

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
R.A. No.05 of 2023

Mir Ghazanfar Ali & others	Applicants
	Vs.	
Muhammad Yousuf	Respondent

Date of hearings : 05.09.2024, 27.09.2024 & 03.10.2024
Date of judgment : 18.10.2024.

M/s. Barrister Munim Masood and Masood Anwer Ausaf, advocate for the applicants M/s. Haq Nawaz Talpur and Asad Khan Jakhrani, advocate for respondent

O R D E R

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MUHAMMAD IQBAL KALHORO J: Late Muhammad Yousuf, represented by his legal heirs in this application filed a suit for specific performance of agreement to sell in respect of a Bungalow bearing Survey No.350 (Old Survey No.21/7) measuring 1050 square yards, Survey Sheet No.J.M., situated at Cosmopolitan Cooperative Housing Society, Jamshed Quarters, Karachi, before this Court on original side. The suit was decreed vide judgment and decree dated 26.04.2005 against which appellants preferred High Court Appeal No.147/2005.

2. During pendency of the said appeal, Official Assignee was appointed as a receiver to take over possession of the subject property, which was duly complied with. Thereafter, appellate did not pursue the said appeal and it was dismissed in non-prosecution vide order dated 19.05.2009. The defendant, predecessor-in-interest of applicants, who are his legal heirs, was directed in the decree to execute the sale deed in respect of the said bungalow in favour of the plaintiff on payment of balance sale consideration within one month from the date of decree *viz.* 26.04.2005 and hand over the original documents of the suit property to the plaintiff. It was further directed that in case defendant failed to execute the sale deed in favour of the plaintiff, the latter shall deposit the balance sale consideration with the Nazir of the Court, who on receipt of the same shall execute the sale deed in favour of the plaintiff and hand over possession of the property in dispute to the plaintiff.

3. After dismissal of high court appeal, respondent filed an execution application bearing No.04/2013 initially before this Court on original side but the same for want of pecuniary jurisdiction was returned to be filed before the relevant Senior Civil Judge Karachi, East. When the

execution application was filed there, it was dismissed as time barred. Against which, however plaintiff / respondent preferred a Civil Appeal No.150/2017, which was allowed vid order dated 26.11.2015 and the matter was remanded to the Executing Court to decide the same afresh. Yet, the applicant preferred II-Appeal No.08/2020 before this Court, which after a full-fledged hearing was dismissed on 17.03.2022. In the same judgment the point of limitation was dealt with by this Court in para-7, which is reproduced herein under;

“7. The contention with regard to limitation in view of the judgment of the Apex Court and Section 48 CPC will be applicable in the present appeal as case pertains to the property and bonafide inference can be drawn with regard to the bonafide of the decree holder who preferred application for deposit of the amount to satisfy the decree though that was not allowed but subsequently due to suspension of that judgment an application for withdrawal of amount was made subject to outcome of appeal meaning thereby there was continuation in time as the same may file during pendency of appeal. The High Court Appeal No.147 of 2005 was dismissed vide order dated 19.05.2009 in non-prosecution. However, second Execution Application No.04 of 2013 was filed on 23.01.2013 within six years of the last Order as provided under Section 48, C.P.C. Thus, the second execution application was not time-barred and the Appellate Court has rightly set-aside the Order dated: 09-05-2017 passed by the Executing Court.

This judgment, the applicants have challenged before the Supreme Court in CPLA No.870-K of 2022, but since no injunctive order was passed, the executing court has meanwhile proceeded with the execution application and has allowed the same by the impugned order dated 06.01.2023, hence, this revision application.

4. Appellants' counsel has emphasized only one ground in the arguments that learned Executing Court while passing the impugned order has failed to appreciate that according to the judgment and decree under execution, the respondent was required to make payment of the balance amount of the sale consideration to the applicants within one month time from the date of decree 26.04.2005 / or from the date of dismissal of the I-Appeal. And, in the wake of such payment, the applicants were required to execute the sale deed in favour of the respondents. But in case, the applicants failed to execute the sale deed, the respondents were required to deposit the balance amount with Nazir of the Court. The Nazir after receiving the balance sale consideration was required to execute the sale deed in favour of the respondents and hand

over possession of the suit property to them. However, the respondents never deposited the balance amount of sale consideration to the applicants or the Nazir of the Court as directed in the judgment and decree, hence, respondents are not entitled to any relief as claimed and the decree is liable to be rescinded in terms of Section 35 of Specific Relief Act. He has relied upon the case law reported in **2010 CLC 120** to support his arguments.

5. On the other hand, learned counsel for the respondents has opposed such arguments and has questioned maintainability of this revision application before this Court. He has emphasized that the applicants had a remedy before the learned District & Sessions Judge in the shape of civil revision application but instead of doing so, they have directly filed the revision application before this Court, which in view of the scheme of section 115 CPC is not maintainable. On merits, he has submitted that the judgment and decree passed by this Court has already attained finality. The respondents had within a required time filed an application before this Court for depositing the balance sale consideration. But when the HCA was filed by the appellants, and stay was granted, the respondents withdrew the said application with permission of the Court. After dismissal of the HCA filed by the appellants, the respondents immediately approached the Court with second execution application to deposit the sale consideration but were ordered to approach the Court of relevant pecuniary jurisdiction, which they did. There is no delay on the part of respondents in this regard. Further, the deposit of sale consideration was subject to execution of sale deed by the applicants and only after their failure to do so, respondents were required to approach the Nazir of the Court for the same purpose. The respondents had acted within a period of one month after dismissal of HCA by approaching the Court with the application to deposit the sale consideration. There is nothing on record to show that they had at any time failed to comply with judgment and decree of this Court ***vis-a-vis*** depositing balance sale consideration. He has relied upon the case law reported in PLD 2020 Sindh 129 and 2017 CLC 1379.

6. I have considered the contentions of the parties and perused material available on record including the case law cited at bar. Insofar the argument of the applicants' counsel that due to the Respondent/Decree Holder's deliberate non-compliance of payment of decretal amount, the Decree warrants cancellation in accordance with

Section 35(c) of the Specific Relief Act, 1877 ("Act, 1877), the record indicates that at no time during pendency of the suit, the plaintiff, predecessor in interest of the respondents, was directed to deposit the remaining sale consideration in the court to show his bona fide. There is nothing on record to show either that he was unwilling to make good of the remaining sale consideration, if directed, and give it to the defendant or his successors/applicants. On the contrary, the facts testify that since passing of the Judgment and Decree, the Respondents/Decree Holder has been, and remains, ready and willing to fulfill his part of the contract by approaching the Court for this purpose within time.

7. After the Judgment and Decree, the plaintiff/decree holder had first issued a legal notice to the judgment debtor/applicants, requiring compliance by him. When the judgment debtor/applicants failed to act upon the legal notice, the plaintiff/decree holder filed an application in the court indicating his intention to pay remaining sale consideration and demanding implementation of the judgment and decree for the applicants/judgment debtor. While this application was still pending the judgment debtor / applicants filed an appeal in which as an interim measure suspension of the judgment and decree was ordered. Only after such stay order, the plaintiff/respondents withdrew the application and started contesting the appeal. After dismissal of the appeal in non-prosecution, the plaintiff/respondents filed second application for execution, which this court has already held (the relevant para already reproduced above) was within time. There appears to be no delay in either approaching the executing court, nor any hesitation on the part of plaintiff/respondents to pay the remaining sale consideration at any time during the long litigation between the parties. Therefore, in my view the judgment and decree cannot be rescinded under Section 35(c) of the Act, 1877, as in the facts and circumstances the equity requires that discretion should not be exercised in favor of the judgment debtor/applicants.

8. Further, it may be sated that it is a settled proposition that while exercising jurisdiction under Section 115 CPC, the revisional court does not have authority to correct errors of facts, no matter how significant, or errors of law, unless such errors pertain to the jurisdiction of the subordinate court. Specifically, this principle applies where the subordinate court has either exercised a jurisdiction not legally vested in it, failed to exercise a jurisdiction conferred upon it by law, or acted in

the exercise of its jurisdiction illegally or with material irregularity. This makes it very obvious that the revisional jurisdiction u/s 115 CPC is to be exercised to correct jurisdictional errors only and the revisional jurisdiction of the Court, has not be so liberally exercised as to convert a revision into an appeal.

9. Learned Counsel for the judgment debtor/applicants, when put to satisfy maintainability of this revision application directly before this court, contended that according to sub-section (2) of Section 115 of the CPC, it is the choice of the judgment debtor/applicants to approach either the High Court directly or the District Court concerned. He further asserted, relying on sub-section (3) of Section 115 of the CPC, that once a forum is chosen, the party is bound by its election.

10 In order to understand this controversy, it is necessary to refer to legislative history of Section 115 CPC. Initially, the revisional jurisdiction u/s 115 CPC was exclusively conferred upon the High Court. However, with the amendment through Act XIV of 1994, sub- sections (2) to (4) were added to Section 115, stipulating that all Revision Applications concerning cases decided by the subordinate courts within a particular district must be filed before the relevant District Court, provided that the pecuniary jurisdiction of the subject matter does not exceed the appellate jurisdiction of that District Court. In other words, in order a district court to have jurisdiction, all revision applications challenging decisions of subordinate courts where no appeal lies must involve an amount or value of the subject matter that does not exceed the appellate pecuniary jurisdiction of the district court.

11. The phrase, "The District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject matter does not exceed the limits of the appellate jurisdiction of the District Court" employed by the legislature in enacting sub-section (2) of Section 115 of the CPC, is significant for understanding the legislative intent and resolving the current controversy. As a matter of law, not all the orders are appealable. Only those specified under Order 43, Rule 1 of the CPC can be appealed. Section 96 of the CPC provides for appeals against original decrees. The law on this point is clear: if the subject matter's value falls within the

District Court's pecuniary jurisdiction, the appeal lies with the District Court, for all other cases, jurisdiction rests with the High Court. Section 104, read with Order 43, Rule 1 of the CPC, reinforces this by allowing appeals before either the District Court or the High Court, depending on their pecuniary limits.

12. It is important to note that an appeal is a continuation of the suit. In the context of this controversy, Sections 6 and 15 of the CPC are relevant. Section 6 addresses the pecuniary jurisdiction of the Civil Courts, while Section 15 outlines the appropriate forum for instituting a suit. It would be expedient to reproduce both the provisions as under:-

"6. Pecuniary Jurisdiction. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceed the pecuniary limits (if any) of its ordinary jurisdiction."

"15. Court in which suits to be instituted. Every suit shall be instituted in the Court of the lowest grade competent to try it."

Review of the aforementioned provisions of the CPC makes it abundantly clear that unless the pecuniary value of the subject matter exceeds the appellate pecuniary jurisdiction of the District Court, the revisional jurisdiction of this Court would not be invoked as it would be in contravention of the Sections 6 and 15 CPC. Therefore, even if, for the sake of argument, it is assumed that the revisional jurisdiction of the High Court and the District Court is concurrent, it is still subject to the provisions of Sections 6 and 15 of the CPC. Therefore, if the submissions made by the learned Counsel for the judgment debtor/applicants relating to concurrent jurisdiction are accepted, a question would arise that why a civil suit could not be entertained by the High Court in its original civil jurisdiction in disregard to the pecuniary value of the suit, considering that both the High Court and the District Court in Karachi share the concurrent jurisdiction to entertain a suit, except qua the valuation of the subject matter. It is settled that jurisdiction cannot be conferred upon the court or for this matter the revisional court as a matter of choice at the behest of the aggrieved party. The parties are bound by the provisions of Sections 6 and 15 of the CPC, as well as by sub-sections (1) and (2) of Section 115 of the CPC.

13. It would seem irrational and illogical to assume that a court lacking appellate jurisdiction due to pecuniary limitations could nonetheless be approached to exercise revisional jurisdiction in the same matter. Such an interpretation would contradict the overall structure and scheme of the CPC and the Civil Courts Act. Endorsing that the concurrent revisional jurisdiction of the District Court or High Court where no appeal lies means that the District Court could be bypassed at the will of the party would be inconsistent with the statutory framework regulating civil jurisdiction. Under Section 115(2) CPC, the District Court exercises revisional jurisdiction over decisions from subordinate Courts, provided the subject matter falls within the District Court's appellate pecuniary jurisdiction. In all other cases, revisional jurisdiction rests with the High Court under Section 115(1) CPC. Where no appeal is provided, an aggrieved party may seek revision from the appropriate court with revisional powers. However, it is not a matter of right to a party to choose revision before the High Court and overlook the District Court on the ground that both the courts have concurrent jurisdiction.

14. It is well-established that a statute or its provisions must be interpreted as a whole, and no single provision should be read in isolation. A fundamental principle of statutory interpretation is to avoid conflict and strive for harmonious construction. The statute should be read in its entirety, with each provision considered in relation to the others, to ensure consistency with the overall objectives of the law. The findings arrived at above make it the only harmonious interpretation which can be bestowed to sub- sections incorporated in section 115 of CPC.

15. For what has been stated above, I am of the view that the applicants have no case on merits and secondly the direct approach to this Court bypassing the District Court is not maintainable. This being the position, I do not find any merit in the application in hand and accordingly dismiss it.

The revision application is disposed of accordingly.

J U D G E