

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C. J.  
Raja Saeed Akram Khan, J.

Civil Appeal No.46 of 2015  
(PLA filed on 11.11.2014)

1. Muhammad Shafi,
2. Muhammad Sakhi,
3. Muhammad Rafi, sons (legal heirs of Mst. Khanam Jan deceased), r/o village Kotli, Tehsil Chikar, District Hatian Bala.

....APPELLANTS

**VERSUS**

1. Akbar Ali,
2. Ali Zaman,
3. Suleman, sons,
4. Zareena,
5. Sakeena,
6. Haleema, daughters of Doosa,
7. Shazaman,
8. Muhammad Saleem, sons,
9. Mst. Zeba, daughter of Muhammad Jan,
10. Muhammad Yousaf,

11. Muhammad Ismaeel,
12. Muhammad Khursheed,
13. Muhammad Rasheed,
14. Muhammad Rafique,
15. Muhammad Naveed,
16. Sabir (minor),
17. Muhammad Babir (minor), through Muhammad Yousaf sons of Mst. Gullan.
18. Noren,
19. Nosheed, daughters of Muhammad Hussain, caste Hoteel, r/o village Kotli, Tehsil Chikar District Hattaian Bala.
20. Assistant Collector, Tehsil Chikar, District Hattian Bala,
21. Girdawar Circuit Kotli Chikar,
22. Patwari, Chikar,

.... RESPONDENTS

23. (i) Guljan, widow, (ii) Samreen, d/o Yaseen w/o Chand, (iii) Lubna alias Bobi w/o M. Kabeer, (iv) M. Sultan, alias Shani, s/o late Yaseen, (v) Muhammad Ramzan (minor) s/o (late) Yaseen. (all legal heirs of Yaseen, deceased).
24. Yameen,
25. Muhammad Din, sons,
26. Shameem Jan, daughter,
27. Noor Din, husband of Mst. Sabri, caste Janjua, r/o Bala Pandi, Tehsil Chikar, District Hattian Bala.
28. Barkatullah s/o (deceased represented by legal heirs) (i) Mst. Sakina Bibi, widow (ii) Imiaz Ahmed, (iii) Ibrar Ahmed, (iv) Israr Ahmed (sons), (v) Mst. Naila Bibi, (vi) Gudo Bibi, (vii) Anham Bibi (daughters), residents of village Dhoodpura (lamnian), Tehsil and District Hattaian Bala.
29. Mst. Hussan Jan,

30. Mst. Rukhsana Bibi, d/o Khanam Jan (late) r/o Kotli,  
Chikar District Hattian Bala.

....PROFORMA-RESPONDETNES

[On appeal form the judgment & decree of the High Court  
dated 05.09.2014 in Civil Appeal No.139 of 2010]

FOR THE APPELLANTS: Sardar Abdul Sammie Khan,  
Advocate.

FOR RESPONDENTS Nos; Mr. Muhammad Azad Khan  
1 to 6, 8 to 15, 18 and 19: Tareen, Advocate.

*Date of hearing:* 14.03.2017.

**JUDGMENT:**

Ch. Muhammad Ibrahim Zia, C.J.— The above titled appeal by leave of the Court arises out of the judgment & decree of the High Court dated 5<sup>th</sup> September, 2014, whereby the appeal filed by Mst. Khanam Jan, the mother of the appellants, herein, has been dismissed.

2. The succinct facts necessary for disposal of this appeal are that the plaintiff, Mst. Khanam Jan (deceased) filed a suit for declaration-cum-possession and cancellation of sale-deed dated 16.08.1963 pertaining to the suit land in the Court of Civil Judge, Hattian Bala, on 24.02.2003, which

was later on, amended on 11.11.2008. It has been alleged in the plaint that the land measuring 29 *kanal*, 7 *marla* was in the ownership and possession of the father of the plaintiff. Her father died on 16.11.1962, leaving behind two daughters. The predecessor-in-interest of the defendant-respondents with the connivance of the revenue officials got entered in the revenue record a sale-deed registered on 16.08.1963. It has been further alleged that the sale-deed has been executed on behalf of a dead person and the plaintiff remained unaware of the fact, till she demanded the possession of the land and she was told that the suit land had been alienated in favour of the predecessor-in-interest of the defendant-respondents vide sale-deed dated 16.08.1963. The learned Civil Judge, Hattian Bala vide its judgment and decree dated 28.04.2009 dismissed the suit for want of proof and on the ground of limitation. Feeling aggrieved, the plaintiff preferred an appeal before the District Judge, Hattian Bala, which also met the same fate vide judgment and decree dated 08.06.2010. The plaintiff assailed the judgment and decree of the District Judge, Hattian Bala through second appeal before the Leanred

High Court which was dismissed through the impugned judgment and decree dated 5<sup>th</sup> September, 2014, hence this appeal by leave of the Court.

3. Mr. Muhammad Azad Khan Tareen, Advocate, counsel for the respondents raised a preliminary objection that the petition for leave to appeal filed by the appellants/petitioners is hopelessly time barred, therefore, without going into further deliberation, this appeal is not maintainable.

4. While meeting the preliminary objection, Sardar Abdul Sammie Khan, Advocate, counsel for the appellants apposed the argument of the counsel for the respondents and submitted that the objection is misconceived. After deduction of time spent in obtaining the requisite certified copies, the petition is well within time. He submitted that the impugned judgment of the High Court was passed on 5<sup>th</sup> September, 2014. The petition for leave to appeal was filed on 11.2.2015. 11 days were consumed in obtaining the certified copies. After exclusion of these days, the petition for leave to appeal is well within time. He further submitted that the objection raised by the office that the

copy of decree sheet of the High Court is not mandatory, has no substance. The objection may be overruled.

5. We have considered the arguments of the counsel for the parties. As the preliminary objection goes to the root of the case, therefore, at first, we intend to attend this objection.

6. According to the stated facts, the petition for leave to appeal is barred by 7 days. The appellants are claiming that after deduction of time spent in obtaining the certified copies, the same is within time. The perusal of the record reveals that except the decree sheet of the High Court, only three days were consumed in obtaining the certified copies of the impugned judgment and the grounds of appeal before the High Court. No doubt under the statutory provisions of law, a party has got a statutory right of exclusion of time spent in obtaining the requisite certified copies. Although, this question emerges at the time of filing of the petitions for leave to appeal in civil matters but the question remains that the certified copies of which of the documents are mandatory. Rule 3 of Order XIII of the Azad Jammu & Kashmir Supreme Court Rules,

1978 deals with the question which is reproduced as under:-

“3. (1) the petitioner shall lodge at least four copies of-

(i) his petition for special leave to appeal;

(ii) the judgment and order sought to be appealed from together with grounds of appeal or application before the High Court and the order of the High Court refusing grant of certificate under section 42(11) of the Constitution, if any, one copy each of which shall be certified to be correct;

(iii) the affidavit, in support of allegations of fact prescribed by rule 4 of Order XVII hereinafter contained; and

(iv) Unless a caveat as prescribed by rule 2 of Order XVII, has been lodged by the other party who appeared in the Court below, an affidavit of service of notice of the intended petition upon such party;

(2) The petitioner shall, on demand, furnish to other parties, at their expense on the prescribed charges, copies of all or any of the documents filed by him in the Court.

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The rule unambiguously speaks that only the copy of the judgment or order sought to be appealed from together with ground of appeal or application before the High Court are the requisite certified copies. The decree of the High

Court neither is requisite nor mandatory under the statutory provision of law. Thus, the argument of the counsel for the appellant that the appellants are entitled for exclusion of time consumed in obtaining the decree sheet of the High Court, does not find support from the statutory provision of rule. As the question of limitation was left open to be determined at the time of final hearing of appeal, thus, in view of the clear statutory provision of rule the appellants are only entitled for the exclusion of time spent in obtaining the certified copy of the impugned judgment and the grounds of appeal before the High Court and for obtaining these copies only three days were consumed. After exclusion of three days, the petition for leave to appeal is barred by 4 days. According to the settled principle of law it is duty of a party to explain satisfactorily each and every day of delay. Even this Court has not condoned the delay of one day. We are fortified in our view from the judgment of this Court delivered in the case reported as *Mahboob and another vs. Muzaffar Din* [1992 SCR 338], whereby it was observed as under:-



“The non-petitioner has placed a copy of the order of this Court entitled *Azad Jammu & Kashmir Government vs. Rashid Ahmed Katal* (Civl P.L.A. No.41 of 1987], in which the delay of one day was not excused and the petition was dismissed as being barred by limitation.”

Again, in the case reported as *Chairman AJK Council vs. Abdul Latif and 5 others* [1997 SCR 264], it was observed by this Court as under:-

“In view of settled position regarding the principle that knowledge of counsel is the knowledge of client I am not persuaded by the contention raised by the learned counsel for the appellant and thus the plea regarding the condonation of delay on the aforesaid ground is hereby repelled. In our considered view the delay of each day has to be explained by a party seeking the condonation of delay which has not been satisfactorily explained.”

Similarly, in the case reported as *Azad Government and another vs. Mujahid Hussain Naqvi* [2002 SCR 302], this Court observed as under:-

“... Suffice it to say that no explanation whatsoever has been furnished for the condonation of delay. It is a settled principle of law that unless a sufficient cause is shown the delay of even one day is as much fatal as the delay of more days.....”

In the case in hand, the appellants failed to explain the delay of four days. The contention of the appellants for exclusion of time spent in obtaining the certified copy of decree sheet is against the rules. In furtherance of exclusion of time spent in obtaining the required certified copies if a liberal view is adopted it will create hardships and there will be no end of such lame excuse for condonation of delay. Any person may claim condonation of delay on the ground of exclusion of time spent in obtaining the certified copy of the irrelevant document. Such like liberal interpretation or construction of the rules may amount to frustrate the system and result into miscarriage of justice. Thus, the petition for leave to appeal filed by the appellants is time barred and merits dismissal on the sole point.

With the above stated reasons, the appeal stands dismissed being time barred, with no order as to costs.

**CHIEF JUSTICE**  
Muzaffarabad.  
--.03.2017.

**JUDGE**

**Date of announcement: 21.03.2017**

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