

Limitation Act, 1908.

Preamble

THE

LIMITATION ACT, 1908

IX OF 1908

7th August 1908

An Act to consolidate and amend
the law for the Limitation of Suits, and for other purposes.

Preamble : — Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property.

Court Decisions

Preamble. Law containing limitation must be acted upon but if there was no provision in that law regarding limitation, then in that event, Limitation Act, 1908 which is of general nature would come into play and that principle could be stretched to any extent regarding applicability of statutes. Any provision specially made applicable to particular Act must be applied thereto and in that event provisions of general nature would not come into play. P.L.J.1999 Tr.C. (Services) 480.

Application to family suits. Whether period of limitation prescribed under Family Courts Act is different from period prescribed in first schedule of Limitation Act. Period of limitation against judgment of Family Court does not find any place in Limitation Act, but period was provided 30 days in Family Courts Act. Period prescribed for an appeal against judgement of Family Court is different from first schedule of Limitation Act. Section 29 of Limitation Act will be applicable to appeals under Family Courts Act. PLJ 1996 AJK (FSC) 179 = 1996 MLD 692

It is hereby enacted as follows:—

1. Short title, extent and commencement

PART I

PRELIMINARY

1. Short title, extent and commencement. — (1) This Act may be called the Limitation Act, 1908.

(2) It extends to the whole of Pakistan.

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes any person from or through whom an applicant derives his right to apply:

(2) "bill of exchange" has the same meaning as in section 5 of the Negotiable Instruments Act, 1881 (XXVI of 1881), and includes a Hundi and a Cheque]:

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed,

as the case may be:

- (4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:
- (5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing, or attached to or subsisting, the land of another:
- (6) "foreign country" means any country other than [Pakistan] :
- (7) "good faith"; nothing shall be deemed to be done in good faith which is not done with due care and attention:
- (8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue:
- (9) "promissory note" has the same meaning as in the Negotiable Instruments Act, 1881 (XXVI of 1881):
- (10) "suit" does not include an appeal or an application: and
- (11) "trustee" does not include a Benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

3. Dismissal of suit, etc. instituted, etc. after period of limitation

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

3. Dismissal of suit, etc. instituted, etc. after period of limitation.—Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Court Decisions

Lapse of prescribed period of limitation. Doors of Justice are closed after lapse of prescribed period of limitation and no plea of injustice, hardship or ignorance could be agitated unless delay so caused was fully Justified legally and each day's delay must be accounted for by legal and valid reasons. P.L.J.2000 Tr. C. (Services) 517.

Punjab Pre-emption Act, 1913, S.15—Deficiency of court-fee and its effect on limitation—Failure to pay proper court-fee at time of institution of suit would not render suit time-barred at subsequent stage when orders were passed for supply of deficiency Question rat limitation, "held, would not arise with reference to proceedings on question of court-fee under O. VII, R. 11. Civil Procedure Code—En cases of deficient court-fee, it was a matter of right that Court was to determine deficiency and afford at least one opportunity under said provision to plaintiff to make up deficiency. →1986 S C M R 1439

Recovery of possession of immovable property – Suit plot was taken over and converted into the park in year 1975 and the suit for recovery of possession was filed in the year 1991—Validity—Such suit was hit by provision of S. 3 of the Limitation Act, 1908, and was barred by Art. 142 of Limitation Act, 1908, which provided maximum period of 12 years – Suit was not maintainable in circumstances. PLD 2003 Kar. 162

S. 3 and Article 181. Limitation. Application U/S. 12(2) CPC and revision U/S. 115 CPC were both miserably time barred. It would be, a mockery of Limitation Act if issues are framed in an application which was filed after more than 13 years of decree passed by trial Court. Sanctity

must be attached to Judicial proceedings and law is never on side of an indolent person even if the contentions of petitioner be favourably considered. Trial court as also the District Judge were bound by mandatory provisions of section 3 of Limitation Act, 1908 where prima facie there were no reasons for condonation of delay. P.L.J.1996 Lah. 939 = 1997 CLC 268.

Suit for recovery. Suit decreed but for less amount. Appeal against for further decree of amount refused. Dismissal due to bar of limitation. It is well settled that knowledge of counsel is knowledge of client, Legal principle that it was duty of client to find out position of case cannot be disputed. Counsel for appellant has not advanced any reason why discretion of court should have been exercised in favour of Bank in the light of amended section 3 of Limitation Act. Counsel of Bank was present at the time of announcement of judgment. During period of .29th of June to 29th of November, no effort was made to find out whether judgment had been announced or not. No explanation has been given for it. PLJ 1997 SC (AJK) 143 = PLD 1997 SC (A&K) 15.

Validity of limitation not effected by deficient court-fee.- P L D 1984 S.C .289

Void order, erroneous order an decree obtained through fraud—Starting point of limitation—Period of limitation would apply to such orders and decrees, which would start running, when person adversely affected factually came to know about the same— In all fairness terminus a quo should be fixed and date to knowledge of alleged void order must be independently established on sound basis. PLD 2004 Kar. 143

Suit by co-owner seeking share of inheritance—Limitation—For such co-owner, particularly in possession, there was no limitation. PLD 2004 Lah. 1

Amendment in plaint – Defendant raised a plea that the suit was not maintainable under O.XXX, R.10. C.P.C. and the same was liable to be rejected – Plaintiff sought amendment in plaint –

Validity – Any amendment at such belated stage being hit by the provisions of S.3 of the Limitation Act, 1908, could not be allowed – Where the suit was not maintainable at the time of institution, amendment could not be allowed to make the proceedings in the suit so as to make it maintainable resulting in change of the character of the suit by introducing new plaintiff for which no application was made by the party – High Court declined to allow amendment in the plaint – Plaint was rejected in circumstances. PLD 2002 Kar. 315

Application U/S. 12(2) CPC and revision U/S. 115 CPC were both miserably time barred. It would be, a mockery of Limitation Act if issues are framed in an application which was filed after more than 13 years of decree passed by trial Court. Sanctity must be attached to judicial proceedings and law is never on side of an indolent person even if the contentions of petitioner be favourably considered. Trial court as also the District Judge were bound by mandatory provisions of section 3 of Limitation Act, 1908 where prima facie there were no reasons for condonation of delay. PLJ 1996 Lah. 939 = 1997 CLC 268.

Condonation of delay-Contention that delay should be condoned because machinery of Government takes inordinately long time to make arrangements for filing cases-Repelled—*Government in matter of condonation, held, cannot claim preferential treatment.- 1981 C L C 1148

Court Fees Act, 1870) could not be read in isolation or independently of those provisions of Court Fees Act, 1870 which relate to ascertaining proper court-fee-Certain amount of court-fee, if and when adjudged, as proper fee as was visualised by S. 6, Court Fees Act, 1870 result would follow as provided in Ss. 10(ii), 12(ii) & 28 of Court Fees Act, 1870 and not as provided in S. 3, Limitation Act, 1908 Validity mentioned in Ss. 10(ii), 12(ii) & 28, Court Fees Act, 1870 was vis-a-vis fiscal requirement (and consequences) as a measure of . prosecution of lis and not regarding physical institution of a document by act of presentation –Question of limitation arises if after determining “proper” court-fee document was returned and time was allowed for fresh

presentation of same (after supply, of deficiency) and same was not refiled within specific period. P L D 1984 S.C 157

Date of the suit be reckoned from the time when the plaint was presented to the Court competent to receive it– Insufficiency or deficiency of court-fee shall not affect the question of limitation at all–Validity of plaint for the purposes of the Limitation Act is not dependent on its validity for the purposes of Court Fees Act. 1987 C L C 2428

Deficiency of court-fee and its effect on limitation–Failure to pay proper court-fee at time of institution of suit would not render suit time-barred at subsequent stage when orders were passed for supply of deficiency Question rat limitation, “held, would not arise with reference to proceedings on question of court-fee under O. VII, R. 11. Civil Procedure Code–En cases of deficient court-fee, it was a matter of right that Court was to determine deficiency and afford at least one opportunity under said provision to plaintiff to make up deficiency. –>1986 S C M R 1439

Deficiency, making up–interpretation of O. VII, r. 11, C. P. C.-Contentions (1) that decision of S.C in case of Mst. Walayat Khatun P L D 1979 S C 821 and subsequent reported decisions by S.C has led to conflict of authority, thus leading to confusion, for litigant public and Bar which needed to be resolved, (2) that S.C in a Full Bench case of Shahna Khan v. Aulia Khan P L D 1984 S C 157 has pointed out that case of Mst. Walayat Khatun : was authority and law declared only to extent of common ratio of two separate judgments, rendered therein–Held: (1) Decision in Mst. Walayat Khatun’s case P L D 1979 S C 821 cannot be assumed to have dissented from S.C judgments in Muhammad Nawaz Khan’s case P L D 1970 S C 37 and Shah Nawaz’s case 1972 S C M R 179–Law laid down by S.C in cases of Muhammd Nawaz Khan P L D 1970 S C 37 and Shah Nawaz’s case 1972 S C M R 179 continue to hold field and is law declared, notwithstanding judgment in case of Mst. Walayat Khatun P L D 1979 S C 821–No departure was ever made in any case from what was held in two cases of Muhammad Nawaz and Shah Nawaz to effect that it was obligatory to allow time for supply of deficiency in court-fee before rejecting plaint and regarding refusal of discretion under S. 149, C. P. C. only on grounds of contumacious and positive mala fide conduct ; (2) That this being not unusual for Court consisting of Bench of more than one Judge to render a decision consisting of more than one judgment, decision reached in Mst. Walayat Khatun’s case P L D 1979 S C 821 was undoubtedly common ratio of two separate judgments–Strict view in Mst. Walayat Khatun’s case expressed in second judgment was not common ratio of decision and has to be treated as individual opinion of one Judge. P L D 1984 S.C 289

Delay in filing appeal against rule of court. Unexplained delay of 17 days in filling appeal. No express extension for submission of award is required. Delay is impliedly condoned. Knowledge of proceedings appear from record. Plea of proceedings without knowledge repelled. PLJ 1999 Lah. 251 = 1999 MLD 2829.

Dismissal of time barred appeal.. Appeal filed by defendant was barred by time. Defendant had failed to offer any explanation, much less plausible, for the same. Appellate Court below, thus, appears to have applied its judicial mind to facts and circumstances of case carefully and had recorded speaking order vide which he had dismissed appeal. Appellate Court had given valid reasons for its conclusions and because of the fact that order impugned was neither arbitrary nor perverse which does not suffer from any illegality or material irregularity, therefore, no interference was warranted by High Court in exercise of its revisional jurisdiction. PLJ 2000 Pesh. 110.

Extension of time, grant of. Deficiency in Court Fee made good before decision of appeals but effect of filing appeals initially without proper Court Fee as well as effect of making good deficiency not determined by appellate Court Question whether appellants before lower Courts

entitled to grant of extension of time also not considered Held: Appeals could not be dealt with on merits without considering aforesaid questions and no alternative left but to remand cases to lower appellate Courts for fresh decision. Civil Procedure Code, 1908, S. 107 (1) P L D 1982 Lah.218

Gavaranga Sahu v. Botokrishna Patro I L R 32 Mad. 305 and Hari Ram v. Akbar Hussain I L R 29 All. 749 ref

Laches/Delay when bar to a /is. Laches per se is not a bar to a Constitution Petitioner. There is a marked distinction between delay in filing of a legal proceeding within period specified in an Article of Schedule to Limitation Act and delay in filing of a Constitution Petition for which no Statutory period is provided for. In former case delay of each day is to be explained by furnishing sufficient cause for seeking condonation of delay under Section 5 of Limitation Act in filing of a legal proceeding after expiry of statutory period. Whereas, in latter case, delay or question of laches is to be examined on equitable principles for reason that grant of constitutional relief is a discretionary relief and Court may decline to press into service its constitutional jurisdiction if it would be inequitable keeping in view conduct of a petitioner. Question of delay or laches is to be considered with reference to facts of each case.

Delay/laches of several years can be overlooked in»a Constitution petition if facts of case and dictates of justice so warrants. Plea of laches is only available to a person who acts bona fide under belief that what he is doing is legal and proper and same cannot be invoked in aid by a person who knew from very inception that what he was doing was on account of his own manipulation contrary to law. PLJ 1999 SC 2331 = 1999 SCMR 2883.

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Land Reforms Regulation, 1972 (M.L.R. 115), para. 25(7)Unless required amount of Court Fee chargeable on document (which term includes plaint also) as was indicated in schedules, was not paid, it shall not be taken to be of any validity Such rule however, does not lead to a necessary corollary that the plaint which was not adequately stamped was not a 'proper plaint' at all in the eyes .of law and further that for the limitation purposes suit shall be deemed to have been instituted only when proper and required Court Fee was paid on it. 1987 C L C 2428 Lapse of prescribed period of limitation. Doors of justice are closed after lapse of prescribed period of limitation and no plea of injustice, hardship or ignorance could be agitated unless delay so caused was fully justified legally and each day's delay must be accounted for by legal and valid reasons. PLJ 2000 Tr. C. (Services) 517.

4. Where Court is closed when period expires

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Court Decisions

S. 10 of General Clauses Act, 1897. Delay in filing appeal. Condonation of. Revisional jurisdiction. Exercise of By reading these two provisions it would be cleared that these enable a person to do what he could have done on holiday, on next working day in other words where period is prescribed for performance of an act in a court or office and that period expires on holiday then act should be considered to have been done within period if that is done on next day on which court or office is open. Principle of S. 4 of Limitation Act is analogous to that of S. 10 of General Clauses Act which is more general in character than former i.e. S. 4 of Limitation Act by using words act and proceedings instead of suit, appeal or application and also word 'office' in addition to court. It is general preposition of law that one should not be prejudiced by act of court or may be said by act of office which is beyond control of person. PLJ 1996 Pesh. 87 – 1995 CLC 1830.

Suit in forma pauperis. Whether second appeal was barred by time. Objection that appeal is barred by 5 days. Argument that High Court being closed due to summer vacations, appeal could be filed on re-opening of Court under Section 4 of Limitation Act, 1908, and same having been filed on 19.8.1985, was well within time. High Court was functioning even during summer vacations. In fact, appellants filed appeal during vacations but failed to specify ground of urgency, which cuts at root of argument. Case of appellants was not covered by Section 4 of Limitation Act. Regular second appeal is barred by 5 days. PLJ 1995 Lah. 172 = 1995 MLD 1042.

5. Extension of period in certain case

Any appeal or application for [a revision or] a review of judgment or for leave to appeal or any other application to which this section may be made applicable [by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Court Decisions

Suit in forma pauperis. Whether second appeal was barred by time. Objection that appeal is barred by 5 days. Argument that High Court being closed due to summer vacations, appeal could be filed on re-opening of Court under Section 4 of Limitation Act, 1908, and same having been filed on 19.8.1985, was well within time. High Court was functioning even during summer vacations. In fact, appellants filed appeal during vacations but failed to specify ground of urgency, which cuts at root of argument. Case of appellants was not covered by Section 4 of Limitation Act. Regular second appeal is barred by 5 days. PLJ 1995 Lah. 172 = 1995 MLD 1042.

Time-harred appeal. Appeal was filed when limitation of ninety days for filing the same had already expired. Appellants, had no explanation for delay. Appellants, plea, that appellant being Government, time was required for Government agencies to get sanction and face lengthy procedure for filing appeal, can hardly be reason. to condone delay, which had created

substantive right in favour of respondents. Government cannot claim to be treated in any manner differently from ordinary litigant nor the same can be granted facilities other than ordinary litigants. No where either in application for condonation of delay or affidavit in support thereof, delay was stated to be due to obtaining sanction from Government. Government functionaries appeared to be unnecessarily careless, negligent and deliberately delayed filing of appeal even after obtaining copy of impugned judgment. PLJ 2000 Kar. 109. Where Appellants, plea, was that they had no knowledge of judgment was of no consequence in as much as, judgment was announced in presence of Assistant Government Pleader. Appellant's contention that time was required for Government to get sanction and face lengthy procedure for filing appeal could hardly be the reason to condone delay, which had created substantive right in favour of respondents. Government could not claim to be treated in any manner differently from ordinary litigant nor it could be granted facilities other than the ordinary litigants. No where in memo of appeal, in application under S. 5, Limitation Act 1908, and in affidavit in support thereof, it had been stated that delay was due to obtaining sanction from Government. Government functionaries seemed to be un-necessarily careless, negligent and deliberately delayed filing of appeal even after obtaining copy of impugned judgment, for which appellants had no reply. Appeal having been filed beyond prescribed period of limitation and no cogent reason having been given for condonation of delay, the same was dismissed being barred by time. PLJ 2000 Kar., 123 = 2000 CLC 831. /* ->Dismissal of appeal for non-payment of court-fee - *Defendant's plea that funds were not available by Finance Department was not valid ground for enlargement of time or grant of permission to make up deficiency of court-fee- Defendants by not affixing requisite court-fee on memo of appeal even after objection of plaintiff, for two years were guilty of contumacy especially when decree of Trial Court clearly indicated payable court-fee-When party to litigation was guilty of contumacy, Court could not extend time for its benefit-Defendant's conduct in not affixing court-fee on memo. of appeal being contumacious Court would decline to exercise discretion in his favour-Where defaulting party could not make out good cause for condonation of delay, such party could not be allowed to make up deficiency of court-fee after expiry of period of limitation-Government could not claim to be treated in any manner differently from ordinary litigant in such matter-Delay of each day must be explained-Dismissal of appeal by Appellate Court for non-payment of court-fee would not Justify interference therein-Defendants were not found entitled to relief on account of their contumacious conduct. 1998 M L D 589

Petitioner's officials acted with gross negligence in refiling revision petition. They took almost one year in doing what they were required to do in seven days and explanation offered by them for this inordinate delay has not been found to be convincing. P.L.J.1997 SC 1644 = 1997SCMR 1224 = NLR 1997 Civil 693 = 1997 Law Notes 393.

Suit for permanent injunction. Possession of petitioner is not proved, when possession of petitioner over disputed property is not proved how permanent injunction can be granted to petitioner. Civil revision is time barred as well as learned counsel has failed to properly constitute civil revision placing documentary evidence as well as necessary documents on record. Revisional Jurisdiction is intended to correct errors of subordinate courts and limitation is a statutory bar. P.L.J.1997 Lah. 699 = PLD 1997 Lah. 403.

'Order without jurisdiction' and 'order based upon technical errors'—Difference existed between a case where the Court though vested with jurisdiction to pass an order but while passing the same, some technical error was committed which did not affect the jurisdiction of the Court and the case in which the Court though not vested with jurisdiction and power to pass an order but it had passed the same, in the latter case, the higher Court before whom such order was challenged could decide question of condonation of delay keeping in view that the maintenance

of such order on the ground of limitation would perpetuate an order which was nullity having been passed by the Court vested with no jurisdiction giving undue advantage to a party deriving benefit thereunder—Delay could be condoned in circumstances. PLD 2002 S.C 630 1998 SCMR 2296 ref.

1974 S C M R 364 ; 1976 S C M R 141 ; 1976 S C M R 147 analysed. P L D 19E Lah; 261 and P L D 1981 B J 23 Ref.

Appeal :- Condonation of delay. Sufficient cause. Any action taken on advice give by counsel against a clear provision of law would not entitle party to seek condonation of delay on the ground that the bonafidely acted on that advice. Where, however, appellant is able to establish that he acted in good faith in pursuing his appeal before wrong Court, such a case cannot be excluded from purview of S. 5, Limitation Act, 1908, for condonation of delay. PLJ 1999 SC 208 = 1998 SCMR 2296.

Appeal filed by appellants firstly before District Judge was incompetent and before a party is allowed condonation it has to be seen as to whether a sufficient cause within meaning of Section 5 read with Section 14 of Limitation Act exists to warrant condonation. Party has to demonstrate that he prosecuted appeal before a wrong forum in a good faith. Appellants did not act with due care and attention to bring their case within meaning of "good faith". Appeal was -filed after delay of 160 days which is hopelessly time barred, hence, dismissed. PLJ 1998 Lah. 69 = 1998 CLC 485.

Appeal is barred by 334 days. It is not only a case of indifference on the part of counsel for appellants but also a case of gross negligence on the part of appellants and their representative. On both counts main ground for condonation of delay cannot be termed "sufficient cause" within scope of S. 5 of Limitation Act. In matter of Limitation Government is at par with an ordinary litigant. Appeal dismissed in limine. PLJ 1996 Pesh. 269 = 1997 CLC 434.

Appeal—Condonation of delay—Appellant-plaintiff filing his first appeal before District Judge which was returned for presentation to proper forum—Appellant faced with a curious order passed by trial Court which placed him in a fix and he remained in hands of Advocate who was under a bona fide mistake of law qua value of suit and determination of forum of appeal which point was not free from difficulty—Delay condoned in circumstances. 1986 C L C 126 Appellant genuinely believed that Rev. Secretary had jurisdiction to review his orders and consumed time in pursuing remedy at a wrong forum. Appellant filed affidavit which was not controverted by respondents. It is in interest of Justice that delay in filing appeal may be condoned and appeal may be decided on merits. PLJ 1994 Tr.C. (Services) 180 == 1994 PLC(C.S.) 597.

Appellant has filed application for condonation of delay stating that appeal filed by respondent before Tribunal was dismissed, for default of appearance and that he came to know of restoration of appeal only when he received notice from A.O.R. engaged in Civil Appeal No. 1790 of 1996 intimating him that petition for leave to appeal has been filed against decision of learned Tribunal. Statement made by appellant has not been controverted. Sufficient reasons have been given by appellant for condonation of delay in filing appeal. Delay condoned. PLJ 1998 SC 702 = 1998 SCMR 183 = 1998 PLC 96.

Application for extension of time. Acceptance of. Revision filed by respondent accepted. Expression "Case decided" falling in S. 5 does not necessarily mean decision of entire suit. It may relate to a decision of an interlocutory matter, order of trial Court fell. within expression of "case decided" and as such was amenable to revision. Impugned order passed by revisional Court cannot be said to be illegal. PLJ 1998 Lah. 1053 = 1998 MLD 1129.

Civil Procedure Code, 1908 Order IX Rule 13. Under Section 5 of Limitation Act applicant is

required to explain each day delay but has failed to give plausible explanation for delay. Application filed under Order DC Rule 13, CPC is dismissed being barred by time. PLJ 1995 Kar. 206 – 1995 CLC 1346.

Compensation of acquired land. There is no period provided for filing of appeal u/S. 54 of Act. However, under Art. 156 of Limitation Act period of 90 days has been provided for appeal to High Court, under C.P.C. 1908 except for cases covered by Articles 151 and 153 of Limitation Act. Period has to run from date of decree. Since appeal was filed beyond 90 days, therefore, petitioner also moved C.M. for condonation of delay on sole ground of lengthy correspondence for seeking sanction from Provincial Govt.. Sanction was granted by Provincial Govt. much earlier than filing of instant appeal and within stipulated period fixed for appeal. Appeal was filed beyond period of limitation and no cogent reasons have been given for condonation of delay. PLJ 1998 Pesh. 9 = PLD 1998 Pesh. 21 = NLR 1998 Rev. 42.

Condonation of delay. Delay of 133 days in filing appeal. Contention that counsel delayed intimation of judgment. Knowledge of counsel is knowledge of client and thus limitation starts running from date of announcement of judgment if it is announced in presence of counsel. PLJ 1997 SC (AJK) 361 -1997 MLD 2926.

Condonation of delay— Delay of 21 days was sought by the authorities to be condoned— Plea raised by the Authorities for Condonation of delay was that the delay in filing of the petition for leave to appeal was not intentional or deliberate but due to the fact that the judgment was received in the concerned office i.e. Law Branch after some delay— Validity— No preferential treatment is to be offered to Government Department qua the civil litigation— Supreme Court declined to condone the delay and took serious note of the conduct of Government officials and directed that the officers of Government Departments who were responsible for causing delay in instituting proceedings before different Courts should be penalized because on account of their such conduct Government sustained considerable loss which ultimately had to be borne by the public and lethargic tactics of the delinquent officers could not be tolerated merely either on account of their ignorance of law or for any extraneous consideration— Supreme Court expected that Government functionaries would take interest to institute the proceedings before courts for law within time as per law of limitation. PLD 2003 SC 6

Condonation of delay in-filing appeal for enhancement of compensation under section 60 of N.W.F.P. Urban Planning Ordinance 1978. Petitioner's plea that he had no knowledge of acquisition proceedings was not warranted for acquisition, covered a large area, which was duly notified compensation was disbursed after announcement of award and possession of acquired land was taken by Departmental Authority concerned. Application for condonation of delay did not meet requirements of S. 5, Limitation Act, for it neither contained sufficient cause for not preferring appeal within time nor explained delay of each day which is condition precedent for condonation of delay. Even if it was perumed that petitioner had no knowledge of award, he was obliged to file appeal within six weeks of award in terms of S. 60 NWFP Urban Planning Ordinance 1978. Question of condonation of delay was determined on the touchstone of provisions of S. 5 of Limitation Act, and not on principle of equity. Equity, however helps vigilant and not indolent. Order in question was not shown to suffer from any legal defect so as to warrant interference in Constitutional jurisdiction. PLJ 1996 Pesh. 326 = 1996 MLD 1428. Condonation of delay. Appellant was pursuing his remedy diligently and some points of law are involved in his case. In the interest of justice delay condoned by computing period spent in High Court. Moreover, limitation is not pressed by respondents as well. PLJ 1996 Tr.C. (Services) 142 = 1995 PLC (C.S.) 1207.

Condonation of delay. Application for Dismissal of. Application against. Ailment (low backache). Ground of. Appeal was preferred after delay of 28 days of prescribed period of limitation and no

sufficient cause for condonation of delay for each days delay has been shown, therefore, there could not be said to be any illegality or misreading of evidence warranting interference in revisional jurisdiction. PLJ 1997 Kar. 194 == 1997 MLD 732.

Condonation of delay. Impugned judgment was passed in open Court in presence of Legal Advisor of M.C.L., Chief Corporation Officer, Asstt. Education Officer and Superintendent, General of M.C.L.. Therefore, it cannot be urged that impugned order was not in knowledge of functionaries of Corporation. No sufficient cause can be said to have been shown for not preferring appeal within prescribed period of limitation. All four appeals are barred by limitation. PLJ 1996 Lah. 686 = PLD 1996 Lah. 499.

Condonation of delay. In applications seeking condonation of delay, no sufficient cause was shown except mentioning facts for seeking condonation. Thus it was found hopelessly time barred. PLJ 1999 Qta. 77 = PLD 1999 Qta. 36.

Condonation of delay. Time spent in prosecuting application for review cannot be excluded while computing limitation for filing appeal. PLJ 1998 Lah. 191 = PLD 1998 Lah. 189.

Condonation of delay-Contention that delay should be condoned because machinery of Government takes inordinately long time to make arrangements for filing cases-Repelled-
*Government in matter of condonation, held, cannot claim preferential treatment. 1981 C L C 1148+1998CLC417

Declaration, possession and injunction. Contention that Article 163 provides limitation of 30 days and application for restoration was hopelessly time barred. By virtue of amendment brought by Ordinance X of 1980, provisions of Section 5 of Limitation Act have been made applicable to application filed under Order DC Rule 9(1) of C.P.C.. Delay condoned and suit restored. PLJ 1995 Kar. 378 = PLD 1995 Kar. 267.

Deficiency, making up- Interpretation of O. VII, r. 11, C. P. C.-Contentions (1) that decision of S.C .in case of Mst. Walayat Khatun P L D 1979 S C 821 and subsequent reported decisions by S.C .has led to conflict of authority, thus leading to confusion, for litigant public and Bar which needed to be resolved, (2) that S.C .in a Full Bench case of Shahna Khan v. Aulia Khan P L D 1984 S C 157 has pointed out that case of Mst. Walayat Khatun : was authority and law declared only to extent of common ratio of two separate Judgments, rendered therein-Held: (1) Decision in Mst. Walayat Khatun's case P L D 1979 S C 821 cannot be assumed to have dissented from S.C .Judgments in Muhammad Nawaz Khan's case P L D 1970 S C 37 and Shah Nawaz's case 1972 S C M R 179-Law laid down by S.C .in cases of Muhammad Nawaz Khan P L D 1970 S C 37 and Shah Nawaz's case 1972 S C M R 179 continue to hold field and is law declared, notwithstanding Judgment in case of Mst. Walayat Khatun P L D 1979 S C 821-No departure was ever made in any case from what was held in two cases of Muhammad Nawaz and Shah Nawaz to effect that it was obligatory to allow time for supply of deficiency in court-fee before rejecting plaint and regarding refusal of discretion under S. 149, C. P. C. only on grounds of contumacious and positive mala fide conduct ; (2) That this being not unusual for Court consisting of Bench of more than one Judge to render a decision consisting of more than one Judgment, decision reached in Mst. Walayat Khatun's case P L D 1979 S C 821 was undoubtedly common ratio of two separate Judgments Strict view in Mst. Walayat Khatun's case expressed in second Judgment was not common ratio of decision and has to be treated as individual opinion of one Judge. P L D 1984 S.C .289

Delay condonation of. Pray for. Revision filed after a delay of 877 days. Appeal dismissed on 15-5-1991 copy applied on 2.11.1993 which delivered on the same day, but revision filed on 12.1.1994. Under second proviso to sub-section (1) of Section 115 Cr.P.C. a revision petition must be made within 90 days of decision of subordinate court. Petition is barred by 877 days and explanation that time was consumed due to official routine for getting sanction from

Government is not a valid ground for condonation of such a long delay. After prescribed period of limitation has elapsed, door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless delay properly explained and accounted for. PLJ 1998 Lah. 1211 = 1998 MLD 1672.

Delay in filing appeal against rule of court. Unexplained delay of 17 days in filling appeal. No express extension for submission of award is required. Delay is impliedly condoned. Knowledge of proceedings appear from record. Plea of proceedings without knowledge repelled. PLJ 1999 Lah. 251 = 1999 MLD 2829.

Delay in filing appeal before departmental authority. Whether service Tribunal could dismiss appeal on point of limitation. At. time of representation, Authority was conscious of proceedings being out of time thus by deciding controversy .on merit it' impliedly condoned delay. Extract of concise statement filed by special Assistant to Prime Minister is also Supportive of fact that authority keeping in view facts and circumstances of case and affidavit filed by appellant and comments submitted by department, it impliedly condoned delay and in those circumstances it was not justified by Servica Tribunal to dismiss appeal merely on technical ground of limitation without advertng to merits of case. Since Service Tribunal has not expressed any opinion on merits of case therefore remand order will serve ends of justice. Appeal accepted and case remanded to. service Tribunal for deciding it afresh on merits in accordance with law. PLJ 1998 SC (AJK) 95.

Delay in filing appeal before wrong forum. S.C confirmed its earlier view expressed in Sherin's case (1995 SCMR 584) that despite S. 14, Limitation Act 1908 of appellant was able to establish that he followed remedy before wrong forum in good faith with due care and caution Court may condone such delay in filing of appeal treating it as sufficient cause -under S. 5, Limitation Act 1908. Court, however, reiterated that filing of appeal in wrong Court on account Of mistaken advice tendered by counsel for condonation of delay by itself would not attract S. 5, Limitation Act 1908. PLJ 2000 SC 200 = PLD 2000 SC 94.

Delay in filing grievance notice and grievance petition. Condonation of Prayer for. Section 5 of Act is applicable to grievance notice and grievance petition under Section 25-A of Ordinance. Although Section 14 of Act is not applicable, yet its principle can be applied while condoning delay under Section 5. Petition before NIRC against termination order was not competent at all but respondent patently acted negligently while petitioning to NIRC. There is no sufficient cause for condoning delay. Both grievance notice and grievance notice and grievance petition were beyond limitation and order of respondent holding that grievance notice and grievance petition were within time, is clearly illegal and without jurisdiction. PLJ 1996 Lah. 252 = 1996 PLC 162.

Delay in filing ICA. Condonation of delay. Appellants were given call date for supply of copy by Copying Agency as 19.2.1997, 5.3.1997 and 15.3.1997. Even if Copy Agency had secretly prepared certified copy of impugned Judgment on 20.2,1997, act of officials of Court would not cause any prejudice to party. Appeal filed within time. P.L.J.1999 SC 64 = 1998 SCMR 2280.

Delay in filing" petition for leave to appeal before Supreme Court. Condonation of delay. Entitlement. Petitioner being Government whether entitled to be treated preferentially. State and subject both are at par in the eyes of law, therefore, Government agencies are not to be treated preferentially. Impugned order however, being void and beyond jurisdiction of High Court, delay in filing petition for leave to appeal was condoned. Compensation in terms of money was neither claimed in original plaint, nor prayer was made for granting decree in terms of money nor during pendency of suit plaint was sought to be amended by incorporating alternative relief. High Court, thus, travelled beyond it jurisdiction' by granting relief to Respondents and passed order which had no legal sanction in law. Case was remanded to High Court for disposal in accordance with law. PLJ 2000 SC 1739.

Delay of 67 days in intra court appeal:— A period of 20 days is prescribed for filing an Intra Court Appeal. Appeal in question has been filed after 67 days. In Paragraph No. 3 of application, appellant applied for approval to solicitor of Punjab on 15.5.1997, when limitation to file appeal had already expired. In matter of limitation Government cannot claim any exceptional treatment. Being a party in litigation, Government functionaries are expected to take all possible steps, for ensuring that remedy is availed within limitation. Appeal dismissed in limine. PLJ 1998 Lah. 96 – 1998 CLC 569. Condonation of delay. Appellants were given call date for supply of copy by Copying Agency as 19.2.1997, 5.3.1997 and 15.3.1997. Even if Copy Agency had secretly prepared certified copy of impugned judgment on 20.2.1997, act of officials of Court would not cause any prejudice to party. Appeal filed within time. PLJ 1999 SC 64 = 1998 SCMR 2280.

Delay of each day must be explained. 1998CLC417

Delay of five days in filing appeal was explained by showing cause that delay had occasioned on account of sickness of defendant who also filed an affidavit. Petitioner, plaintiff did not file any counter affidavit to challenge authenticity of said certificate and in rebuttal of affidavit. Appellate court was perfectly justified in condoning five days delay in filing appeal. PLJ 1995 Lah. 511 = 1995 MLD 923.

Dismissal of time barred appeal. Copies of judgment and decree were delivered to defendant (petitioner) well within time of limitation yet he did not file appeal within period of limitation and filed the same after 10 days of expiry of limitation. Appellate Court dismissed defendants appeal as being time barred. Party seeking condonation of delay must explain each day's delay and unless same was done, delay would not be condoned especially when valuable rights had accrued to other side. Grant or refusal of condonation being pure question of discretion, High Court saw no substance to interfere with it having been properly exercised by competent court. Superior Courts would not and should not interfere with exercise of discretion under S. 5, Limitation Act 1908 exercised by courts below unless view of such court was found to be preposterous or perverse. Defendant having failed to point out any irregularity, illegality or jurisdictional error in impugned order there was no substance to interfere with discretion exercised by competent Court. PLJ 1999 Pesh. 70 = 1999 MLD 2357. Appeal filed by defendant was barred by time. Defendant had failed to offer any explanation, much less plausible, for the same. Appellate Court below, thus, appears to have applied its judicial mind to facts and circumstances of case carefully and had recorded speaking order vide which he had dismissed appeal. Appellate Court had given valid reasons for its conclusions and because of the fact that order impugned was neither arbitrary nor perverse which does not suffer from any illegality or material irregularity, therefore, no interference was warranted by High Court in exercise of its revisional jurisdiction. PLJ 2000 Pesh. 110.

Filing of appeal in wrong forum. Provisions of Section 5 and 14 of Limitation Act 1908, whether attracted. Sufficient cause. Connotation. Sufficient cause would differ from case to case and any action taken on advice by the counsel against any clear provision of law would not entitle the party to seek condonation of delay on the ground that he had acted bonafide on such advice. Where both the parties were legal heirs of deceased and appellant, in order to deprive respondents, took various steps to prolong the proceedings they were not entitled to claim condonation of delay for filing appeal in wrong forum. Appellant, having contested appeal emanating out of /is between them, after judgment of the same it had become clear that appeal arising from judgment of Trial Court was to be preferred before High Court and not the District Court. Appellant having filed appeal before District Court instead of High Court were adamant to claim that they had properly filed the same they were thus not entitled to claim condonation of delay in filing appeal in wrong forum and the time spent therein. Deliberate

assertion of a plea, which to their knowledge was illegal/improper, could not be treated as sufficient cause for condonation of delay. Sufficient cause for delay having not been shown, appeal of appellants was rightly dismissed by the High Court. PLJ 2001 SC 248 = PLD 2001 SC 355.

Grounds for condonation of delay. Judgment was announced on September 16, 1998. Appeal was filed on February 12, 1999, after prescribed limitation. Appellant has failed to show any sufficient cause for condonation. According to appellants, own case, as appearing from affidavit of his representative, he acquired knowledge of judgment on January 16, 1999, but interestingly, no explanation is given for delay caused from January 16, 1999 to February 12, 1999, when appeal was filed. Appeal is time barred and accordingly dismissed. PLJ 1999 AJ&K 44.

Hassan Bakhsh v. Afzal Shah 1974 S C M R 364 ; Jan Muhammad v. Ghulam uhaus 1976 S C M R 141 and Abdul Ghani v. Muhammad Alam 1976 S C M R 147 analysed.

High Court gave good reasons for declining to condone delay holding that delay of each day is to be explained and Government cannot be treated differently than private litigant on question of limitation under ; Section 5 of Limitation Act. PLJ 1995 SC 335 = 1995 SCMR 546.

It has been well settled that provisions of S. 14 cannot be invoked for seeking condonation of delay, in filing appeal. However, Section 5 of Limitation Act, can be invoked for said purpose, if sufficient cause is shown in perusing wrong remedy. PLJ 1999 Qta. 77 = PLD 1999 Qta. 3 Jagat Dhish Bhargava v. Jawahar Lal Bhargava and others AIR 1961 S(832 ref.

Laches/Delay when bar to a Lis. Laches per-se is not a bar to a Constitution Petitioner. There is a marked distinction between delay in filing of a legal proceeding within period specified in an Article of Schedule to Limitation Act and delay in filing of a Constitution Petition for which no Statutory period is provided for. In former case delay of each day is to be explained by furnishing sufficient cause for seeking condonation of delay under Section 5 of Limitation Act in filing of a legal proceeding after expiry of statutory period. Whereas, in latter case, delay or question of laches is to be examined on equitable principles for reason that grant of constitutional relief is a discretionary relief and Court may decline to press into service its constitutional jurisdiction if it would be inequitable keeping in view conduct of a petitioner. Question of delay or laches is to be considered with reference to facts of each case.

Delay/laches of several years can be overlooked in a Constitution petition if facts of case and dictates of justice so warrants. Plea of laches is only available to a person who acts bona fide under belief that what he is doing is legal and proper and same cannot be invoked in aid by a person who knew from very inception that what he was doing was on account of his own manipulation contrary to law. PLJ 1999 SC 2331 = 1999 SCMR 2883.

Lapse of prescribed period of limitation. Doors of justice are closed after lapse of prescribed period of limitation and no plea of injustice, hardship or ignorance could be agitated unless delay so caused was fully justified legally and each day's delay must be accounted for by legal and valid reasons. PLJ 2000 Tr. C. (Services) 517.

Limitation Act, 1908 read with Evacuee Property and Displaced Persons Laws (Repealed) Act, 1975. Whether Settlement Authorities ceased to exist after repeal of settlement laws. Perusal of impugned order shows that no fresh order was passed by Settlement Authorities. Entire plaint is silent on the point as to why plaintiffs have not challenged impugned order prior to 1995. There is no legal defect in impugned order. Suit was filed after a lapse of 17 years, hence, appears to be patently barred by Limitation Act. PLJ 1996 Kar. 814 = PLD 1996 Kar. 429.

Limitation for Revision :- There is no period prescribed for filing a civil revision but it is to be filed diligently within a period of 90 days. It can be filed after expiry of 90 days provided a case for condonation of delay is made out. High Court can exercise revisional Jurisdiction suo motu at any time without being bound by any period of limitation provided it fosters cause of Justice.

Ground that Government takes longer period than a private litigant, is not sufficient to condone delay. P.L.J.1995 SC 11 = 1994 SCMR 833. Petitioners being conscious of the fact that value of subject matter was beyond Jurisdiction of District Judge, therefore, filing of revision in wrong forum could not be termed as bona fide mistake. For condonation of delay, petitioner, were required to established that delay in filing revision had occurred due to bona fide mistake or under circumstances which were beyond their control; Such qualifying conditions, however, were lacking in petitioner's case, therefore, petitioner, cannot claim protection of S. 5, Limitation Act, 1908 or S. 151 C.P.C- Record indicated that revision petition was returned to petitioners on 27.2.1999 but the same was filed in High Court on 10.4.1999 so the same was further delayed by one month and 13 days for which no explanation had been offered by petitioners. Petitioners having failed to 'make out a case to the effect that they have been pursuing their case in good faith, therefore, they were not entitled to condonation of delay, so caused. Revision was dismissed on ground of limitation. P.L.J.2000 Pesh. 323.

Limitation-interpretation of O. VII, r. 11, C. P. C.-Contentions (1) that decision of S.C in case of Mst. Walayat Khatun P L D 1979 S C 821 and subsequent reported decisions by S.C has led to conflict of authority, thus leading to confusion, for litigant public and Bar which needed to be resolved, (2) that S.C in a Full Bench case of Shahna Khan v. Aulia Khan P L D 1984 S C 157 has pointed out that case of Mst. Walayat Khatun : was authority and law declared only to extent of common ratio of two separate judgments, rendered therein-Held: (1) Decision in Mst. Walayat Khatun's case P L D 1979 S C 821 cannot be assumed to have dissented from S.C judgments in Muhammad Nawaz Khan's case P L D 1970 S C 37 and Shah Nawaz's case 1972 S C M R 179—Law laid down by S.C in cases of Muhammd Nawaz Khan P L D 1970 S C 37 and Shah Nawaz's case 1972 S C M R 179 continue to hold field and is law declared, notwithstanding judgment in case of Mst. Walayat Khatun P L D 1979 S C 821-No departure was ever made in any case from what was held in two cases of Muhammad Nawaz and Shah Nawaz to effect that it was obligatory to allow time for supply of deficiency in court-fee before rejecting plaint and regarding refusal of discretion under S. 149, C. P. C. only on grounds of contumacious and positive mala fide conduct ; (2) That this being not unusual for Court consisting of Bench of more than one Judge to render a decision consisting of more than one judgment, decision reached in Mst. Walayat Khatun's case P L D 1979 S C 821 was undoubtedly common ratio of two separate judgments-Strict view in Mst. Walayat Khatun's case expressed in second judgment was not common ratio of decision and has to be treated as individual opinion of one Judge. P L D 1984 S.C 289

Mistaken advice of counsel : — Although appeal had been filed by appellant before District Judge on account of mistaken advice of counsel yet the conduct and act of District Judge and its office in entertaining appeals in earlier round when appeal was filed by respondents and then when the appeal was filed by appellant and District Judge deciding appeals on both occasions on merits and not noting or raising question of maintainability and respondents conduct on both occasions were also factors which led to appellant in filing appeal before District Judge and pursuing the same there. Such facts and circumstances together constitute case of sufficient cause as per terms of S. 5, Limitations Act 1908. Appeal filed by appellant before High Court was, thus, not liable to be rejected on ground of' limitation. Case was remanded to High Court for disposal of appeal on merits. PLJ 2000 SC 200 = PLD 2000 SC 94. Wrong advice of counsel or negligence mistake of the counsel is no reason for condoning the delay. PLD 2003 Pesh. 46

Mukhi Chatromal and another v. Khubchand and 6 others 1988 CLC 1711; Assistant Commissioner and Land Acquisition Collector, Badin v. HaJi Abdul Shakoor and others 1997 SCMR 919; Mst. Walayat Khatun v. Khalil Khan and another PLD 1979 SC 821; H.H.S. Feldman

v. Province of East Bengal PLD 1970 Kar. 295; Seth Hafiz Abdul Aziz Yousfani & Sons v. HaJi Ali Muhammad & Co. PLD 1968 Kar. 883; Muhammad Ghaffar v. The State 1969 SCMR 12; Siddiq Khan v. Abdul Shakur Khan PLD 1984 SC 289; Shah Nawaz and 6 others v. Muhammad Yousaf and 3 others 1972 SCMR 179; F.A. Khan v. Government of Pakistan PLD 1964 SC 520; Province of East Pakistan v. Chairman, Election Tribunal, N. W. F. P. PLD 1976, SC 625; Muhammad Nawaz's case PLD 1970 SC 37; Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others v. Jamaluddin and others 1996 SCMR 727; State Life Insurance Corporation of Pakistan v. Mst. Zainab Khatoon and 5 others PLD 1987 SC(AJ&K) 5 and Mst. Walayat Khatun v. Khalid Khan PLD 1979 SC 821 ref.

Mutations and alienations having taken place behind the back and knowledge of the owner of the property, Condonation of delay in filing suit while taking into consideration the circumstance was valid. PLD 2003 SC 159

Office of High Court has been returning appeal on petty objections. Contention of. Appeal is not barred by time. Appeal was instituted in time. Objections raised by office were removed and it was re-filed within time given by office. Appeal thereafter seems to have treated as an objection case merely because office was of view that objection regarding flagging of impugned order was still not removed at time of re-filing of appeal in time and it is possible flag attached to impugned order might have fallen down while appeal was lying in the office of High Court. Even otherwise it was not an objection of such a nature which could only be removed by the appellant or his counsel. Appeal in all other respects was complete and office could have put up appeal for hearing by flagging impugned order itself instead of placing appeal against as an objection case. High Court of the view that law does not intend to make appeals as barred by time due to non-compliance, by defaulting party, in time, such petty objections, being raised by office of High Court and the spirit of law, in High Court's view is that appeals are to become barred by time only if nature of objections is such, that the same can only be removed by the defaulting party itself, like making of deficiency of Court-fee, deposit of printing charges, furnishing of certified copies of impugned judgments and decrees etc.. No contumacy is involved and there is no negligence either on the part of appellant or his counsel because appeal was re-filed in time after removal of the objections which were raised for first time by office but office again treated it as an objection case merely because allegedly impugned order was not flagged. This "objection could have been removed by office itself easily in absence of the appellant or appellant's counsel. PLJ 2000 Lah. 958.

Officials acted with gross negligence in re-filing revision petition. They took almost one year in doing what they were required to do in seven days and explanation offered by them for this inordinate delay has not been found to be convincing. PLJ 1997 SC 1644 = 1997SCMR 1224 = NLR 1997 Civil 693 = 1997 Law Notes 393.

Operation of S. 12 distinct from that of S. 5:- Words "time requisite" in S. 12-Court required to exclude time requisite for obtaining copy of order appealed from-Such statutory provision of exclusion to be distinguished from power conferred on Court under S. 5 to admit appeal after period of limitation prescribed therefor if Court satisfied that appellant - bad sufficient cause for not preferring appeal within such period-Section 5 confers discretionary power on Court-No such discretion vests under S. 12 and party is entitled, as of right, to exclude period spent in obtaining copies-Section 12 confers a substantive right upon appellant to claim time as excluded and Court cannot impose upon statutory right of any appellant a restriction not warranted by Act Appellant must act with reasonable promptitude and diligence in order to satisfy Court that time which he claims to be excluded was properly required in obtaining copies-Question as to what was time requisite for obtaining copy must necessarily depend upon practice and Rules in force-No general principles on question could safely be formulated-Such

question is one of fact to be determined on circumstances of each case in light of Rules framed on subject, P L D 1984 S.C 208

Petition for leave to appeal :- Duty of counsel of petitioner to have informed petitioner in time about dismissal of petition. Opposite party could not be penalised for negligent handling of case by petitioner or his counsel. Such plea was not a valid ground for condonation of delay. Leave to appeal was refused. PLJ 2001 SC 1523 Contention that respondent, (a Federal Government Employee) during pendency of Infra-Court Appeal Before High Court, where, appeal was not maintainable, raised no objection to maintainability of such appeal and, therefore appellants (Federation of Pakistan) were under bona fide impression that I.C.A. was competently filed. Respondent was under no obligation to point out defect in proceedings filed by appellants. Ground urged by appellants (Federation of Pakistan) for condoning delay, therefore, could not be accepted as "sufficient cause" for not filing appeal in time. PLJ 1999 SC 1802 = 1999 SCMR 644.

Plaintiff seeking declaration of land in question being ownership possession. Land in question, being Banjar Qadeem and Gher Mumkin Darya seemed lying vacant not under of any cultivator. Where property was not in possession of any one then rightful owner could claim possession of such property as possession would follow title. Suit being for declaration anybody whose ownership or possessor rights were interfered with or threatened could come to civil Court at any time when his possession or rights stood threatened. No question of -limitation would, thus, arise in such cases. Appellate Court, therefore had rightly decided point of limitation.

Additionally defendant had not been able to show good ground as to why revision was not filed in time and why should delay be condoned. Only reason which was assigned for delay was that there were some complicated questions for the department due to frequent misplacement of relevant files and paper which were the cause of delay in filing revision. Application for condonation of delay did not show sufficient ground and explanation for period of delay, therefore, same was rightly dismissed by Appellate Court. Judgment of Appellate Court being un-exceptionable, revision was not maintainable in circumstances. PLJ 1999 Lah. 1790.

Pre-emption. Whether delay in filing first appeal was condonable. In spite of fact that Clerk of Court of District Judge pointed out that appeal was time barred, still appellants did not move application under Section 5 of Limitation Act, which requires that applications should be moved alongwith memo of appeal. Appellants moved application more than a year after presentation of memo of appeal. There was no explanation as to why application was not moved earlier. Appellants were clearly negligent and if such type of excuses are accepted then whole purpose of Limitation Act would be frustrated. PLJ 1995 Lah. 114 = PLD 1994 Lah. 399.

Principles—Person seeking condonation of delay must explain delay of each and every day to the satisfaction of the court and should also establish that delay had been caused due to reasons beyond his control—When the delay in filing the appeal was seemingly due to mere negligence and carelessness of the appellant who failed to pursue his case with due diligence, he was not entitled to any indulgence by the Supreme Court—When on the day period of limitation expired, copies of the impugned judgment were available with the appellant and appeal could have been filed in time, delay regarding time consumed between preparation of copies and its delivery was condoned but each day after expiry of period of limitation having not been satisfactorily explained, appeal was liable to be dismissed as time-barred—Involvement of valuable rights would not furnish a proper ground for condonation of delay in a civil matter—Door of justice was closed after the prescribed period of limitation had elapsed and no plea of injustice, hardship or ignorance could be of any avail unless the delay of each day was properly explained and accounted for. PLD 2003 SC 628

Principles—Where on merits the respondent had no case, then limitation would not be a hurdle

in the way of appellant for getting justice—S.C observed that the Court should not be reluctant in condoning the delay depending upon facts of the case under consideration. PLD 2002 S.C 84 Province of East Pakistan v. Abdul Hamid Darji and others 1970 S C M R 559 and Commissioner of Income-tax v. Ravi Textile and Carpet Company 1968 SCMR115rel.

Punjab Alienation of Land Act, 1900 :— Sale of land by lessee and further sale by lessee—Acceptance of application u/s 3(2) of Punjab Alienation of Land Act, by D.C. holding that Section 12 of Pakistan (Administration of Evacuee Property) 1949 did not oust his jurisdiction concerning property belonging to evacuees—Constitutional petition against order of D.C. disposed of by High Court—Declaratory suit challenging vires of D.C. dismissed by Civil Court—Appeal dismissed by District Judge—High Court accepted appeal on merits and dismissed appeal being barred by time on failure of appellant to attach judgment and decree of trial Court with memo of appeal—Inter Court Appeal—Whether appeal was time-barred—Question of law—Discretion—Exercise of—S.C has considered this proposition of law and held that High Court should have passed order on application of appellant for dispensing with production of certified copy of judgment and since record was available in High Court, prayer in application should have been allowed and discretion should have been exercised in favour of appellant when Court is vested with power to exempt party from performing legal obligation, but such request if declined and in the meanwhile Court has permitted period of limitation prescribed for performance of such obligation to expire, time must be extended by Court to enable party to perform such obligation, because no one can be made to suffer by any act of Court—Court has inherent power and existence of inherent power is to do justice based on sound judicial principles-. PLJ 2002 LAH.. 90 AIR 1947 Calcutta 67; PLD 1999 SC 35; ILR Calcutta Series 1955; PLD 1959 Lah.. 946 PLD 1989 SC 532.

Re-admission and condonation of delay. Prayer for. Earlier provisions of Section 5 of Limitation Act were not applicable and period of limitation provided for re-admission of appeal could not be extended. Through Act, IV of 1990 amendment was made in Order XLI C.P.C. and sub-rule (2) was added to Rule-19. After said amendment, delay in filing petition for re-admission of appeal can be condoned if sufficient cause is shown for delay. Petition for re-admission is barred by 119 days. No sufficient cause existed for condonation of delay. It is well established principle of law that where valuable rights are accrued to party for lapse of time due to negligence or lack of bona fides etc. such party cannot be deprived of such rights except where sufficient cause is shown. Court has no jurisdiction to extend time as petitioner was grossly negligent and inactive. Petition for condonation and re-admission fail and are dismissed in limine. PLJ 1998 Lah. 1199 = 1999 CLC 45.

Re-Admission of appeal dismissed for non-prosecution. Time for readmission of appeal (30 days) dismissed for default runs from date of dismissal and not from . date of knowledge of dismissal. Application for restoration has been submitted after 8 months of dismissal of appeal in default. Application for re-admission of appeal is hopelessly barred by time. No sufficient cause has been established for condonation of delay. Law helps those who are vigilant in perusing their rights and not those who sleep thereon. Application for readmission of appeal is dismissed as barred by limitation. P.L.J.1997 Lah. 710 = 1997CLC 1324.

Sufficient cause. Notwithstanding the fact that S. 14, limitation Act, 1908, in term, does not apply to proceedings of an appeal, if appellant is able to establish that he followed remedy before a wrong forum in good faith, the Court may condone such delay in filing of appeal treating same as "sufficient cause" under S. 5, Limitation Act, 1908. As to what would constitute "sufficient cause" in such cases would depend on facts and circumstances of each case. PLJ 1999 SC 208 = 1998 SCMR 2296.

Suit decreed but for less amount. Appeal against for further decree of amount refused.

Dismissal due to bar of limitation. It is well settled that knowledge of counsel is knowledge of client, Legal principle that it was duty of client to find out position of case cannot be disputed. Counsel for appellant has not advanced any reason why discretion of court should have been exercised in favour of Bank in the light of amended section 3 of Limitation Act. Counsel of Bank was present at the time of announcement of judgment. During period of .29th of June to 29th of November, no effort was made to find out whether judgment had been announced or not. No explanation has been given for it. PLJ 1997 SC (AJK) 143 = PLD 1997 SC (A&K) 15. Suit for declaration with permanent injunction. Grant of temporary injunction by trial Court, upheld in appeal. Lapse of time due to settleme.nt of dispute through respectables. Ground for condonation of delay. Prayer for. Ground of condonation of delay do not appear to be forceful in given situation. Names of respecfeables have not been disclosed in petition nor date is given as to when matter was referred to such respectables for settlement. There is no ground for condonation of delay in filing revision. Application to that effect is dismissed which is, patently time barred. PLJ 1999 Lah. 1060.

Suit for declaration-Application u/S. 5 of Limitation Act for extension of time. Acceptance of. Revision against. Acceptance of. Writ against. Question of maintainability of Revision petition against order of trial court. Order of trial Court was not appealable, hence, revision was competent. Trial Court entertained an application which could not be entertained, as such acted illegally. Consequently revisional court was competent to set that mistake right by passing impugned order. PLJ 1998 Lah. 1053 = 1998 MLD 1129.

There can be no two opinions that a suit for declaration with prayer for consequential relief, will be governed by Article 120 under which starring point of limitation, is date when right to sue accrues. Right fco bring a declaratory suit is a continuing right. Where plaintiff is in possession, more particularly as a co-sharer in joint khata, he is not bound to sue ,on every denial of his right. PLJ 1995 SC 265 = 1995 SCMR 284.

Time barred appeal. Unless and until a substantial reason for condonation of delay is explained in application u/S. 5 'of Limitation Act Affidavit annexed with application has no value at all. Delay itself gives a right of dismissal of appeal to adverse party unless it is condoned by learned court. PLJ 1998 Lah. 1105 = 1998 CLC 1212. Plaintiff's suit having been dismissed on 28-9-1996, he applied for copies of Judgment and decree Sheet on 7-5-1997 and after obtaining copies filed appeal on 8-5-1997—Plaintiffs' plea for condonation of delay was, that on coming to know that suit had been dismissed on 28-9-1996 he also came to know that decree Sheet had not been prepared for which he applied on 7-5-1997 and on getting copies filed appeal on 8-5-1997, therefore, time spent in obtaining copies would be available to plaintiff for extending the same and as such appeal filed on 8-5-1997 was within time—Plaintiff offered no explanation as to why he did not apply even for the copy of Judgment, dated 28-9-1996 during that period—Copy of memo. of appeal filed before Appellate Court showed that Judgment and decree challenged therein, were shown to be passed on 7-5-1997, thus, showing glaring negligence on the part of appellant-*Plaintiff had obtained certified copies of Judgment and decree of connected case on 28-9-1996 and filed appeal in time, therefore, it seemed unplausible that he was not in the knowledge of passing of decree and Judgment in the case—Only in cases where decree Sheet was not prepared by Court and parties were not at fault for the same, they would be entitled to extension of time and that position could only be maintained when application for obtaining certified copy of Judgment, at least, had been made in time—Appeal against Judgment and decree, having not been filed in time, would not be maintainable. 1998CLC417

Where Order without jurisdiction : — Defence of defendant was closed on his failure to file written statement—Such order was assailed before First Appellate Court in exercise of revisional jurisdiction under S.115, C.P.C.—Revision petition after remaining pending for some time was

returned to the defendant for lack of pecuniary jurisdiction—Defendant filed the revision before High Court—Delay in filing of the petition was condoned and the same was allowed—Contention of the plaintiff was that the High Court had wrongly condoned the delay—Validity—Mere wrong advice by a counsel in the matter by itself was not considered as sufficient ground for condonation of delay but each case had to be considered in which question of limitation was raised keeping in view peculiar circumstances of that case—High Court, in the present case, was seized of the revision petition and was exercising jurisdiction under S.115, C.P.C. under which a right had also been conferred on aggrieved person to file revision petition—High Court itself was vested with the power to call for record of any case to satisfy itself whether any order was valid and did not suffer from any irregularity amounting to illegality or was bad for want of jurisdiction—Such aspect of the case had been kept in view while deciding in the present case as to whether the order passed by the Trial Court for closing the defence of the defendant was valid and what was the extent of illegality attached to it—Where the High Court came to the conclusion that in the facts and circumstances of the case, the conditions laid down by the relevant law for applicability of penal provisions of O.VIII, R.10, C.P.C. had not been fulfilled and the order passed by the Trial Court was without jurisdiction, the High Court rightly proceeded to set aside the same by condoning the delay by holding that in such matters, the point of limitation would not stand in the way of Court to do justice—Condonation of delay by the High Court in the present case was based on valid and relevant considerations so that an order which was without jurisdiction and as such nullity in law might be perpetuated—S.C declined to interfere with the order passed by High Court—Leave to appeal was refused. PLD 2002 S.C 630 Mst. Hakumat Bibi v. Imam Din and others PLD 1987 SC 22 and Azad Hussain v. Haji Muhammad Hussain, PLD 1994 SC 874 distinguished. Sardar Sakhawatuddin and 3 others v. Muhammad Iqbal and 4 others 1987 SCMR 1365; The Secretary, Board of Revenue, Punjab, Lah.. and another v. Khalid Ahmad Khan 1991 SCMR 2527; Sherin and 4 others v. Fazal Muhammad and 4 others 1995 SCMR 584; Ghulam Ali v. Akbar alias Akoor and another PLD 1991 SC 957 and Mian Aizad Bakhsh v. Sheikh Muhammad Afzal 1985 SCMR 1003 ref. Whether bonafide mistake or ill-advice by counsel is a sufficient ground for condoning delay. Section 5 provides that delay in filing of appeals can be condoned provided sufficient cause has been put forth. Bonafide mistake or ill-advice by counsel does not constitute sufficient ground for condoning delay. Appeals are-not maintainable on account of being barred by limitation. PLJ 1994 Qta. 32 = PLD 1994 Qta. 88.

Whether delay in filing appeal is condonable. Reason given in application for condonation of delay is that appellant had been pursuing his remedy in civil court. It is settled law that grievance of appellant could be redressed only in appeal before Service Tribunal and civil court had no jurisdiction. Prosecution of case before another forum under wrong legal advice is no ground for condonation of delay. PLJ 1994 Tr.C. (Services) 116 = . 1994 PLC(C.S.) 334

6. Legal disability

1) Where a person entitled to institute a suit [or proceeding] or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned a minor, or insane, or an idiot, he may institute the suit [or proceeding] or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule or in section 48 of the Code of Civil Procedure, 1908 Act (V of 1908).

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period,

both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in subsections (1) and (2) shall apply.

Illustrations

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrues. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrues, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Court Decision

Certain amount of court-fee, if and when adjudged, as proper fee as was visualised by S. 6, Court Fees Act, 1870 result would follow as provided in Ss. 10(ii), 12(ii) & 28 of Court Fees Act, 1870 and not as provided in S. 3, Limitation Act, 1908. Validity mentioned in Ss. 10(ii), 12(ii) & 28, Court Fees Act, 1870 was vis-a-vis fiscal requirement (and consequences) as a measure of prosecution of lis and not regarding physical institution of a document by act of presentation – Question of limitation arises if after determining “proper” court-fee document was returned and time was allowed for fresh presentation of same (after supply, of deficiency) and same was not refiled within specific period. P L D 1984 S.C 157

Land Reforms Regulation, 1972. Unless required amount of Court Fee chargeable on document (which term includes plaint also) as was indicated in schedules, was not paid, it shall not be taken to be of any validity. Such rule however, does not lead to a necessary corollary that the plaint which was not adequately stamped was not a ‘proper plaint’ at all in the eyes of law and further that for the limitation purposes suit shall be deemed to have been instituted only when proper and required Court Fee was paid on it. 1987 C L C 2428

P L D 1984 SC 289 ref.

7. Disability of one of several plaintiffs or applicants

Where one of several persons jointly entitled to institute a suit [or proceeding] or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

ILLUSTRATIONS

(a) A incurs debt to a firm of which B, C and D are partners, B is insane and C is minor, D can give a discharge of the debt without the concurrence of B and C, Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners, E and F are insane, and G is a minor, Time will not run against any of them until either E or F becomes sane, or G attains majority.

8. Special exceptions

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations

(a) A, to whom a right to sue for legacy has accrued during his minority, attains majority eleven years after such accurer. A has under the ordinary law, only one year remaining with which to sue. But under Section 6 and this section an extension of two years will be allowed to him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accurer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrue, his idiocy continuing up to the date of his death. A's representative-in-interest has, under the ordinary law nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Continuous running of time

Where once time has begun to run, no subsequent disability or inability to sue stops it: Provided that where letters or administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Suits against express trustees and their representatives

Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

11. Suits on foreign contracts

1) Suits instituted in [Pakistan] on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in [Pakistan] on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

Court Decision

Condonation of delay. Time spent in prosecuting application for review cannot be excluded while computing limitation for filing appeal. PLJ 1998 Lah. 191 = PLD 1998 Lah. 189.

12. Exclusion of time in legal proceedings

1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

(5) For the purposes of subsections (2), (3) and (4), the time requisite for obtaining a copy of the decree, sentence, order, judgment or award shall be deemed to be the time intervening between the day on which an application for the copy is made and the day actually intimated to the applicant to be the day on which the copy will be ready for delivery.

Court Decision

Exclusion of time :- Appeal filed by petitioner against decree of trial Court was dismissed being time-barred. Validity. Judgment of trial Court was recorded and decree was granted on 31.10.1993. Application for obtaining copies was moved on 16.12.1993. Copies were prepared on 23.1.1994 when copying fee was also deposited on that dated. Period between 16.12.1993 to 23.1.1994, when copies were prepared, was permissible to be deducted while computing limitation for purpose of appeals. Further period till 31.3.1994 when copies were received, however, could not be deducted being wilful negligence and carelessness on the part of appellant whose duty was to follow his application. No reasonable explanation has been offered for such delay justifying its condonation. PLJ 2000 AJ&K 46. Where copy of dismissal of appeal was obtained, appeal filed .within thirty days after excluding time requested for obtaining copy of judgment, would be within time. PLJ 1998 Kar. 105 = NLR 1998 Lah. 64.

Mode of computing' period of limitation. Period of added sub-Section (5) to section-12 Limitation Act, 1908 introduced vide Limitation (Amendment) Act XIII of 1991 reveals that it has changed complexion of sub*section (2) of Section 12 Limitation Act, 1908. According to old Act of 1908 "Time requisite" meant interval between date of application and date when same was ready for supply. However, according to amendment introduced in form of addition of sub-section (5) to Section 13 vide Limitation (Amendment) Act, XIII of 1991 "Time requisite" would be deemed to be time intervening between day on which application for copy is made and day actually intimated to applicant to be day on which copy will be ready for delivery. Thus according to Section 12(5) Limitation Act, as it now stands and holds field, "Time requisite" would not come to end, as soon as copy is ready for delivery, but it will start running as soon as applicant is actually intimated about day on which copy would be ready for delivery. PLJ 1998 Lah. 880 = 1998 CLC 1123.

Time requisite for obtaining copies. If there was delay in depositing, and delivering the stamps and folios after notification such delay could not be taken advantage of by a prospective appellant or applicant, as the time taken could not be said to be the time requisite for obtaining copy of order or decree under S. 12(2). Fact that appellant or applicant had made a delayed deposit and Court had accepted delayed deposit instead of rejecting the application, did not make any difference. PLJ 1999 Kar. 246 = 1998 CLC 2023. Where Plaintiff's suit having been dismissed on 28-9-1996, he applied for copies of Judgment and decree Sheet on 7-5-1997 and after obtaining copies filed appeal on 8-5-1997-Plaintiffs' plea for condonation of delay was, that on coming to know that suit had been dismissed on 28-9-1996 he also came to know that

decree Sheet had not been prepared for which he applied on 7-5-1997 and on getting copies filed appeal on 8-5-1997, therefore, time spent in obtaining copies would be available to plaintiff for extending the same and as such appeal filed on 8-5-1997 was within time—Plaintiff offered no explanation as to why he did not apply even for the copy of Judgment, dated 28-9-1996 during that period—Copy of memo. of appeal filed before Appellate Court showed that Judgment and decree challenged therein, were shown to be passed on 7-5-1997, thus, showing glaring negligence on the part of appellant—*Plaintiff had obtained certified copies of Judgment and decree of connected case on 28-9-1996 and filed appeal in time, therefore, it seemed unplausible that he was not in the knowledge of passing of decree and Judgment in the case—Only in cases where decree Sheet was not prepared by Court and parties were not at fault for the same, they would be entitled to extension of time and that position could only be maintained when application for obtaining certified copy of Judgment, at least, had been made in time—Appeal against Judgment and decree, having not been filed in time, would not be maintainable. 1998CLC417

Jagat Dhish Bhargava v. Jawahar Lal Bhargava and others AIR 1961 S(832 ref.

Operation of S. 12 distinct from that of S. 5 :- Words “time requisite” in S. 12—Court required to exclude time requisite for obtaining copy of order appealed from—Such statutory provision of exclusion to be distinguished from power conferred on Court under S. 5 to admit appeal after period of limitation prescribed therefor if Court satisfied that appellant – bad sufficient cause for not preferring appeal within such period—Section 5 confers discretionary power on Court—No such discretion vests under S. 12 and party is entitled, as of right, to exclude period spent in obtaining copies—Section 12 confers a substantive right upon appellant to claim time as excluded and Court cannot impose upon statutory right of any appellant a restriction not warranted by Act Appellant must act with reasonable promptitude and diligence in order to satisfy Court that time which he claims to be excluded was properly required in obtaining copies—Question as to what was time requisite for obtaining copy must necessarily depend upon practice and Rules in force—No general principles on question could safely be formulated—Such question is one of fact to be determined on circumstances of each case in light of Rules framed on subject, P L D 1984 S.C 208

13. Exclusion of time of defendant’s absence from Pakistan etc. and certain other territories
In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from [Pakistan] and from the territories beyond [Pakistan] under the administration of [the [Federal] Government] [*****] shall be excluded.

Court Decisions

Redemption. Mortgagee migrated to India in the wake of independence. Period of limitation i.e. 60 years stopped running at that time or not. Period of limitation stopped running with effect from 15/8/1947 -against evacuee mortgage in view of provisions of section 13. PLJ 1997 Lah. 902 = PLD 1997 Lah. 716 = NLR 1997 Civil 552.

14. Exclusion of time of proceeding bona fide in Court without jurisdiction

1) 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, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a

Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Court Decisions

Appeal against legality of judgments:— Appeal against basic order passed in revision was clearly time barred- Appellant whether entitled to benefit under S. 14, Limitation act in computing period of limitation. Appellants, plea that time spent in prosecuting review petition be excluded from computing period of limitation was not warranted. Appellants submission that he would not press against basic order dismissing revision petition would not advance his case at present point of time as said order would be a hurdle in way of appellant to get required relief as by efflux of time that (order in revision) had attained finality. PLJ 2000 SC 212 = PLD 2000 SC 63.

Bona fide mistake of law:— Appellant-plaintiff filing his first appeal before District Judge which was returned for presentation to proper forum—Appellant faced with a curious order passed by trial Court which placed him in a fix and he remained in hands of Advocate who was under a bona fide mistake of law qua value of suit and determination of forum of appeal which point was not free from difficulty—Delay condoned in circumstances. 1986 C L C 126

Civil appeal before High Court. Delay in filing of Whether time spent in wrong forum is extendable. Bare perusal of Section 14 marks it manifestly clear that time spent in pursuing remedy in a wrong appellate forum cannot be condoned. This section can be pressed, into service only where suit was pursued in a wrong forum. Civil Judge admittedly assumed jurisdiction under Civil Courts Ordinance, Section 18 whereof provides that appeals having valuation exceeding Rs. 50,000/- shall be instituted before High Court. Argument raised by appellants is not acceptable. PLJ 1994 Qta. 32 = PLD1994 Qta. 88.

Condonation of delay. Leave to appeal was granted;, inter alia, to consider; whether plaintiff was entitled to have delay condoned when decree dated 22.7.1974 was one of consent; whether plaintiff was not entitled to invoke provision of S. 14 of Limitation Act, 1908, when he had himself instituted suit in the Court of Civil Judge IIIrd Class and then consented to decree being passed; and whether suit stood automatically dismissed in view of the directions contained in decree dated 22.7.1994 to deposit pre-emption money on 7.10.1974 and that direction had not been complied with. P.L.J.2001 SC 282 = PLD 2001 SC 476.

Conduct of Court and Parties :— Although appeal had been filed by appellant before District Judge on account of mistaken advice of counsel yet the conduct and act of District Judge and its office in entertaining appeals in earlier round when appeal was filed by respondents and then when the appeal was filed by appellant and District Judge deciding appeals on both occasions on merits and not raising question of maintainability and respondents conduct on both occasions were also factors which led to appellant in filing appeal before District Judge and pursuing the same there. Such facts and circumstances together constitute case of sufficient cause as per terms of S. 5, Limitations Act 1908. Appeal filed by appellant before High Court was, thus, not liable to be rejected on ground of limitation. Case was remanded to High Court for disposal of appeal on merits. P.L.J.2000 SC 200 = PLD 2000 SC 94.

Delay in filing appeal before wrong forum. S.C confirmed its earlier view expressed in Sherin's

case (1995 SCMR 584) that despite S. 14, Limitation Act 1908 of appellant was able to establish that he followed remedy before wrong forum in good faith with due care and caution Court may condone such delay in filing of appeal treating it as sufficient cause -under S. 5, Limitation Act 1908. Court, however, reiterated that filing of appeal in wrong Court on account of mistaken advice tendered by counsel for condonation of delay by itself would not attract S. 5, Limitation Act 1908. PLJ 2000 SC 200 = PLD 2000 SC 94.

Delay in filing grievance notice and grievance petition. Condonation of Prayer for. Section 5 of Act is applicable to grievance notice and grievance petition under Section 25-A of Ordinance. Although Section 14 of Act is not applicable, yet its principle can be applied while condoning delay under Section 5. Petition before NIRC against termination order was not competent at all but respondent patently acted negligently while petitioning to NIRC. There is no sufficient cause for condoning delay. Both grievance notice and grievance notice and grievance petition were beyond limitation and order of respondent holding that grievance notice and grievance petition were within time, is clearly illegal and without jurisdiction. PLJ 1996 Lah. 252 = 1996 PLC 162. Delay in filing suit. Suit for pre-emption before Collector instead of civil court because pre-emptor did not claim preferential right on the basis of tenancy. Objection raised by defendant. Collector returned the plaint to plaintiff for presenting the same before Civil Court. Plaintiff filed it in civil court after more than two years from sale of land in dispute. Whether plaintiff was entitled to concession of S. 14 by excluding period spent in proceedings before Collector. Provisions of S. 14 would only be satisfied if plaintiff could show that there was some confusion about the state of law which occasioned filing of suit before a wrong forum. The mistake of a counsel was by itself not to be a ground for condoning the delay. No material produced before the courts below on the basis of which they hold that there was general state of confusion about law applicable while filing the suit before Rev. Court. PLJ 1996 Lah. 1468 = 1996 MLD 747.

Delay in filing suit. Suit for pre-emption before Collector instead of civil court because pre-emptor did not claim preferential right on the basis of tenancy. Objection raised by defendant. Collector returned the plaint to plaintiff for presenting the same before Civil Court. Plaintiff filed it in civil court after more than two years from sale of land in dispute. Whether plaintiff was entitled to concession of S. 14 by excluding period spent in proceedings before Collector. Provisions of S. 14 would only be satisfied if plaintiff could show that there was some confusion about the state of law which occasioned filing of suit before a wrong forum. The mistake of a counsel was by itself not to be a ground for condoning the delay. No material produced before the courts below on the basis of which they hold that there was general state of confusion about law applicable while filing the suit before Rev. Court. P.L.J.1996 Lah. 1468 = 1996 MLD 747.

Essentials for condoning delay explained and illustrated. P.L.J. 2002 SC 49 1975 SCMR 259; PLD 1977 SC 102; PLD 1993 SC 385; 1984 SCMR 890; 1068; 1985 SCMR 333; 1988 SCMR 2; PLD 1991 SC 102, 957; PLD 1992 SC 424; 1995 SCMR 584; 1998 SCMR 2296; PLD 2000 SC 94 ref. Exclusion of time of proceeding bona fide in Court without jurisdiction :- Although appeal had been filed by appellant before District Judge on account of mistaken advice of counsel yet the conduct and act of District Judge and its office in entertaining appeals in earlier round when appeal was filed by respondents and then when the appeal was filed by appellant and District Judge deciding appeals on both occasions on merits and not noting or raising question of maintainability and respondents conduct on both occasions were also factors which led to appellant in filing appeal before District Judge and pursuing the same there. Such facts and circumstances together constitute case of sufficient cause as per terms of S. 5, Limitations Act 1908. Appeal filed by appellant before High Court was, thus, not liable to be rejected on ground

of limitation. Case was remanded to High Court for disposal of appeal on merits. PLJ 2000 SC 200 = PLD 2000 SC 94.

Exclusion of time under Section 14 :- Judgment and decree passed by District Judge was appealable and revision before -High Court was not competent U/S. 115 CPC. Learned Single Judge decided same -as appeal and condoned delay in filing appeal. Time prescribed for filing appeal was 90 days under Article 156 of Limitation Act. Appeal was admittedly barred by 203 days. Prosecution of review petition before District Judge and time spent therefor could not be excluded under Section 14 of Limitation Act. Discretion exercised by learned Single Judge in condoning delay was contrary to settled legal position and result of misreading record, which was rightly interfered with by D.B. of Lah. High Court. PLJ 1995 SC 598 = PLD 1995 SC 472.. Appeal against legality of judgment delivered in revision by High Court on 23.9.1992 and also the judgment dated 5,4.1993 passed in review. Appeal against basic order passed in revision was clearly time barred- Appellant whether entitled to benefit under S. 14, Limitation act in computing period of limitation. Appellants, plea that time spent in prosecuting review petition be excluded from computing period of limitation was not warranted. Appellants submission that he would no press against basic order dismissing revision petition would not advance his case at present point of time as said order would be a hurdle in way of appellant to get required relief as by efflux of time that (order in revision) had attained finality. PLJ 2000 SC 212 = PLD 2000 SC 63. Question of pecuniary jurisdiction and trial by a wrong forum would amount to technical error justifying benefit of S.14, Limitation Act, 1908 to be extended to affected litigant-Plaintiff alone being not responsible for pursuing his remedy in wrong Court but defendant and Court equally were responsible for continuation of lis in wrong forum, plaintiff would be entitled to benefits of S.14, Limitation Act, 1908. 1997 C L C 768 Appellant-plaintiff filing his first appeal before District Judge which was returned for presentation to proper forum-Appellant faced with a curious order passed by trial Court which placed him in a fix and he remained in hands of Advocate who was under a bona fide mistake of law qua value of suit and determination of forum of appeal which point was not free from difficulty-Delay condoned in circumstances. 1986 C L C 126 Appellant was pursuing his remedy diligently and some points of law are involved in his case. In the interest of Justice delay condoned by computing period spent in High Court. Moreover, limitation is not pressed by respondents as well. P.L.J.1996 Tr.C. (Services) 142 = 1995 PLC (C.S.) 1207. It has been well settled that provisions of S. 14 cannot be invoked for seeking condonation of delay, in filing appeal. However, Section 5 of Limitation Act, can be invoked for said purpose, if sufficient cause is shown in perusing wrong remedy. P.L.J.1999 Qta. 77 = PLD 1999 Qta. 3

Filing of appeal in wrong forum. Provisions of Section 5 and 14 of Limitation Act 1908, whether attracted. Sufficient cause. Connotation. Sufficient cause would differ from case to case and any action taken on advice by the counsel against any clear provision of law would not entitle the party to seek condonation of delay on the ground that he had acted bonafide on such advice. Where both the parties were legal heirs of deceased and appellant, in order to deprive respondents, took various steps to prolong the proceedings they were not entitled to claim condonation of delay for filing appeal in wrong forum. Appellant, having contested appeal emanating out of /is between them, after judgment of the same it had become clear that appeal arising from judgment of Trial Court was to be preferred before High Court and not the District Court. Appellant having filed appeal before District Court instead of High Court were adamant to claim that they had properly filed the same they were thus not entitled to' claim condonation of delay in filing appeal in wrong forum and the time spent therein. Deliberate assertion of a plea, which to their knowledge was illegal/improper, could not be treated as sufficient cause for condonation of delay. Sufficient cause for delay having not been shown,

appeal of appellants was rightly dismissed by the High Court. PLJ 2001 SC 248 = PLD 2001 SC 355.

Period consumed during proceedings before Wafaqi Mohtasib or before President of Pakistan:— Plaintiff after dismissal of his claim for recovery of amount of damage by defendant, instead of filing suit approached Wafaqi Mohtasib who accepting claim of plaintiff directed defendant to pay amount of damage to plaintiff. President of Pakistan, on appeal, set aside order of Wafaqi Mohtasib. Plaintiff filed suit for damages and permanent injunction after about 3 years and 10 months from dismissal of his claim by defendants. Plaintiff claimed that period spent in proceeding before Wafaqi Mohtasib should have been excluded. Period consumed during proceedings before Wafaqi Mohtasib or before President of Pakistan could not be excluded as provided under S. 14 of Limitation Act, 1908, because proceedings before Wafaqi Mohtasib and President of Pakistan did not constitute "civil proceedings". In absence of any legal disability of plaintiff for not bringing suit within time, suit was dismissed being barred by time. P.L.J.1999 Kar. 587 = 1999 CLC 364 = NLR 1999 Civil 266.

Sufficient cause. Notwithstanding the fact that S. 14, limitation Act, 1908, in term, does not apply to proceedings of an appeal, if appellant is able to establish that he followed remedy before a wrong forum in good faith, the Court may condone such delay in filing of appeal treating same as "sufficient cause" under S. 5, Limitation Act, 1908. As to what would constitute "sufficient cause" in such cases would depend on facts and circumstances of each case. PLJ 1999 SC 208 = 1998 SCMR 2296.

Suit for specific performance of contract. Whether action for specific performance. initiated by petitioner was within time. Parties agree that Art. 113 in Schedule to Limitation Act applies to action/suit. Period of limitation prescribed is three years from time fixed for performance of agreement or if no such date is fixed from date when plaintiff has notice that performance is refused. There are two well known principles with regard to laws of limitation. Firstly, that laws of limitation take away right of parties and so these laws must be liberally construed and without doing any offence to intents of legislature. Secondly, when there is doubt in construction of relevant clause, benefit should be given to plaintiff. Refusal of defendant to perform contract must be clear unequivocal and unconditional for the purpose of starting period of limitation. It is quite clear that petitioner had earlier filed suit for grant of mandatory and perpetual injunction on the basis of agreement to sell aforesaid suit was found incompetent and dismissed; Trial Court, while doing so, did not render its findings on issues relating to merits of claims of parties petitioner initiated action for specific performance after expiry of four days of that date; suit was brought on same cause of action and was between same parties. Suit/ action fell within ambit of Section 14 of Limitation Act and so was well within time. PLJ 1998 Lah. 1000 = 1998 CLC 900.

Where Party and Court equally were responsible for continuation of lis in wrong forum:— Question of pecuniary Jurisdiction and trial by a wrong forum would amount to technical error Justifying benefit of S.14, Limitation Act, 1908 to be extended to affected litigant-Plaintiff alone being not responsible for pursuing his remedy in wrong Court but defendant and Court equally were responsible for continuation of lis in wrong forum, plaintiff would be entitled to benefits of S.14, Limitation Act, 1908. 1997 C L C 768

Whether relief could be extended to petitions :— During pendency of Constitutional petition of employees of Board of Secondary Education Kar., declaring employees of Corporation to be Civil Servants. Whether relief envisaged in S. 14 of Limitation Act could be extended to petitions. Section 14 of Limitation Act, even as it stands, would not have applied to cater relief in present category of cases. Section 14 extends rehedronly when suit or application is delayed because of pursuing another remedy in another forum, not having Jurisdiction, inspite of diligence and

bonafides of pursuit. By definition in Limitation Act itself, suit does not include appeal to which (before Tribunal), thus, benefit cannot be extended. Even so, because section 5 of Limitation Act applies, principle in section 14 of Act can be resorted to for seeking condonation, if delay occurs.. Thus, if petitions were to encounter plea of bar on ground of limitation, they may, even fall back on broad rule in section 14 of Limitation Act, which would apply to their case much as section 5 of same Act should on parity of reasoning and even under Sindh Service Tribunals (Amendment) Act, XXXI of 1994. Petitions dismissed leaving petitioners to pursue such other remedies as he available to them under law. P.L.J.1997 Kar. 627 = 1997PLC (C.S.) 1158.

Whether relief could be extended to petitions. Section 14 of Limitation Act, even as it stands, would not have applied to cater relief in present category of cases. Section 14 extends only when suit or application is delayed because of pursuing another remedy in another forum, not having jurisdiction, in-spite of diligence and bona-fides of pursuit. By definition in Limitation Act itself, suit does not include appeal to which (before Tribunal), thus, benefit cannot be extended. Even so, because section 5 of Limitation Act applies, principle in section 14 of Act can be resorted to for seeking condonation, if delay occurs.. Thus, if petitions were to encounter plea of bar on ground of limitation, they may, even fall back on broad rule in section 14 of Limitation Act, which would apply to their case much as section 5 of same Act should on parity of reasoning and even under Sindh Service Tribunals (Amendment) Act, XXXI of 1994. Petitions dismissed leaving petitioners to pursue such other remedies as available to them under law. PLJ 1997 Kar. 627 = 1997PLC (C.S.) 1158

Whether time spent in wrong forum is extendable. Bare perusal of Section 14 marks it manifestly clear that time spent in pursuing remedy in a wrong appellate forum cannot be condoned. This section can be pressed, into service only where suit was pursued in a wrong forum. Civil Judge admittedly assumed Jurisdiction under Civil Courts Ordinance, Section 18 whereof provides that appeals having valuation exceeding Rs. 50,000/Shall be instituted before High Court. Argument raised by appellants is not acceptable. P.L.J.1994 Qta. 32 = PLD1994 Qta. 88.