JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

R.F.A. NO. 94 OF 2018

T&T EMPLOYEES CO-OPERATIVE HOUSING SOCIETY ISLAMABAD

Versus

HAJI GHULAM HUSSAIN

Appellant by	**:**	**Mr. Jameel Hussain Qureshi, Advocate.**
Respondents by	**:**	**Sheikh Muhammad Khizar-ur-Rashid and Rubab Bhatti, Advocates.**
Date of hearing	**:**	**06.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, the Appellant/Defendant No. 1 has called into question the propriety and legality of the (i) Order dated 22.12.2017 **("Impugned Order")** and (ii) Order and Decree dated 05.04.2018 **("Impugned Order and Decree")** passed by the learned Civil Judge 1st Class Islamabad-West **("Trial Court")**.

2. Succinctly, the facts giving rise to the filing of the instant Regular First Appeal are that the Respondent/Plaintiff filed a suit for specific performance and permanent injunction with the averments that he transferred land measuring 15 Kanals 15 Marlas **("Suit Property")** situated in village Pind Parian Islamabad in favour of the Appellant/Defendant No. 1 and was entitled to its consideration. It was alleged that the factum of transfer of land was acknowledged by the Appellant/Defendant No. 1 through Letter dated 27.01.2010. The suit land was situated in the housing project of Appellant/Defendant No. 1. It is averred in the plaint that Appellant/Defendant No.1 had promised the Respondent/Plaintiff to take double of the land from its name situated outside the project against the consideration of Suit Property, but it was able to transfer land measuring 14 Kanals 06 Marlas against the land measuring 7 Kanals 03 Marlas out of 15 Kanals 15 Marlas, but failed to

pay consideration or transfer any land against the remaining 8 Kanals 12 Marlas. It was contended that an Agreement dated 20.06.2002 was executed between the Respondent/Plaintiff and the Appellant/Defendant No.1, according to which the Appellant/Defendant No.1 acknowledged and promised that either it would pay the sale consideration or would provide land measuring 8 Kanals 12 Marlas out of the Suit Property, otherwise the Respondent/Plaintiff would have the right to get the Suit Property transferred through the process of the Court in his name. Since the Appellant/Defendant No.1 neither paid the sale consideration nor transferred any land against land measuring 08 Kanals 12 Marlas in favour of the Respondent/Plaintiff, and ultimately refused to honour its commitment made through Agreement dated 20.06.2002, wherein no target date is mentioned, which necessitated the Respondent/Plaintiff to file a suit for Specific Performance of Agreement dated 20.06.2002 as well as Permanent Injunction.

3. None appeared in the Court in response to the summons on behalf of the Defendants, owing to which they were proceeded against ex-parte vide Order dated 22.12.2017. The order sheet reveals that the Defendants subsequently filed an application for setting aside the ex-parte proceedings, contending therein that the service upon the Defendants was not effected, due to which they could not appear in the Court on the date fixed. The learned Trial Court, owing to the contentions made in the application, framed an issue on 12.03.2018 to the effect: “whether the applicant was duly served through summons/notice?” and fixed the matter for evidence of Appellant/Defendant No. 1. Since the Appellant/Defendant No.1 failed to produce any evidence to prove the stance taken in the application, the said application was also dismissed vide order dated 05.04.2018, and ultimately the suit of the Respondent/Plaintiff was decreed as prayed for, vide the Impugned Order dated Decree dated 05.04.2018.

4. Feeling aggrieved from the Impugned Order and Decree dated 05.04.2018, the Appellant/Defendant No. 1 filed an appeal before the District Judge Islamabad-West, which was returned for want of pecuniary jurisdiction, vide Order dated 30.05.2018; hence, this Appeal.

5. At the very outset, a legal objection was raised by the learned counsel for the Respondent/Plaintiff that the Appeal was time-barred, hence liable to dismissal on this score alone. When confronted, learned counsel for the Appellant/Defendant No.1, while conceding the above-said objection, argued that an application for condonation of delay under Section 5 of the Limitation Act has been filed with the Appeal, and contended that there is only a few days' delay in filing the Appeal, which may be condoned. Before proceeding further, I deem it appropriate to determine the fate of the application for condonation of delay.

C.M. NO. 3 of 2018:

6. Through this application under Section 5 of the Limitation Act, 1963, the Applicant/Appellant/Defendant No. 1 seeks condonation of delay in filing the accompanying Appeal against the judgment and Impugned Order and Decree. The Appeal has been filed with a delay of 04 days, i.e., beyond the prescribed period of limitation. The applicant seeks to explain the delay on the grounds stated in the application. It is well settled that for the delay to be condoned under Section 5 of the Limitation Act, the applicant must demonstrate sufficient cause and furnish a plausible and satisfactory explanation for each day's delay. A mere statement, unsupported by material particulars or cogent evidence, cannot be accepted as a valid ground for condonation. In the present case, the applicant has failed to provide any substantial or bona fide explanation that can be considered as sufficient cause. The reasons mentioned are vague, devoid of supporting documentation, and lack persuasive value. No effort has been made to explain the steps taken during the intervening period or to demonstrate due diligence on the part of the Appellant/Defendant No. 1. Furthermore, it is equally settled in law that delay defeats equity. The delay in approaching the Court has resulted in the accrual of a substantive right in favour of the opposite party, which cannot be lightly interfered with in the absence of compelling reasons. In the absence of any justifiable ground, it would be inequitable and unjust to deprive the Respondent/Plaintiff of the benefit of finality that has accrued in their favour by the operation of law.

7. The august Supreme Court, in *Ramlal and Others v. Rewa Coalfields Ltd.*, **AIR 1962 SC 361**, observed that the expression "sufficient cause" must receive a liberal construction so as to advance substantial justice; however, such liberality must not override the need for finality and certainty in litigation. The explanation must not only be plausible but must also reflect reasonable conduct on the part of the litigant. In light of the foregoing and upon a careful consideration of the material on record, this Court is of the view that no sufficient or convincing cause has been shown for condoning the delay in filing the Appeal. In *Imtiaz Ali Vs Atta Muhammad and another,* **PLD 2008 Supreme Court 462**, it has been held that limitation period having commenced, no interruption could stop the limitation running. The period spent for obtaining the copy of the Impugned Order and Decree could be exempted, but Applicant/Appellant/Defendant No. 1 cannot be allowed any more period. In *Government of Pakistan Vs Malbrow Builders contractor Sialkot,* **2006 SCMR 1248**, it was held that question of limitation being not a mere technicality cannot be taken lightly, and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification. Sufficient cause is not capable of connotation with exactitude and differs from case to case, but laxity, carelessness, and cursory approach of the functionaries of the Government do not constitute sufficient cause, and question of any indulgence does not arise. In *The Secretary Communication and Works Government of Balochistan Quetta vs Miwais Khan and 6 others,* **2023 CLC 752**, it was held that the appellant had not been able to sufficiently explain the inordinate delay within the parameters of law. It was further held that in absence of any valid explanation of the delay for each and every day, the appeal was not maintainable. In *Muhammad Sarfraz Siyal Vs Fazal Hussain Khan,* **2021 CLC 867 Islamabad** it was held that the act of approaching the wrong forum must be accounted for. It should be established that due to some honest, bona fide, and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence, or ignorance of law attributed to him could not constitute sufficient cause. It was further ruled that ignorance of law was

no excuse. In *Lal Khan through legal heirs vs Muhammad Yousaf through legal heirs,* **PLD 2011 Supreme Court 657** it was held that an aggrieved person has to pursue his legal remedies with diligence, and if a petition or suit is filed beyond limitation, each day's delay has to be explained. Where vague explanation was given without even specifying the date of knowledge of the impugned order/judgement nor any explanation tenable in law was provided to justify condonation, delay condoned was violative of law and was not sustainable. Hence, the application under Section 5 of the Limitation Act is hereby **dismissed**.

MAIN CASE:

8. Upon examination of the record, it has been noticed that neither the Collector nor the Halqa Patwari, who were parties to the suit as Defendants No.2 and 3 and against whom the decree was passed, have been impleaded as a party in the present Appeal. The only Respondent impleaded is Haji Ghulam Hussain, the original Plaintiff in the suit. The legal question for consideration before this Court is whether the Appeal is competent in the absence of the above-said parties, i.e., the Collector and the Halqa Patwari (Defendants No.2 and 3). It is a settled principle of civil jurisprudence that all necessary parties must be impleaded in an Appeal against a judgment and decree where their rights are affected. The Collector and Halqa Patwari were parties to the original suit, and the Impugned Decree has been passed jointly and severally against them along with the Appellant/Defendant No. 1. Therefore, they are necessary parties for the proper adjudication of the Appeal. The failure of the Appellant/Defendant No. 1 to implead these parties implies that the decree has attained finality so far as it relates to the Collector and the Halqa Patwari. No Appeal has been filed by or against them, and as such, the decree has become conclusive and binding on them. The law is clear that where a decree is passed against several defendants jointly and severally, an appeal by only one of them, without impleading the others whose rights are inseparably connected with the matter under challenge, is not maintainable. Any adjudication in such an appeal would necessarily have the effect of modifying or reversing a part of the decree that has attained finality. Such piecemeal or inconsistent decrees are not permissible under

law. The superior courts of Pakistan have consistently held that non-joinder of necessary parties in an appeal vitiates the proceedings. In this regard, reliance may be placed on *Nasrullah Khan and another versus Mst. Khairunissa and others,* **2020 SCMR 2101** and *Dr. Muhammad Akbar versus Mst. Safia Kakar and others*, **2023 MLD 24.**

9. In view of the foregoing reasons, the Appeal is found to be fatally defective due to the non-joinder of necessary parties, namely the Collector and the Halqa Patwari, as well as time-barred. The Impugned Order and Decree, having attained finality against them, cannot be reopened or disturbed in their absence. The Appeal, therefore, is incompetent; hence, **dismissed** with costs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this ____ day of June 2025.

JUDGE