW-2 and submitted his affidavit in evidence as Ex.P-13; Muhammad Rafi appeared as PW-3 and submitted his affidavit as Ex.P-14; Muhammad Abbas Goraya/Patwari Halqa Phulgaran appeared as PW-4 and recorded his statement on oath. In documentary evidence, PW-1 produced certain documents as Ex. P-2 to Ex. P-12. PW-4 produced his report as Ex. P-15/1-3 and mutations as Ex.PW-2/1-26. The Petitioner/Defendant produced evidence through Mumtaz Ali Khan as DW-1, who submitted his affidavit as Ex. D-1 and also produced certain documents as Ex. D-2 to D-10. Shehzad/Girdawar Circle Mouza Phulgaran testified as CW-1 and recorded his statement on oath. After the closure of evidence and hearing the arguments of both parties, the learned Trial Court, vide Judgment dated 20.07.2024, dismissed the suit filed by the Respondents/Plaintiffs.

3. Being aggrieved by the Judgment to the extent of the comments made in paras 56 to 63 and 65 by the learned Trial Court, the Petitioner filed an appeal before the learned District Judge, Islamabad-East, on 26.08.2024. The Respondents No. 1 to 8 also filed an appeal against the Judgment dated 20.07.2024 before the learned District Judge, Islamabad-East, on 12.09.2024. Along with the appeal, an application for condonation of delay was also filed. The learned Additional District Judge-V, East-Islamabad, after hearing the arguments of the parties, vide Impugned Order dated 25.02.2025, allowed the Application for condonation of delay. Feeling aggrieved by the Impugned Order, the Petitioner/Defendant has filed the instant Petition.

4. The learned counsel for the Petitioner submits that the Impugned Order suffers from material illegality and irregularity; that the observation of the learned Appellate Court with respect to condonation of delay in filing of the appeal by the Respondents/Plaintiffs on account of the filing of the appeal by the Petitioner within the limitation period is not lawful and justifiable for condoning the delay; that both matters are different in subject and nature and have

no common interest or common cause of fact and law; that the Respondents/Plaintiffs assailed the Judgment and Decree against the dismissal of their suit, whereas the Petitioner/Defendant instituted an appeal against the observations passed in paras 56 to 63 and 65, which were beyond the issues framed in the suit; that the case law relied upon by the learned Appellate Court to condone the delay in the Respondents'/Plaintiffs' appeal is absolutely irrelevant and distinguishable from the facts of this case; that the Petitioner's/Defendant's appeal challenges the ancillary observations in the Judgment, not the merits of the original suit; that the Petitioner's/Defedant's appeal was not filed on the merits of the original suit but solely to expunge extraneous observations unrelated to the pleadings; that the Respondents'/Plaintiffs' appeal is time-barred, and the learned Appellate Court failed to apply the mandatory requirements of Section 5 of the Limitation Act, 1908 **("Limitation Act")**; that the Respondents/Plaintiffs were required to explain each and every day of delay but failed to do so; that the Impugned Order is against the law and facts of the case, as the contents of the Respondents'/Plaintiffs' application under Section 5 of the Limitation Act, 1908 did not make out any sufficient cause for condonation of delay. Lastly, the learned counsel prayed that the instant petition may kindly be accepted, the Impugned Order may kindly be set aside, and the application under Section 5 of the Limitation Act filed by the Respondents No. 1 to 8 may kindly be dismissed.

5. On the other hand, the learned counsel appearing on behalf of the Respondents No. 2 to 4 and 6 to 8 submitted that the Impugned Order condoning the delay under Section 5 of the Limitation Act, was passed by a competent Court after due application of judicial mind and consideration of the facts placed before it. The learned Trial/Appellate Court exercised its discretion judiciously, finding sufficient cause for the delay. The Petitioner has failed to establish any ground for dismissal of the Application for condonation of delay and is merely seeking to delay the proceedings on technicalities. Lastly, the learned counsel prayed for the dismissal of the instant petition.

6. No one is in attendance on behalf of the Respondent No. 5 despite service through publication in newspaper "Dawn International" dated 23.06.2025, therefore, the said Respondent is proceeded against ex-parte.

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

8. The matter for determination before this Court is whether one appeal filed by the Petitioner **(**i.e**.,** Bahria Town vs. Ansar Farooq**)** against the Judgment and Decree was filed before the Appellate Court within time, while the appeal filed by the Respondents against the same Judgment and Decree was filed after the period of limitation, is to be condoned or not. For ready reference, judgments of the superior Courts are to be reproduced here for the guidance of this Court. In the case titled *Subedar Sardar Khan through legal heirs and others vs. Muhammad Idrees through General Attorney and others* **(PLD 2008 Supreme Court 591)**, it is held as under:-

> *"6. We have heard the learned counsel for the parties and examined the available record. Firstly, adverting to the question of limitation, as the appeal (C.A.1775/2002) filed by Ghulam Farid is barred by 38 days. Since similar questions of law arising out of common judgment dated 6-6-2005 are also involved in another appeal (C.A.1087/2002) and we propose to decide both the appeals through single judgment, therefore, we condone the delay in filing the appeal. Reference can be made to the judgment reported as Mehreen Zaibun" Nisa v. Land Commissioner, Multan and others (PLD 1975 SC 397), Pakistan Television Corporation (ibid), Sheikh Muhammad Rashid v. Majid Nizami, Editor-in-Chief The Nation and Nawa-e-Waqt (PLD 2002 SC 514) and Water and Development Authority through Chairman, WAPDA House, Lahore v. Abbas Ali Malano and another (2004 SCMR 630)."*

9. Similarly, in the case titled *Muhammad Ashraf and others vs. U.B.L and others* **(2019 SCMR 1004)**, the august Supreme Court held as under:-

> *"4. Out of the three instant Civil Petitions before us, one Civil Petition bearing No.3032-L of 2016 is barred by limitation and accompanied by an application for condonation of delay i.e. Civil Misc. Application No.3057 of 2016, while the other two Civil Petitions bearing Nos.2701-L and 2994-L of 2016 are within time. It is settled law that where an order or judgment is challenged through separate proceedings be it appeals or petitions, some of which are within time, while the others have been filed beyond the period of limitation, all such appeals or petitions ought to be decided on merit especially when an order in one appeal or petition (within time) would apply to the other appeal or petition, which may be barred by limitation. Consequently, it is appropriate to decide all three Civil Petitions on merits."*

10. In the above-referred judgments, it is held that where an Order or Judgment is challenged through separate proceedings, be it appeals or petitions, some of

which are within time while the others have been filed beyond the period of limitation, all such appeals or petitions need to be decided on merits. In the instant case, the learned counsel on behalf of the Petitioner argued that the appeal filed by the Petitioner is against the same Judgment and Decree, but his appeal is not based on merits but to the extent of expunction of remarks made in paras 56 to 63 and 65, while the appeal filed by the Respondents, in which they have challenged the merits of the case, will not be covered by the judgments of the Supreme Court *supra*.

11. While perusing the judgments of the august Supreme Court mentioned above, this Court is of the view that irrespective of the nature of the appeals, it has been held that if appeals are filed against the same Judgment or Order, condonation ought to be allowed, and the appeals be decided on merits. Hence, the Petitioner's counsel has failed to point out any illegality or jurisdictional defect in the Impugned Order. Resultantly, the instant Civil Revision Petition is **dismissed,** being devoid of any merit**.**

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open Court on _____.

JUDGE

//Sajid//