

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IV,
QUETTA.**

Civil Appeal No.17/2024.

Bibi Samia daughter of Muhammad Jaffar,
Resident of Satellite Town, Laraib Housing Society,
Quetta. **Appellant/Plaintiff.**

Versus.

1. Chairman Balochistan Board of Intermediate,
& Secondary Education Samungli Road, Quetta.
2. National Database & Registration Authority,
Through its Director General NADRA,
Provincial Head Office, New Zarghoon Road,
Quetta.

Respondents/Defendants.

**APPEAL U/S 96 CPC AGAINST THE IMPUGNED
JUDGMENT DATED 27.04.2024 PASSED BY CIVIL
JUDGE-II, QUETTA.**

Mr. Nadir Munir Advocate for appellant.

Miss. Aster Mehak Legal Advisor for respondent No.1.

Mr. Zubair Naseem Khawaja Law Officer for respondent No.2.

JUDGMENT

01st October, 2024.

1. By this judgment, I intend to dispose of the instant appeal filed by the appellant against the judgment and decree dated 27th April, 2024 (**hereinafter referred to as the "Impugned Judgment"**), passed by the learned Civil Judge-II, Quetta (**hereinafter referred to as the "Trial Court"**), whereby the suit filed by the appellant/plaintiff was dismissed. The appellant pray for setting aside the same and for decreeing the suit in his favour.

2. Brief facts as gleaned from the appeal are that appellant/plaintiff filed "Suit for Declaration & Correction of Date of Birth and Mandatory Injunction" against the respondents in the court of learned Civil Judge-II, Quetta with following prayer:-

- A. Declare that the plaintiff's actual date of birth is 12.01.1995 instead of 02.08.1992, as the marriage of her parents was solemnized on 25.12.1993.



- B.** Direct the defendant No.1 to correct date of birth of the plaintiff in her academic certificate as 12.01.1995 instead of 02.08.1992 and issue her revised matriculation certificate and intermediate certificate.
- C.** Direct the defendant No.2 to correctly mention the date of birth of plaintiff in her CNIC No.54401-2765949-6 as 12.01.1995 instead of 02.08.1992 and issue her revised CNIC.
- D.** Any other relief which this Hon'ble Court deems fit may kindly be awarded/allowed in favour of plaintiff, in the interest of justice, equity & fair play.

3. On the other hand, the respondents filed their written statement and contested the claim of appellant on legal as well factual grounds. Out of divergent pleadings of the parties, following issues have been formulated on 24.11.2023:-

1. Whether the suit is time barred?
2. Whether the correct date of birth of plaintiff is 12.01.1995 instead of 02.08.1992?
3. Whether the defendant No.1 in SSC and defendant No.2 in CNIC incorrectly recorded the date of birth of plaintiff as 02.08.1992 instead of 12.01.1995?
4. Whether the plaintiff is entitled for the relief claimed for?
5. Relief?

4. During trial, the learned counsel for plaintiff moved an application under Order 6 rule 17 CPC for amended in the pliant to the extent of removing clerical mistake occurred in mentioning/writing the correct date of birth that is, 12.02.1995 instead of 12.01.1995. The said application was accepted by trial court and subsequently, following amended/replaced issues were framed on 29.03.2024.

1. Whether the correct date of birth of plaintiff is 12.02.1995 instead of 02.08.1992?
2. Whether the defendant No.1 in SSC and defendant No.2 in CNIC incorrectly recorded the date of birth of plaintiff as 02.08.1992 instead of 12.02.1995?



5. After framing of issues the parties were directed to produce evidence in support of their respective claims. In order to substantiate their claim, the appellant/plaintiff produced as many as four witnesses and lastly the plaintiff got recorded her statement. On the other hand, the defendant No.1 did not opt to adduce any evidence in rebuttal, while defendant No.2 recorded statement of his representative namely, Mir Ghous Bakhsh, who vouched record of family tree of plaintiff as Ex.D/B.

6. After close of trial, the learned trial court after hearing final arguments from learned counsels for the parties, through impugned judgment and decree dated 27.04.2024 dismissed the suit. Hence this appeal.

7. On registration of appeal, notice was issued to the respondent and record was called from the learned trial court. The respondents made their appearance through their counsels. I have heard the arguments and have gone through record of the cases, in view whereof formulated the following points for determination:-

1. Whether the suit of the plaintiff is barred under the law of limitation?
2. Whether the actual date of birth of the plaintiff is 12.02.1995 instead of 02.08.1992?
3. Whether the appellant/plaintiff is entitled to the relief claimed for?

8. In view of above, my findings on the formulated points for determination are as under:-

POINT NO.1:

Whether the suit of the plaintiff is barred under the law of limitation?

9. The plaintiff has filed this suit, contending that her date of birth is incorrectly recorded in her matriculation certificate and CNIC as 02.08.1992 instead of 12.02.1995. The plaintiff asserts a continuing cause of action, claiming that her date of birth was incorrectly entered in the matriculation record, and that this error was perpetuated when she applied for her CNIC, which was issued with the same incorrect



date. She further alleges that she approached the defendants for correction of her date of birth, but no action was taken. However, the plaintiff has failed to specify in her plaint when she became aware of the incorrect date of birth in her matriculation certificate and CNIC. Upon scrutinizing the evidence provided by the plaintiff, it is evident that although four witnesses were produced, none testified as to when the plaintiff discovered the error in her date of birth in these documents. The documentary evidence submitted by the plaintiff shows that the DMC was issued to her in 2011. Despite receiving the DMC in 2011, the plaintiff failed to initiate a suit for the correction of her date of birth within the prescribed time. According to Article 120 of the Limitation Act, 1908, the time limit for filing a suit for declaration is six years. However, the plaintiff did not file this suit until 2023, which is 12 years after obtaining the DMC. Therefore, the suit is barred by the law of limitation.

10. It is well settled that limitation is not a mere technicality that can be overlooked, and for an authoritative pronouncement as to the salient features of the law on the subject, one need turn no further than the judgment of the Honourable Supreme Court in the case reported as *Khushi Muhammad through L.Rs, and others v Mst. Fazal Bibi and others* PLD 2016 SC 872, where the following principles were distilled from an examination of various relevant judgments of the superior Courts:

“(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;

ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or



hardship does not save limitation, nor does poverty of the parties;

(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;

(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;

(v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;

(vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

(vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;

(viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced."

11. In conclusion, the plaintiff/appellant's claim is significantly barred by the law of limitation, as she filed the suit well beyond the statutory period. Furthermore, the documents produced by the plaintiff suggest that her suit is indeed barred by the law of limitation.



POINT NO.2:

Whether the actual date of birth of the plaintiff is 12.01.1995 instead of 02.08.1992?

12. The appellant/plaintiff has filed her suit contending that her actual date of birth is 12.02.1995, whereas it is incorrectly recorded as 02.08.1992 in her matriculation certificate and CNIC. The plaintiff's primary argument is based on her parents' marriage, which, according to her, was solemnized on 25.12.1993. She claims that this fact came to her knowledge upon reviewing her parents' *Nikah Nama*, which purportedly reflects that their marriage took place on 25.12.1993, and therefore, her date of birth could not have been 02.08.1992. The plaintiff is thus asserting her date of birth to be 12.02.1995 based on the date of marriage mentioned in the *Nikah Nama*.

13. In support of her claim, the appellant/plaintiff produced four witnesses. PW-1, a cousin of the plaintiff, verbally supported her position but admitted during cross-examination that his own date of birth is 29.07.1989. This indicates that he was of a very young age at the time of the marriage of the plaintiff's parents and the plaintiff's birth, rendering his testimony unreliable in substantiating her claim. PW-2, a representative from the Union Council, produced the plaintiff's birth certificate as Exhibit 2-A, which was issued on 1st September 2023, only a few days before the filing of the suit. It is a settled principle of law that in cases of discrepancies between documents recording dates of birth, precedence is given to documents prepared at an earlier time. Therefore, in the present case, no credence can be given to a birth certificate issued 25 years after the plaintiff's birth.

14. PW-3, the plaintiff's uncle, also verbally supported her stance but failed to testify to his presence at the marriage of the plaintiff's parents. At the time of the marriage, he was only 7 years old, making it unlikely that he could have accurately remembered the date of birth of the plaintiff.

15. PW-4 produced the plaintiff's DMCs, which reflect her date of birth as 02.08.1992. The plaintiff herself also appeared as a



witness but failed to provide a specific date on which she became aware of the incorrect date of birth.

16. The plaintiff's entire case hinges on the *Nikah Nama*, which was not produced through the proper channel, as neither the *Nikah* registrar nor the witnesses mentioned in the *Nikah Nama* were called to verify its authenticity. Additionally, neither the plaintiff's testimony nor the evidence produced was found to be credible or convincing.

17. In light of the foregoing, it is evident that the appellant/plaintiff has failed to establish her claim with credible evidence. The plaintiff has not demonstrated when she became aware of the alleged discrepancy in her date of birth, nor has she provided sufficient or reliable documentary proof to substantiate her assertion. The *Nikah Nama*, upon which her entire case hinges, was neither produced through the proper channels nor corroborated by witnesses. Furthermore, the birth certificate issued decades after her birth cannot be given precedence over earlier official records. Therefore, the plaintiff's claim lacks merit both on factual and legal grounds.

POINT NO.3:-

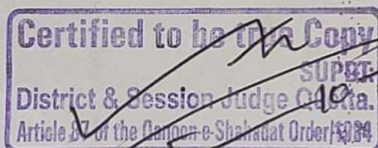
Whether the appellant/plaintiff is entitled to the relief claimed for?

18. Since the material points have been decided against the appellant, therefore, she is not entitled to the relief claimed. Civil Appeal No.17/2024 filed by the appellant is hereby dismissed. Consequently, the impugned judgment and decree dated 27.04.2024 passed by the learned Civil Judge-II, Quetta, are upheld. A decree sheet of the appeal shall be prepared. A copy of this judgment and decree of the appeal shall be sent back to the learned trial court as required under Order 41, Rule 37 of the CPC. The file, after completion and compilation, shall be consigned to the record.

Announced in open court

This on 01st day of October, 2024.

Sd/-
Additional District Judge-IV,
Quetta.



DECREE IN APPEAL
(ORDER XLI, RULE 35 OF THE CODE OF CIVIL PROCEDURE)
IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IV,
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Bibi Samia daughter of Muhammad Jaffar,
 Resident of Satellite Town, Laraib Housing Society,
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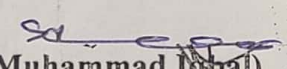
Mr. Nadir Munir Advocate for appellant.
Miss. Aster Mehak Legal Advisor for respondent No.1.
Mr. Zubair Naseem Khawaja Law Officer for respondent No.2.

This appeal, coming on this 01st day of October 2024 for final disposal before me, **Muhammad Iqbal**, Additional District Judge-IV, Quetta in presence of their counsels.

It is ordered:-

“The Civil Appeal No.17/2024 filed by the appellant is hereby dismissed. Consequently, the impugned judgment and decree dated 27.04.2024 passed by the learned Civil Judge-II, Quetta, are upheld.”

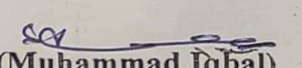
GIVEN under my hand and seal of the court, this on 01st day of October 2024.


(Muhammad Iqbal)
 Additional District Judge-IV,
 Quetta.

COSTS OF APPEAL IN APPEAL NO.17/2024.

Appellant.		Amount	Respondent.		Amount
1.	Stamp for memo of Appeal	Rs.44/-	1.	Stamp for power	Rs.Nil
2.	Court Fee	Rs.Nil	2.	Services of Process.	Rs.Nil
3.	Stamp for power	Rs.03/-	3.	Miscellaneous.	Rs.Nil
4.	Services of Process.	Rs.03/-			
5.	Miscellaneous.	Rs.Nil			
Grand Total		Rs.50/-	Grand Total		Rs.Nil

Certified to be true Copy
 Distri & Sesion Judge Quetta.
 Article 87 of the Qanoon-e-Shahadat Order/1924


(Muhammad Iqbal)
 Additional District Judge-IV,
 Quetta.