

Stereo HCJ DA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
M U L T A N B E N C H M U L T A N
JUDICIAL DEPARTMENT

Civil Original No.01 2012
&
C.M.No.3292 of 2019

Nazar Hussain etc

V/S

*Nasir Ali and M/s Salahudin Suleman
Cotton Factory*

JUDGMENT

Date of hearing	24.02.2020
Petitioner(s) by	Mr. Zafar Iqbal Khan Baloach, Advocate
Respondent(s) by	M/s Tanveer Ahmad and Ijaz Ahmad Toor, Advocates for the Respondents No.1 to 3. Mr. Muhammad Suleman Bhatti, Advocate assisted by Jawad Younas and Saqib Aziz, Advocates for the Respondent No.4. Mr. Ahsan Ramzan, Advocate for SECP with Malik Muhammad Tariq Iqbal, Executive Officer.

JAWAD HASSAN, J. This judgment will decide twenty four (24) years old controversy between the parties brought before this Court in year 2012 and further clarify two important questions firstly, invoking original jurisdiction of this Court being a Company Judge under Section 152 of the Companies Ordinance, 1984 (the "***Ordinance***") for the rectification of register, and secondly, the time frame for the filing of application under Section 152 and applicability of provisions of Limitation Act, 1908 (the "***Limitation Act***") on such like applications. The Petitioners have made following prayer:-

“It is therefore respectfully prayed that the petition of the Petitioners may kindly be accepted and directions may graciously be issued to the Respondent No.5 regarding rectification of forged/fake/illegal list/Register of Members for the year 1995 and Particulars of Directors (Form-29) dated 18.06.1995, 15.12.1995 and 14.05.1996 of the Company and a direction may also be issued to the Respondent No.5 to record the documents (Forms-A & 29) filed by the Company (Respondent No.4) and issue filing certificate at the earliest”.

I. FACTUAL BACKGROUND

2. A synoptical resumption of facts are that the Petitioners were shareholders of the Respondent No.4 (M/s Salahuddin Suleman Cotton Factory (Pvt) Limited) (hereinafter referred to as the “**Company**”) which was incorporated and registered on 21.12.1987 under the Ordinance. The Respondents No.1 to 3 submitted bogus and fraudulent Forms-A dated 18.06.1995, Form-A & 29 dated 15.12.1995 and Form-29 dated 14.05.1996 to the Securities and Exchange Commission of Pakistan (the “**Commission**”). The Company informed the Commission on 17.08.1996 not to accept the alleged fake documents submitted by the Respondents. The Commission however, submitted its reply in year 2011 and this petition was filed on 09.01.2012.

3. Without going into the merits of the case, it would be appropriate to address the preliminary objection regarding limitation taken by the learned counsel for the Respondents No.1 to 3 and 5.

II. PETITIONERS' ARGUMENTS

4. Learned counsel for the Petitioners argued that the present petition is within time as the Company communicated the Commission about the illegal transfer of shares on 17.08.1996, which was replied by the Commission in year 2011, hence, the instant petition is within limitation period. In order to strengthen this argument, learned counsel for the Petitioners has relied on "HAFEEZ AHMAD and others Versus CIVIL JUDGE, LAHORE and others" (P L D 2012 Supreme Court 400), "PROVINCE OF PUNJAB through Collector and others Versus MUHAMMAD FAROOQ and others" (P L D 2010 Supreme Court 582), "Mst. KANEEZAN BIBI and others Versus MUHAMMAD RAMZAN and others" (2005 S C M R 1534), "RIAZ HUSSAIN and others Versus MUHAMMAD AKBAR and others" (2003 S C M R 181), "CHAIRMAN, DISTRICT EVACUEE TRUST COMMITTEE, RAWALPINDI Versus SHARIF AHMAD and others" (P L D 1991 Supreme Court 246), "Mian JAVED AMIR and others Versus UNITED FOAM INDUSTRIES (PVT) LTD, LAHORE and others" (2016 CLD 393), and "Mrs. SAEEDA MAHMOOD and another Versus ANAS MUNIR (PVT.) LTD. through Chief Executive, and 6 others" (2007 C L D 637).

III. RESPONDENTS ARGUMENTS

5. Mr. Ijaz Ahmad Toor, learned counsel for the Respondents No.1 to 3 stated that the petition is barred by time therefore it is liable to be

dismissed. He argued that remedies were provided under Section 152 of the Ordinance for a party who called in question the title of shares and omitting his name fraudulently from the register of the company but such remedies ought to have been invoked within the period of limitation provided and if no period is specifically provided then within reasonable period of time. He further argued that in terms of Article 120 of the Limitation Act period for filing a suit is six years of such knowledge and Article 181 of the Limitation Act deals with application prescribing period of limitation as three years. He further argued that the petition in hand was filed on 09.01.2012, and as per para 16 of the petition, the Petitioners gained knowledge on 04.06.1996 therefore, limitation starts from the date of knowledge and not from the date of reply of the Commission. He placed reliance on “Syed AKBAR ALI Versus MAMUN ALI BUMASUK (PVT.) LTD. and others” (2006 C L D 960).

6. Mr. Tanveer Ahmad, Advocate for the Respondents No.1 to 3 stated that the Petitioner No.3 himself filed Form-29 dated 18.06.1995 by reflecting the names of the Respondents No.1 to 3 as Directors which was acknowledged by the Commission in para 7 of the reply. He relied on “NATIONAL BANK OF PAKISTAN Versus BALOCHISTAN WHEELS LIMITED and another” (2004 C L D 1100), “MEHRAN GINNING INDUSTRIES and 2 others Versus SAJID SHAFIQUE and 12 others” (2017 C L D 1165), “ABDUL KAREEM KHAN versus Messrs HAROON-UR-RASHEED TEXTILE MILLS (PVT.) LTD. through Chief Executive and 13 others” (2015 C L D 719) and “Messrs UNITED FOAM INDUSTRIES

(PVT.) LTD. through Chairman and another Versus Messrs JOY FOAM (PVT.) LTD. through Chief Executive and 6 others” (2016 C L D 2325).

7. I have taken into consideration respective arguments advanced by learned counsel for the parties and perused the record.

IV. STATUTORY FOUNDATION

8. Section 152(1) of the Ordinance (now, Section 126 of the Companies Act, 2017) requires any aggrieved person or member of the company to apply to the Court for rectification of the register in case the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members, or there is default or unnecessary delay in entering on the register of members the fact of the person having become or ceased to be a member. Section 152(2) of the Ordinance empowers the Court to either refuse such application or order rectification of the register on payment by the company of any damages sustained by any aggrieved party. The Court is further authorized under Section 152(3) of the Ordinance to decide any question relating to the title of any party to the application to have his name entered in or omitted from the register, and generally decide any question which is necessary or expedient to decide for rectification of the register. There is, however, no limitation period provided for filing such application in this Section.

9. In such a situation, the following moot points are arising out of the petition and arguments of the parties, which are necessary for adjudication of the instant matter:

V. MOOT POINTS

- (1). *Whether any provision of the Limitation Act is applicable for filing an application under Section 152 of the Ordinance (now, Section 126 of the Companies Act, 2017)?*
- (2). *Whether the instant petition has been filed within such limitation period?*

VI. DILEMMA VEILING THE LIMITATION PERIOD

10. In our jurisdiction there appears to be no definitive precedent to the effect that which provision of the Limitation Act applies to a petition under Section 152 of the Companies Ordinance, whether it is covered under Article 120 or Article 181 of the Limitation Act. However, this aspect of the matter needs to be adjudicated upon for the purpose of deciding the lis in hand. It is essential to note that Article 120 of the First Schedule of the Limitation Act provides limitation period of six years from the time when right to sue accrues for the suits for which no period of limitation is provided elsewhere in the schedule. Similarly, Article 181 of the First Schedule of the Limitation Act provides limitation period of three years from the time when right to apply accrues for applications for which no period of limitation is provided elsewhere in the schedule.

VII. LINE OF AUTHORITIES AND LAW

11. In order to determine the above moot points, it is vital to look at the evolution of the jurisprudence on the point of limitation in terms of application under Section 152 of the Ordinance in Pakistan and Indian's context. There is strand of judgments which have returned a finding that an application under Section 152 of the Ordinance cannot be maintained when

the suit for seeking the same relief has become barred by time under the Limitation Act. Hence, as a corollary referring to Article 120 of the Limitation Act qua its applicability to a petition under Section 152 of the Ordinance. Correspondingly, a recent case of this court expressly holds that Article 120 will be applicable to such applications by drawing analogy between the concept of a plaint in C.P.C and an application under Section 152. On contrast there is yet another judgment of this Court, which will be dwelled upon in the latter part, while relying on the august Supreme Court's Judgment opines that Article 181 of Limitation Act will be applicable to such an application. Quite interestingly, decisions in the Indian jurisdiction also have divergent views on this particular issue.

12. In order to illustrate the nuance, reference to the following cases is essential.

(A) ARTICLE 120 OF THE LIMITATION ACT BY IMPLICATION

The judgments discussed below have held that an application under Section 152 of the Ordinance, 1984 cannot be maintained when the suit for seeking the same relief has become barred by time under the Limitation Act.

In the case "Syed AKBAR ALI Versus MAMUN ALI BUMASUK (PVT.) LTD. and others" (2006 C L D 960) it was held that an application for discretionary relief under Section 152 of the Ordinance has to be filed within reasonable period of time, and the petitioner cannot be allowed to call in question transfer of shares at his own sweet-will. The learned Court, however, did not go into the question whether Article 120 or Article 181 of the Limitation Act is applicable to the petition under Section 152 of the

Ordinance. The learned Court held that the petitioner is not entitled to discretionary relief under Section 152 of the Ordinance because he has failed to give any cogent reason for not questioning the transfer of shares from his name for eleven long years. In another case reported as “TALIB HUSSAIN V. BABU MUHAMMAD SHAFI AND 12 OTHERS” (PLD 1987 Lahore 1) the following observations were made at **para 7**: “7..... *The summary proceedings under Section 152 Companies Ordinance, 1984, cannot be resorted to when the suit for seeking same relief has become barred by time under the Limitation Act. Again the discretion vesting in the Court will not be exercised in favour of a party guilty of laches. The delay in a given case may give rise to equitable considerations and disentitle a party from seeking a particular relief.*” Similarly in “Mrs. SAEEDA MAHMOOD and another Versus ANAS MUNIR (PVT.) LTD. through Chief Executive, and 6 others” (2007 C L D 637), the Court held that “*there is no definitive precedent to the applicability of Article 120 or Article 181 of the Limitation Act to the application under Section 152 of the Ordinance. However, time available for filing such application is not open ended, and where a suit based in a same cause of action seeking substantially the same relief as prayed for under Section 152 of the Companies Ordinance No.XLVII of 1984 has become barred by limitation, the application of this under Section 152 of the Ordinance would ordinarily be liable to be dismissed*”.

(B) DIRECT NEXUS WITH ARTICLE 120 OF THE LIMITATION ACT

In order to fully appreciate the applicability of Article 120 of the Limitation Act, reference to the **Companies (Court) Rules 1997 (Rules)** as

well as the relevant provisions of C.P.C is quintessential. **Rule 5** reads as follows:

5. Petitions generally. --- (1) All applications under the Ordinance, except interlocutory applications, shall be made by petition in the manner herein appearing.

(2) All petitions, applications, written statements, affidavits and other proceedings presented to the Court shall be fairly and legibly written, typewritten, cyclostyled or printed on one side of standard petition paper of foolscap size with an inch and a quarter margin and at least an inch and half blank space left at the top and bottom of each sheet and separate sheets shall be stitched together, and shall be dated, divided into separate paragraphs which shall be numbered consecutively and signed by the petitioner, applicant or other authorised person. (emphasis supplied)

Rule 7 (1) provides:

7. Practice and procedure of the Court and provisions of the Code to apply. ---(1) Save as provided by the Ordinance or by these Rules, the practice and procedure of the Court and provisions of the Code so far as applicable shall apply to all proceedings under the Ordinance and these rules. (emphasis supplied)

Similarly **Order IV, C.P.C.** deals with institution of suits. **Rule I** thereof is as follows:

1. Suit to be commenced by plaint---(1) Every suit shall be instituted by presenting a plaint to the Court or to such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

13. It could very well be gathered from the above provisions that in terms of Rule 5 all applications under the Ordinance shall be made by Petitioners and upon petition being entertained for regular hearing, the Respondent would be required to file a written statement.

14. Further Rule 7(1) expressly provides that the practice, procedure and provisions of the Code of Civil Procedure would be applicable to all the proceedings under the Ordinance unless prescribed otherwise.

15. As a corollary it follows that although the proceedings under Section 152 of the Ordinance are initiated by a petition, the formalities and particulars required to be mentioned in those petition are the same as in a plaint. Therefore a petition under Section 152 of the Ordinance partakes the nature of a plaint in substance and proceedings take shape of a suit.

16. Similar finding was reached in the below mentioned case of this Court, where it was observed that that a petition filed under Section 152 of the Ordinance is essentially in the nature of a plaint and the proceedings are akin to a suit. Hence, it was held that the period of limitation for a petition under Section 152 of the Ordinance shall be reckoned under Article 120 of the Limitation Act. In a recent judgment of this Court reported as “MIAN WAHEED UD DIN AND OTHERS V. MESSRS ROYAL RICE MILLERS (PVT.) LTD” (2015 CLD 1978), the court observed, “The

examination of the above provisions leave no room for doubt that a civil suit for a relief under Section 152 of the Ordinance would entail the limitation period prescribed in Article 120 of the Limitation Act. Therefore, Article 120 of the Limitation Act shall be applicable to a petition filed under Section 152 of the Ordinance and period mentioned in the said Article should be taken as a reasonable standard by which delay in seeking remedy under Section 152 of the Ordinance should be measured.” Understandably, the Court held that the period of limitation for a petition under Section 152 of the Ordinance, 1984 shall be reckoned under Article 120 of the Limitation Act, 1908 and is six years. Now the rationale of deriving this conclusion is enfolded in **paras 13 to 16** of the afore referred judgment. The Court observed, while differing from the view contained in the following case - Syed Akbar Ali v. Mamun Ali Bumasuk (Pvt.) Limited and others" (2006 CLD 960) – where with reference to Articles 120 and 181 of the Limitation Act it was stated that the petition under Section 152 of the Ordinance was neither a suit nor an application, that the petition under Section 152 is akin to a plaint. The main reason was based on the premise as succinctly contained in paras 14 and 16 which are reproduced below.

“14. The expressions "suits", "applications" and "petitions" are not defined in the Civil Procedure Code, 1908. By virtue of Section 2(1) of the Limitation Act, 1908, "applicant" includes any person from or through whom the applicant derives his right to apply and "suit" in terms of Section 2(10) thereof does not include all appeal or an application. Section 3 of the Limitation

Act provides that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. By virtue of Section 5 of the Limitation Act, any appeal or any application as specified therein but not a suit may be admitted after the prescribed period provided the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making application within such period. Section 29 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule forming part of the Limitation Act, the period prescribed by such special or local law will be applied for determining any period of limitation for any suit or appeal or application as the case may be. The Schedule forming part of the Limitation Act consists of three divisions prescribing the period of limitation. The first division covering Articles 1 to 155 deals with the limitation for a suit. The second division comprising Articles 156 to 164 pertains to the limitation for filing an appeal, while Articles 166 to 183 deals with the limitation for filing an application. Article 181 is a residuary Article which applies to all applications for which no period of limitation is provided and the period starts running from the date on which the right to apply accrues and is enforceable within three years thereof. A reading of these Articles would show that the limitation period is fixed only in connection with the filing of either a suit or application before a civil court or an appeal.

15. By virtue of the explanation to Section 3 of the Limitation Act, a suit is instituted in ordinary cases,

when the plaint is presented to the proper officer. Similarly, Order IV, C.P.C. deals with institution of suits. Rule I thereof is as follows:

1. Suit to be commenced by plaint---(1) Every suit shall be instituted by presenting a plaint to the Court or to such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

16. **The Companies (Court) Rules, 1997** have been framed, inter alia, to regulate the conduct of the proceedings initiated under the Ordinance. In terms of **Rule 5** thereof all applications under the Ordinance shall be made by petitions. Once a petition is entertained for regular hearing, the respondent(s) is/are required to file "written statement" in answer to the contents of the petition. In terms of **Rule 7(1)**, the practice, procedure and provisions of the Code of Civil Procedure have been made applicable to all the proceedings under the Ordinance unless prescribed otherwise by the Ordinance and the Rules. It is thus clear that although the proceedings under Section 152 of the Ordinance are initiated by a petition, the formalities and material particulars required to be mentioned in those petition are the same as in a plaint; Under the scheme of things, therefore, there is no sanctity attached to the use of the expressions "petition" or "plaint" for describing the nature of the lis. In the context of the proceedings under the Ordinance, the difference between the two expressions appears to be more of nomenclature than of substance. On the

examination of the above provisions, this Court is satisfied that a petition filed under Section 152 of the Ordinance is essentially in the nature of a plaint and the proceedings are akin to a suit."

17. Hence, the Court by drawing an analogy came to the conclusion that a petition under Section 152 of the Ordinance partook the characteristics of a plaint as defined in the C.P.C. Therefore for the purpose of Limitation, Article 120 was attracted.

(C) APPLICABILITY OF ARTICLE 181 OF THE LIMITATION ACT

This Court's judgment reported as "Messrs UNITED FOAM INDUSTRIES (PVT.) LTD. through Chairman and another Versus Messrs JOY FOAM (PVT.) LTD. through Chief Executive and 6 others" (2016 CLD 2325) relies on the judgment of august Supreme Court reported as "M. Imam-ud-Din Janjua v. The Thal Development Authority through the Chairman, T.D.A., Jauharabad" (PLD 1972 Supreme Court 123) to hold that Article 181 of Limitation Act applies to all applications filed under any statute and is not confined in any manner to merely the applications filed under the C.P.C. Hence, the limitation for an application filed under Section 152 will be three years. The reasoning of the Supreme Court, where one of the questions before the Supreme Court of Pakistan was to consider as to whether Article 181 of the Limitation Act applied to proceedings under Section 20 of the Arbitration Act or not, is contained in **pages 128 to 130** and will be instructive to mention.

"In support of his contention that the aforesaid Article applies only to applications under the Code of Civil Procedure learned counsel for the appellant has placed

strong reliance on the observations of the Judicial Committee in the case of Hansraj Gupta v. Dehra Dun M.E.T. Co. Ltd. (AIR 1933 PC 63 = 601 AI 3), Lord Russel of Killowen, while delivering the opinion of the Board in that case, which arose out of an application under the Companies Act, observed that; "It is common ground that the only Article in that Schedule which could apply to such an application is Article 181" but a series of authorities commencing with Bai Manekbai v. Manekji Kavasji (ILR 7 Bom. 213), has taken the view that "Article 181 only relates to applications under the Code of Civil Procedure in which case no period of limitation has been prescribed for the application.

This view, learned counsel points out, has also been followed by the Supreme Court of a neighbouring country in the case of Shah Mulchand & Co. Ltd. v. Jawahar Mills Ltd. (AIR 1953 SC 94), where, after noting that there is some divergence of judicial opinion even within the same High Court in this sub-continent; it has been opined that the preponderating view is undoubtedly to the effect that the said Article applies only to applications under the Code".

The cases before the Privy Council and the aforementioned Supreme Court both arose out of applications under the Companies Act but even so the Privy Council did not express any definite opinion on this question, because it went on, after making the observation quoted above, to consider the position even if Article 181 of the Limitation Act did apply, and came to the conclusion that the application, having been filed three years from the time when the right to apply accrued, was within time even under Article 181 and thus from "either point of view" the application was not

one which could be dismissed by reason of the provisions of Section 3 of the Limitation Act.

Similarly, in the case before the Indian Supreme Court, although a more elaborate discussion was made with regard to the applicability of Article 181, it was again found that, even if Article 181 did apply, the application before that Court was within time.

In 1933, when the Privy Council delivered its opinion, the Arbitration Act of 1940 had not come into existence nor had the Third Division of the First Schedule to the Limitation Act been amended to provide for applications under the Arbitration Act (vide Articles 158 and 178 in the Third Division of the First Schedule to the Limitation Act). Up to that stage all the Articles in this division of the Schedule to the Limitation Act dealt with applications under the Code of Civil Procedure. It may well be that for this reason it was held that Article 181 also applied to only such applications ejusdem generis. After the introduction of Articles 158 and 178 in the Third Division of the First Schedule to the Limitation Act, this reason no longer holds good. The divergence of opinion in British Indian and Indian Courts has arisen mainly because of these amendments introduced in 1940 and the view seems to be gaining ground that after the amendments made in 1940 it was no longer possible to restrict Article 181 only to applications under the Code of Civil Procedure. So far as this Country is concerned, it appears that, after the incorporation of Articles 158 and 178 in the Third Division of the First Schedule to the Limitation Act, the view that has consistently prevailed is that the provisions of this Article are no longer confined to applications under the Code of Civil Procedure. The

first case in which it was held that Article 181 was not restricted to applications under the Civil Procedure Code but "tended even to applications not provided for in that Division was the case of the People Bank of Northern India Ltd. v. Firm Lekhu Ram and Sons (AIR 1941 Pesh. 3), where the Court observed as follows:--

"...if we were to restrict the scope of Article 181 to applications under the Civil P.C. many applications will remain for which there will be no Article in the Limitation Act and the reductio ad absurdum would be that the applicants in those cases would have a free hand to put in applications whenever they liked. An application for filing of an award of this kind by an arbitrator would be a case in point. On this view an arbitrator may keep the award in his pocket for ten years and then he may file it within impunity."

Next in the case of Muhammad Abdul Latif Faruqi v. Nisar Ahmad (PLD 1959 Kar. 465), a learned Single Judge of the former West Pakistan High Court took the view that an application under Section 20 of the Arbitration Act, 1940, has to be filed within the time prescribed under Article 181 of the Limitation Act.

The same view was again taken by a Full Bench of the Azad Jammu and Kashmir High Court in the case of Mian Omar Din v. Government of Azad Jammu and Kashmir (PLD 1968 Azad J&K 21), after noticing the decision from the Indian jurisdiction including that of the Indian Supreme Court referred to above.

Lastly in the case of the West Pakistan Water and Power Development Authority, Lahore v. Messrs Omar Sons Ltd., (PLD 1970 Lah. 398), a Division Bench, after considering all the earlier decisions, came to the conclusion that the position had been materially altered

by the incorporation of Articles 158 and 178 in the Third Division of the First Schedule to the Limitation Act and it was no longer possible to say that the Third Division of Schedule 1 is confined to applications under the Code of Civil Procedure or to apply the ejusdem generis rule only.

Having examined these decisions with care, we, too, have come to the conclusion that, after the incorporation of Articles 158 and 178 in the First Schedule to the Limitation Act, which make specific provision for applications under the Arbitration Act 1940, it is no longer possible to say that the Article contained in the Third Division of the First Schedule to the Limitation Act apply only to applications under the Code of Civil Procedure, because, all the other Articles contained in this Division apply to such applications. With the incorporation of Articles 158 and 178, that reason no longer holds good, and therefore, the scope of Article 181, which is in the nature of a residuary Article, must necessarily be extended to all kinds of applications for which no specific period of limitation has been provided for either in the First Schedule to the Limitation Act or in any other Statute. To hold otherwise would lead to the anomalous result that for applications which have not been expressly provided for in the Third Division of the First Schedule to the Limitation Act there will be no period of Limitation at all. This could not have been the intention of the Legislature.

We regret, with respect, our inability to agree with the Indian Supreme Court that in spite of the subsequent amendments of Articles 158 and 178 no change has been effected in the old construction of Article 181 even

though the reason on which the old construction was founded is no longer available."

VIII. INDIAN JURISPRUDENCE

18. In Indian Supreme Court reported as **“SHA MULCHAND AND CO., LTD. V. JAWAHAR MILLS LTD. SALEM” (AIR 1953 SC 98)** at **104**, the Honourable Supreme Court of India while dealing with the matter of Limitation held as follows:--

"We need not, however, on this occasion, pursue the matter further, for we are of the opinion that even if Article 181 does apply to the present application it may still be said to be within time. The period of limitation prescribed by that Article is three years from the time "when the right to apply accrues". It is true that no further notice after the shares are forfeited, is not necessary to complete the forfeiture of the shares: See-'Knight's case (1867) 2 Ch 321, but it is difficult to see how a person whose share is forfeited and whose name is struck out from the register can apply for rectification of the register until he comes to know of the forfeiture. The same 'terminus a quo' is also prescribed in Article 120, Limitation Act. In O.R.M.O.M.S.P. (Firm) v. Nagappa Chettiar' ILR 1941 Mad 175 (PC) which was a suit to recover trust property from a person who had taken it, with notice of the trust, by a transaction which was a breach of trust, the Privy Council approved and applied the principles of the earlier Indian decisions referred to therein to the case before them and held that the time began to run under Art. 120 after the plaintiff came to know of the transaction, which gave him the right to

sue.....Therefore, the Company must be deemed to have come to know of its cause of action after it came to life again and the present application was certainly made well within three years after that event happened on 16-2-1945. If Article 181 does not apply then the only Article can apply by analogy is Art. 120 and the application is also within time. In either view this application cannot be thrown out as barred by limitation."

19. In another case it has however been observed that a petition seeking rectification of the register of members falls within the ambit of residual Article i.e. 181 of the Limitation Act for the filing of applications with the prescribed limitation of three years. In this behalf reference may be made to the judgment Delhi High Court reported as "**ANIL GUPTA V. DELHI CLOTH AND GENERAL MILLS CO. LTD.**" (1983 (54) Companies Ordinance Cases 301). I will be discussing the findings of this Court in the latter part of this judgment.

IX. CONSTRUCT OF SECTION 152 OF THE ORDINANCE

20. For facility of reference, Section 152 of the Ordinance is reproduced hereunder:

152. Power of Court to rectify register. - (1) If-

(a) *the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company; or*

(b) *default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the*

fact of the person having become or ceased to be a member or debenture holder;

*the **person aggrieved**, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register. (Emphasis added)*

21. The important words used in Section 152 of the Ordinance are that in order to invoke jurisdiction of Section 152, a person has to be aggrieved by any fraudulent entry, omission or default or unnecessary delay of entry on the register of company. The word 'person' used in Section 152(a)(b) of the Ordinance is not defined under Section 2 of the Ordinance. The language of Section 152 demonstrates that a person has to be aggrieved to invoke jurisdiction of this Court whereas the member or debenture-holder may make application upon the act or omission or delay when they have access to information. The 'comma' after the word person aggrieved in Section 152 separated the sentence. The Hon'ble Supreme Court in "Syed MEHMOOD AKHTAR NAQVI Versus FEDERATION OF PAKISTAN through Secretary Law and others" (PLD 2012 SC 1089) has explained the word "comma" in the following words:

"A 'comma' is a point used to mark the smallest structural divisions of sentence, or a rhetorical punctuation mark indicating the slightest possible separation in ideas or construction".

Hon'ble Supreme Court of Pakistan has defined person in "Messrs KHAWAJA AUTO CARS LIMITED versus MUHAMMAD YOUSUF and others" (1991 SCMR 2223) as follows:

The person means a person includes a legal person which may be a registered firm or a private limited company or any other corporation or body having the status of a legal entity.

22. Similarly, in “EXECUTIVE ENGINEER, CENTRAL CIVIL DIVISION PAK. P.W.D. QUETTA Versus ABDUL AZIZ and others” (1996 SCMR Supreme Court 610), the Hon’ble Supreme Court has defined the person in the following way:

“Person Meaning Word ”, person” can have two meanings i.e. human being and legal person.

23. So in order to invoke the jurisdiction of 152 of the Ordinance, a person has to be aggrieved. The ‘person aggrieved’ has been explained by learned Division Bench of this Court in “S.SAJJAD HAIDER Versus GOVERNMENT OF WEST PAKISTAN AND ANOTHER” (PLD 1967 Lahore 838) in the following way:

“A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something”.

24. Furthermore, the word “person aggrieved” is also defined in “Excellent Legal Words and Phrases” Volume II by Mian Muhammad Muhibullah Kakakhel, Page No.3879 published in year 1996 in the same manner as explained in the aforesaid judgment.

25. The word “Court” mentioned in Section 152 of the Ordinance is defined under Section 2(11) of the Ordinance as well as in Rule 1(d) of the **Companies (Court) Rules 1997** whereas member is defined under Section 2(21) of the Ordinance. Although, debenture-holder mentioned in above Section is not defined and only debenture is defined under Section 2(12) of the Ordinance. In order to invoke the jurisdiction of Section 152 of the Ordinance, a person has to be aggrieved, if any fraudulent entry or omission of his name from the register of the company, the register is defined under Section 30(b) of the Ordinance which was inserted through Finance Act, 2007 dated 30.06.2007. Therefore, it is clear that the name of a person, if fraudulently omitted from the register of the company, or he is aggrieved through any instrument by fraudulent entry, omission or delay, can invoke the jurisdiction of Section 152 within **sufficient time frame**. The word ‘instrument’ is recently defined by the Hon’ble Supreme Court of Pakistan in “COMMISSIONER INLAND REVENUE (ZONE-I) LTU, KARACHI Versus Messrs LINDE PAK LTD. KARACHI” (2020 SCMR 333) in the following words:

The term ‘instrument’ has been defined in its ordinary sense, as a written legal document that defines rights, duties, entitlements or liabilities, such as statute, contract, will promissory note or share certificate and with reference to commercial law, the terms has been defined there as an unconditional promise or order to pay a fixed amount of money or fixed charges described in the promise or order esp., commercial paper or security, or any other writing that evidences a right to the payment of the money.

26. Likewise, the word ‘debenture’ has also been explained in aforesaid judgment by the Hon’ble Supreme Court in the following way

The term ‘Debenture’ whose origin lies in the latin word debenture, meaning ‘there are due’, has been described as an instrument acknowledging a debt secured only by a general credit and financial reputation of the corporate issuer, not by a lien on corporate assets”.

X. DETERMINATION BY THE COURT

27. It is evident from the ratio of the afore referred judgment of august Supreme Court Judgment *M. Imam-ud-Din Janjua (supra)* that Article 181 of Limitation Act applies to **all applications** filed **under any statute** and is not confined in any manner to merely the applications filed under the C.P.C. It is fathomable that under Section 152 of the Ordinance an application is to be filed before the Company Bench of this Court and there appears to be no reason to deal with such an application differently than the application filed under Section 20 of the Arbitration Act. Article 181 of the Limitation Act applies to all applications either in the First Schedule to the Limitation Act or in any other statute and as such the application under Section 152 cannot be treated differently and would come within the ambit of Article 181 of the Limitation Act. Clearly, the reasoning given by the Supreme Court of Pakistan applies well on the application to be filed under Section 152 of the Ordinance. I respectfully accord concurrence with the view taken by the august Supreme Court *M. Imam-ud-Din Janjua v. The*

Thal Development Authority through the Chairman, T.D.A., Jauharabad”

(**PLD 1972 Supreme Court 123**) and followed by this court in the case reported as Messrs UNITED FOAM INDUSTRIES (PVT.) LTD. through Chairman and another Versus Messrs JOY FOAM (PVT.) LTD. through Chief Executive and 6 others” (2016 C L D 2325).

28. In view of the above discussion and law laid down in aforesaid judgments by the Hon’ble Supreme Court which annunciate principles of law and decide questions of law hence are binding on this Court under Article 189 of the Constitution, therefore, it becomes clear that since there is no limitation period mentioned in Section 152 of the Ordinance, Article 181 of the Limitation Act is applicable for filing an application under Section 152 of the Ordinance (now, Section 126 of the Companies Act, 2017) before this Court. Such application has to be filed within a period of three years from the time when right to apply accrues.

29. In order to adjudicate the second moot point, it is important to consider the present circumstances leading to this petition. At the outset, the stance taken by the Petitioners is that the Company moved an application dated 17.08.1996 to the Commission not to accept the illegal and bogus transfer deeds filed by the Respondents No.1 to 3 and the same was acknowledged by the Commission but replied in year 2011, and therefore, is within time. This stance has strongly been controverted by the Respondents No.1 to 3 on the ground that the Petitioners gained the knowledge on 04.06.1996 when the Company published a public notice in newspaper and issued a letter to the Commission on 17.08.1996. Therefore,

the limitation period of three years starts from the date of knowledge i.e.17.08.1996.

30. It evinces from the perusal of record that the Petitioners were holding certain shares in the Company which were transferred by them in favour of the Respondents No.1 to 3 vide Transfer Deed dated 14.05.1996 and their resignations from directorship were also signed/issued on the same date. The Commission has also corroborated this very fact in its reply stating that:

“Form-A for the year 1995 was filed by the Petitioner No.3 namely Mr. Muhammad Iqbal Zaki vide his letter dated 14.05.1996. The said Form-A was signed by Mr. Muhammad Iqbal Zaki, Petitioner No.3 and Mr. Nazar Hussain, Petitioner No.1.”

31. As per the report of the Commission, the Respondents No.1 to 3 were shown as Directors as per Form-29 dated 14.05.1996 and their position of directorship has not been declared unlawful or void by any Court of law. On 17.08.1996, the Company submitted an application before the Commission in which they denied change of Board of Directors or in the shareholding of the Company, meaning thereby the Petitioners were in knowledge of the transfer of shares in favour of the Respondents No.1 to 3 on 17.08.1996. From the said date and till the filing of present petition, they never approached any competent Court of law for the redressal of their grievance by filing a suit or any application. The Petitioners, instead of invoking the provision of Section 152 of the Ordinance, has filed this

petition after a lapse of more than fifteen years, which is not covered by the limitation period of Article 181 of the Limitation Act.

32. So far as the assertion of Petitioners that they timely approached the Commission on 17.08.1996 regarding illegal and bogus transfer of shares is concerned, suffice it to say that the remedy of rectification regarding dispute of title does not lie with the Commission because the same is not the competent court of law, rather Section 152 of the Ordinance provides remedy for redressal of grievances of the Petitioners which they did not opt for a considerable span of time. Moreover, the case laws cited by the Petitioners are distinguishable to the above facts and circumstances of the instant petition.

33. In view of above, CM.No.3292 of 2019 is allowed and this petition being hopelessly barred by time is accordingly is **dismissed**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**