

2017 C L D 1165

[Lahore (Multan Bench)]

Before Abid Aziz Sheikh and Jawad Hassan, JJ

MEHRAN GINNING INDUSTRIES and 2 others---Appellants

Versus

SAJID SHAFIQUE and 12 others---Respondents

R.F.A. No. 152 of 1999, decided on 23rd May, 2017.

(a) Companies Ordinance (XLVII of 1984)---

---Ss. 7, 8 & 152---Petition seeking rectification of members' register of a company---Court of original jurisdiction---Scope---Appeal---Scope---When the Company Judge (Single Bench) decided the matter under S. 152(3) of the Companies Ordinance, 1984 against which the appeal laid to the Division Bench of the High Court under S. 152(4) of the Ordinance, then the single Bench which decided the petition was the Court of original jurisdiction---Jurisdiction exercised by the High Court under the Companies Ordinance, 1984 was original jurisdiction, in the sense that the petitions or applications under the various provisions of the Ordinance were entertainable by the High Court as the Court of first instance, hence the appeals against such order, would lie before a Bench of two or more Judges of the High Court.

Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others PLD 1996 SC 543 and Messrs Sunrise Textiles Limited and others v. Mashreq Bank PSC and others PLD 1996 Lah. 1 ref.

(b) Companies Ordinance (XLVII of 1984)---

---S. 152---Limitation Act (IX of 1908), First Sched. Art. 151---Order for rectification of members' register of a company passed by Company Judge (Single Bench) in its original jurisdiction under S. 152 of the Companies Ordinance, 1984---Appeal against such order filed before Division Bench of the High Court under S. 152(4) of the Ordinance---Limitation---Article 151 of First Schedule to the Limitation Act, 1908 specifically dealt with the limitation period where an order had been passed by the High Court in its original jurisdiction---When the Company Judge (Single Bench) passed an order under S. 152 of the Companies Ordinance, 1984 in its original jurisdiction, the period of limitation for filing appeal would be (20) twenty days commencing from the date of decree or order, as provided under Art. 151 of First Schedule to the Act.

Haji Ghulam Rasul and others v. Government of the Punjab through Secretary, Auqaf Department, Lahore 2003 SCMR 1815 ref.

(c) Limitation Act (IX of 1908)---

---S. 5---Condonation of delay---Grounds---Wrong advice or ill advice of the counsel was not a ground for condonation of delay.

Parvez Akhtar v. Dr. Saeed ur Rehman and others 2015 MLD 405 ref.

(d) Limitation Act (IX of 1908)---

---S. 5---Condonation of delay--- Scope--- In case of time barred proceedings, defaulting party must explain the delay of each day caused in preferring valid proceedings in accordance with law.

(e) Limitation Act (IX of 1908)---

---S.5---Condonation of delay---"Sufficient cause" and "good faith"---Meaning---Sufficient cause must be shown by the person seeking condonation of delay, which meant "circumstances beyond control of party concerned"---Nothing could be deemed to be done in good faith which was not done with due care and attention.

Mst. Khadija Begum and 2 others v. Mst. Yasmeen and 4 others PLD 2001 SC 355 rel.

(f) Limitation Act (IX of 1908)---

---S. 5--- Delay by Government in filing appeal---Condonation of delay---Scope---For purposes of limitation the Government could not be treated differently (than other appellants).

Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others 1998 SCMR 307 ref.

Muhammad Suleman Bhatti, Saqib Aziz, Sarfraz Majid and Ms. Rida Jamshed Hayat for Appellants.

Mughees Aslam Malik and Ahmad Khan Chatta, Research Officer for Respondents.

JUDGMENT

JAWAD HASSAN, J.---By this judgment, we intend to decide the instant appeal as well as R.F.A. No.153/1999 as both involving identical matters having similar nature.

2. Through these Regular First Appeals, filed under section 152(4) of the Companies Ordinance, 1984 (the "Ordinance"), the Appellants have called in question the legality of the impugned judgments dated 04.10.1999 passed by the learned Single Judge (the "Impugned Judgments") in C.O. No.02/1996 and C.O. No.03/1996 (the "Company Petitions") whereby the Company Petitions were allowed with cost.

3. Brief facts revealing from these Appeals are that the Respondents filed two (2) Company Petitions under section 152 of the Ordinance seeking rectification of the Member Registers of two (2) companies, namely Mehran Ginning Industries (Private) Limited and Mehran Solvex Industries (Private) Limited (the "Companies"), limited by shares and incorporated on 10.01.1998. It transpires that the Respondents Nos.1 to 3 are the sons of Shafique Ahmad deceased, the Respondents Nos.4 to 8 are daughters of Shafique Ahmad, while the Respondent No.9 is the mother of the Shafique Ahmad deceased. The Respondent No.12 is the widow of the deceased Shafique Ahmad. It is alleged that Shafique Ahmad held

200 and 300 shares respectively in the Companies in his own name at the time of his death on 04.07.1992. Admittedly, at the time of his death the total paid up share capital of the Companies comprised of 500 shares and 5400 shares. The Company Petitions were heard by the learned Single Judge and allowed vide the Impugned Judgments, with the direction that register of members of the Companies be rectified and the 200 shares owned by Mr. Shafique Ahmad at the time of his death, be reverted to his name and the same may be dealt with in accordance with the Articles of Association of the Companies. Hence, these Appeals.

4. We have noted that in pursuance of this Court's order dated 20.12.1999, it was observed that since the Impugned Judgments have been passed in original jurisdiction of the learned Single Bench, prima facie Article 151 would be applicable which prescribes 20 days' time for filing of an appeal to a Larger Bench. The Appellants have also filed applications under sections 5 and 12 of the Limitation Act, 1908 (the "Act") for condonation of delay. The Respondents have filed their reply to the Applications; contested the grounds mentioned in the same and prayed for their dismissal.

5. Before dilating on the arguments raised by the counsel for the parties at length, following moot points are essential for consideration and determination of this Division Bench, arising out of instant appeals:

(a) Whether the Single Bench has exercised its original jurisdiction under section 152 of the Companies Ordinance 1984 while passing the Impugned Judgments?

(b) Whether the Appeals filed by the Appellants are time barred under section 152(4) of the Ordinance read with Article 151 of the Act?

Appellants' Submissions:

6. The learned counsel for the Appellants submitted that the Impugned Judgments are contrary to law and facts, and lacks determination on material issues; that learned Single Bench has failed to consider relevant sections 76, 79, 80 and 81 of the Ordinance, scope of sections 152, 154, 155 and 156 of the Ordinance, and evidence available on record i.e. Articles 11 and 12 of the Memorandum of Articles of Association of the Companies, and documents produced by the Appellants; that Article 14 of the Memorandum is not applicable in instant case; that applications of the Respondents were time-barred; the Respondents are estopped by their own conduct to agitate and move applications at this stage; the Respondents did not come to the Court with clean hands.

7. The learned counsel for the Appellants has also filed applications under sections 5 and 12 of the Limitation Act, 1908 to condone the delay in filing the Appeals, and has submitted that the delay in filing the Appeals was not deliberate; that their counsel neither informed them about the fixation of the case nor decision of the same; that the clerk of the counsel applied for the certified copies on 14.10.1999 and obtained the same on 26.10.1999 and sent the same to the Applicants at Lahore; that the Appellants were informed by their counsel the limitation period as 30 days; that the Applicants filed the Appeals on 05.11.1999; that the period from 14.10.1999 to 26.10.1999 merits to be excluded; that the delay in filing the Appeals was neither intentional nor deliberate but due to unavoidable circumstances. The learned counsel also contended that the Appeals are within limitation because Appeals under section 152(4) of the Ordinance falls within the domain of Article 152 read with Article 156 of the First Schedule of the Act rather than Article 151; that under the Articles 156, limitation

is 90 days which commences from the date of the order appealed from; that wrong advice of the counsel is sufficient ground for condonation of delay.

Respondents' Submissions:

8. On the other hand, learned counsel for the Respondents vehemently controverted the arguments advanced by the learned counsel for the Applicants and prayed for dismissal of the Appeals on the grounds that the Impugned Judgments were passed in presence of both the learned counsel for the parties; that it was the duty of the Applicants to be kept in touch with their counsel; that the ground of no knowledge is not a sufficient ground for condonation of delay; that the ground of alleged wrong advice of the counsel is also not a cogent reason for acceptance of the Applications. The learned counsel has also contended that as the learned Single Judge has passed the Impugned Judgments by assuming its original jurisdiction, which could be appealed against within twenty (20) days under Article 151 of the Act, therefore, Article 156 of the Act is not applicable to the case in hand. In support of his contentions learned counsel has placed reliance on the cases titled *Jhanda v. Maqbool Husain etc.* (1981 SCMR 126), *Khalid Farooq and 3 others v. Hakim Nazar Muhammad and another* (1979 SCMR 52), *Khalid Saigol v. National Investment Trust Ltd. and 2 others* (PLD 1985 Supreme Court 124).

Determination:

9. We have heard the arguments of the learned counsel for the parties and examined the record available with these Appeals.

10. The basic and important question arising out of the present controversy is, what is the limitation period for filing the appeal against any order or judgment passed under Section 152 of the Ordinance by the learned Single (Company) Judge, exercising its original jurisdiction under the Ordinance.

(a) The Original Jurisdiction of the Single Company Bench of the High Court:

11. It follows from the record that on the very first day when the matter was taken up by this Division Bench, it was observed that as the Impugned Judgments were passed in original jurisdiction of the High Court, therefore, Article 151 of the Act would be applicable and the Appellants may file Applications under section 5 of the Act for condonation of delay. The argument of the learned counsel for the Appellants that Article 156 of the Act is applicable to the case in hand because if the matter is dealt with by a Civil Court under section 152 of the Ordinance then its appeal is filed in the High Court under section 152(4)(a) of the Ordinance and the time period provided for the limitation is (90) ninety days, is not tenable and Article 156 of the Ordinance is not applicable because the petition was decided by the Company Judge under section 152(3) of the Ordinance in which it is clearly mentioned that the Court under section 153 may decide any question relating to the title of any person. When the Company Judge decides the matter under section 152(3) of the Ordinance against which the appeal lies to the Division Bench of this Court under section 152(4) of the Ordinance then the Court which decides the petition is the Court of original jurisdiction. Before dilating upon the arguments of both the counsel, we would like to analyze the nature of the Court and proceedings in which the Impugned Judgments were passed. For the sake of brevity, the relevant section is reproduced herein below:

"8. Constitution of Company Benches.- There shall in each High Court be one or more benches, each to be known as the Company Bench, to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under section 7."

12. From the above Section, it is clear that under section 7 of the Ordinance the High Court has been vested to exercise the jurisdiction as Company Bench. Similarly, section 7 of the Ordinance is reproduced below:

7. Jurisdiction of the Court.-

(1) The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court.

(2) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a Court other than the High Court or a Court empowered under subsection (1)."

13. From the record, it reveals that the Respondents had filed petitions under section 152 of the Ordinance and the above referred Sections show that to deal with such matters, the jurisdiction has been vested in the High Court under section 7 of the Ordinance. The Impugned Judgments have been passed by the learned Single Judge under section 152 of the Ordinance in its original jurisdiction and the Appeals lie before the Bench consisting of two or more Judges of the High Court. Section 152(4) of the Ordinance is reproduced below:

"152 (4) An appeal from a decision on an application under subsection (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908),

(a) if the decision is that of a civil court subordinate to a High Court, to the High Court; and

(b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court." (Emphasis Added)"

14. The Hon'ble Supreme Court of Pakistan in case titled Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others (PLD 1996 Supreme Court 543) has elaborately discussed the matter in hand and held as follows:

"Section 8 provides that the Chief Justice of the High Court shall constitute one or more Benches each known as Company Bench to exercise jurisdiction under section

7. The procedure of the Court is provided by section 9 which shall be summary. From these provisions it is clear that the High Court or a Court empowered under section 7(1) has been vested with the jurisdiction to entertain, hear, try and decide the matters and cases arising under the Ordinance. Such jurisdiction has been conferred by the Ordinance. The proceedings under the Ordinance are initiated in the High Court as a Court of first instance. While exercising such jurisdiction it has the characteristics and attributes of original jurisdiction. In this regard, reference may be made to the relevant provisions which provide for appeal against the judgment, order or decision passed by the Court."

15. The Hon'ble Supreme Court of Pakistan in the Brother Steel Mills case supra has also held that:

"the whole question is whether the orders in question were made by the High Court "in exercise of its original civil jurisdiction". If the answer be in the affirmative, then it must follow that appeals lay before a Bench of two or more Judges of the High Court and these appeals are not maintainable. Learned counsel for the appellants agreed that the jurisdiction exercised by the Court under the Companies Ordinance is original jurisdiction, in the sense that the petitions or applications under the various provisions of that Ordinance are entertainable by the High Court as the Court of first instance. In other words, original jurisdiction of the High Court is to be distinguished by contrasting it with its appellate or revisional jurisdiction. They, however, invited us to hold that the jurisdiction that the High Court has under the Companies Ordinance is not 'civil jurisdiction'. It is not civil, so went the contention, because it is not exercised by a Civil Court under the Code of Civil Procedure. In the view of the learned counsel for the appellants, the jurisdiction exercised by the High Court under the Companies Ordinance is a special jurisdiction conferred by a statute. In the Ordinance, the original jurisdiction has been elaborated in the manner that term "original civil jurisdiction" has been used in the Companies Ordinance, 1984 in the general sense. Hence, Companies Ordinance, 1984 confers such original civil jurisdiction on the High Courts, which is completely different from the ordinary original civil jurisdiction conferred by the Code of Civil Procedure. Under the Companies Ordinance, 1984 the Court is required to adjudicate upon rights and liabilities of the parties which are civil in nature. Such jurisdiction conferred by a statute has sometimes been termed as special or statutory jurisdiction, but it possesses all the attributes of original civil jurisdiction and remains nothing but the original civil jurisdiction as distinguished from the appellate jurisdiction."

16. Furthermore, in case titled Messrs Sunrise Textiles Limited and others v. Mashreq Bank PSC and others (PLD 1996 Lahore 1), this Court has held as under:

"The jurisdiction of Company Judge is original jurisdiction conferred by the statute, the civil jurisdiction is a jurisdiction which is in contradistinction to criminal jurisdiction. It deals with the determination of the rights of the warring parties. The jurisdiction of the Company Judge under the Ordinance has all the attributes of original civil jurisdiction. The nature of the jurisdiction of the Company Judge under the Ordinance is original civil jurisdiction and so the order passed by the Company Judge in which the Company is not wound up is subject to appeal before the Bench of High Court comprising of two or more Judges under section 3 of the Law Reforms Ordinance, 1972."

17. In view of the above, it transpires that the jurisdiction exercised by the High Court under Ordinance is original jurisdiction, in the sense that the petitions or applications under the various provisions of the Ordinance are entertainable by the High Court as the Court of first instance, hence the appeals against such order, therefore, would lie before a Bench of two or more Judges of the High Court.

(b) Limitation Period:

18. The Appeals have not been filed within time, therefore, the Appellants have filed applications under sections 5 and 12 of the Act mentioning therein certain grounds for condonation of delay. The contention of the learned counsel for the Appellants that the limitation period would be calculated under Article 156 of the Ordinance and not under Article 151, is not instructive because the Impugned Judgments have been passed under section 152 of the Ordinance by the learned Single Judge assuming its original jurisdiction of which an appeal has to be filed under section 152(4) of the Ordinance. Article 151 of the Act specifically deals with the limitation period where the order has been passed by the High Court in its original jurisdiction. The said Article is reproduced below and is as follows:

Description of suit	Period of Limitation	Time from which period begins to run
1	2	3
151. From a decree or order of a High Court in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order

From the above Article, it is explicit that where the High Court exercises its original jurisdiction, the period of limitation would be (20) twenty days. The Article 151 of the Act clearly stipulates the period of 20 days for filing appeal commences from the date of decree or order. We suffice it to say that in the instant case for the purpose of limitation the Article 151 of the Act would be applicable and not the Articles 156. The case was decided on 04.10.1999 and these Appeal were filed on 05.11.1999 and were heard on 20.12.1999 when the Office objected to its limitation. Reliance in this regard can be placed on the case titled Haji Ghulam Rasul and others v. Government of the Punjab through Secretary, Auqaf Department, Lahore (2003 SCMR 1815) wherein it has been held as follows:

"The learned Single Judge had disposed of the petition of the Article 201 of the Interim Constitution in its extraordinary original jurisdiction. While exercising original jurisdiction, the period of limitation would be 20 days as prescribed by Article 151 of the Limitation Act and not 30 days. The High Court Rule applies to those cases where the appeal is filed against the Appellant judgment of a Single Judge of that High Court, but where the High Court exercise its original jurisdiction then the period of limitation would be 20 days. Accordingly an appeal which was filed beyond the period of 20 days was barred by time under section 3 of the Limitation Act."

(c) Discussion on ground of Condonation of Delay

20. Furthermore, the grounds taken by the Appellants in the Applications are not sufficient grounds to condone the delay in filing these Appeals. We examined the record which reflects that in the Applications no reason or justification has been extended by the Appellants justifying such delay in filing these Appeals which are the sole basis of the prayer made in the Applications. The only grounds/reasons for condonation of delay mentioned in the Applications are that "the Applicants had neither any knowledge of the fixation of the case nor was informed about the order passed by the Court; that the counsel advised 30 days time for limitation; that the delay in filing the appeal was neither intentional nor deliberate rather beyond the control of the Appellants" which are neither cogent nor confidence inspiring to extend favour for condonation of delay. The contention of the learned counsel for the Appellants that the wrong advice of the counsel is sufficient ground for condonation of delay is not supportive to the Appellants. In the case titled Parvez Akhtar v. Dr. Saeed ur Rehman and others (2015 MLD 405), it has been held that:

"it is well settled by now that wrong advice or ill advice of the counsel is not ground for condonation of delay. A counsel having not even consulted the Civil Courts Ordinance and the basic requirements of lodging an appeal, cannot be said to have acted with due diligence, thus the negligence of a counsel has been considered not to be an act done in good faith as the same was not done with due care and caution, thus was never a "sufficient cause" for condonation under section 14 of the Limitation Act. There is another aspect that it was the duty of the Petitioner himself to be vigilant and protect his right in the proper forum."

21. In view of clear enunciation of law laid down by the Hon'ble Supreme Court of Pakistan, this Court holds that the limitation provided for filing an appeal from an order of a High Court in the exercise of its original jurisdiction under section 152 of the Ordinance, is twenty (20) days from the date of the order as provided under Article 151 of the First Schedule provided under section 3 of the Limitation Act, 1908.

22. The judgment passed by the learned Single Judge was delivered on 04.10.1999 but these Appeals have been filed after a delay of 11 days i.e. on 05.11.1999. It is a settled position of law that in case of time barred proceedings, defaulting party must explain the delay of each day caused in preferring valid proceedings in accordance with law. Learned counsel for the Appellants have not been able to extend any cogent reason to be believed for condonation of delay, therefore, the delay of about eleven (11) days cannot be condoned mere on the Applications of the Appellants. Furthermore, the contention of the Appellants that learned counsel advised the Appellants 30 days in filing the Appeal is concerned, the same is not a sufficient ground for condonation of delay as well. Reliance in this regard can be placed on the case titled Mst. Khadija Begum and 2 others v. Mst. Yasmeen and 4 others (PLD 2001 Supreme Court 355) in which, while dealing with the question of limitation it has been categorically held that sufficient cause must be shown by the person seeking condonation of delay, which means "circumstances beyond control of party concerned" and that, nothing shall be deemed to be done in good faith which is not done with due care and attention. It is also settled law that for purpose of limitation Government cannot be treated differently. Reliance is placed on the cases titled Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307).

(d) Conclusion

23. We, therefore, adjudge that the delay in filing of these Appeals would not become liable to be condoned, as the Appellants have failed to show any sufficient reasons for condonation of such delay.

24. In view of the above facts and circumstances, the Applications for condonation of delay are dismissed; consequently, the instant Appeal as well as the connected R.F.A. No.153/1999, being time barred, are hereby also dismissed.

MWA/M-92/L

Order accordingly.