IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6966 of 2016

Present: Munib Akhtar & Yousuf Ali Sayeed, JJ

Plaintiff: Forte (Private) Limited, through Mr. Abdullah Azam, Advocate.

Respondent No.1: Azam Khan, through Mr. Syed Abid Shirazi, Advocate.

Date of hearing: 20.01.2017 and 27.01.2017.

Date of Judgment:

JUDGMENT

YOUSUF ALI SAYEED, J. The Petitioner has charted a somewhat convoluted course towards invoking the writ jurisdiction of this Court, seeking correctional Orders by way of certiorari in respect of civil proceedings that have ensued before the Courts below.

1. The preceding facts, as relevant for present purposes, are as follows:

   (a) The Respondent No.1 filed Civil Suit No.144/2014 against the Petitioner for recovery of Rs.605,200/- in the Court of learned 1st Senior Civil Judge, Karachi East, which was subsequently transferred to the Court of learned IIIrd Senior Civil Judge, Karachi East (the "**Underlying Suit**").

   (b) The Petitioner entered appearance in the Underlying Suit through counsel and contested the claim. A written statement was filed and on 24.10.2014 issues were framed, including, on the point of limitation, whether the Underlying Suit was time barred under the law. This is of particular significance as regards the matter at hand.

(c) Thereafter, the Petitioner's counsel remained continually absent on all dates of hearing subsequent to 25.02.2015, with the consequence that firstly the Petitioner's right of cross-examination and subsequently the right to lead evidence were struck off vide Orders dated 06.10.2015 and 16.10.2015 respectively.

(d) The Underlying Suit then proceeded to arguments, and on 30.10.2015, in the continued absence of representation on behalf of the Petitioner, the Suit was partially decreed in favour of the Respondent No.1.

(e) On 23.12.2015, beyond the period of limitation for filing of an appeal, the Petitioner filed an application for review under Section 114 read with Order IX Rule 13 of the CPC, praying that the Judgment and Decree, as well as the preceding Orders made on 06.10.2015 and 16.10.2015, as aforementioned, be set aside and that the Underlying Suit be restored to its original position as on 06.10.2015 (the "**Review Application**").

(f) The Review Application was found to be without merit and was dismissed vide Order dated 21.09.2016.

(g) Against such dismissal, the Petitioner filed an application for revision under Section 115 of the CPC before the learned VIth Additional District & Sessions Judge, Karachi (East), bearing Civil Revision No.120 of 2016, praying that the aforementioned Order dated 21.09.2016 be set aside and the Underlying Suit be dismissed as being time barred; or in the alternative, that the Judgment and Decree dated 30.10.2015 be set aside and the Underlying Suit be restored to its original position as on 06.10.2015 (the "**Revision Application**").

(h) As it transpired, the learned Additional District & Sessions Judge found that no material had been brought on record to show that any irregularity or illegality had been committed while passing Judgment and Decree in the Underlying Suit and, as such, was not inclined to interfere with the Order of 21.09.2016 whereby the Review Application had been dismissed.

(i) Accordingly, vide Order dated 25.11.2016 the Revision Application was also dismissed, and the Petitioner hence proceeded to file the present Petition under Article 199 of the Constitution with prayers substantively similar to that made in revision.

2. In response to our query as to whether recourse by way of the Review Application had been followed due to lapse of the period of limitation for appeal, it was submitted by learned counsel for the Petitioner that an appeal could nonetheless have been filed along with an application for condonation of the period of delay had the Petitioner been so inclined or advised. Needless to say, the merits of this notional argument do not merit scrutiny, nor is a finding on this point relevant for present purposes.

3. It was further stated by learned counsel that the right of appeal did not of itself preclude the filing of a review, and the decision to assail the Judgment and Decree and preceding Orders passed in the Underlying Suit vide the Review Application rather than through an appeal was one that was consciously taken whilst considering the underlying facts and circumstances. It was submitted that the Petitioner was fortified in its approach as the said Judgment and Decree suffered from 'error apparent on the face of the record', which could validly be corrected in exercise of the jurisdiction conferred under Order 47, Rule 1 CPC. Reliance was placed on the Judgment of the Honourable Supreme Court in the case of Syed Arif Shah v. Abdul Hakeem Qureshi, reported at PLD 1991 SC 905, as well as single-bench Judgments of this

Court in the cases of Haider Ladhu Jaffar & Another v. Habib Bank Limited through President & 10 Others, reported at 2014 CLC 725, and Jehanzeb Aziz Dar v. Messrs Maersk Line & Others, reported at PLD 2000 Karachi 258 respectively.

4. Whilst the principles laid down in these cited cases are well established, the fact remains that the scope of review under S.114 CPC is far narrower than that of a first appeal, which permits a larger enquiry on a broader plane. As such, grounds that may be taken in such appeal could well be, and often are, beyond the bounds permissible for review.

5. From a perusal of the Review Application as well as arguments advanced at the bar, it is evident that the principal thrust of the Petitioner's case for review was that the learned Civil Judge had essentially committed a material irregularity in passing the Judgment and Decree in the Underlying Suit in as much as there had been a complete failure to consider the aspect of limitation, despite a specific issue having been framed in that regard, and that this constituted an error apparent on the face of the record.

6. In furtherance of this argument, it was submitted by learned counsel for the Petitioner that as per the case set up by the Respondent No.1 in terms of the Plaint, all purchase orders were admittedly dated prior to 25.10.2010, and the invoices raised post-delivery were also all admittedly issued prior to 29.11.2010. Hence, the period of limitation of filing a suit, which had to be reckoned as per Articles 52 or 56 of the Limitation Act 1908, expired prior to 29.11.2013. Thus, the Respondent No.1's claim was already barred by limitation on 01.02.2014, being the date on which the Underlying Suit was filed. It was submitted that this issue has not been dilated upon by the learned trial Court while dismissing the Review Application, and, in turn, the learned Additional District & Sessions Judge has also failed to consider this point and thus failed to properly exercise his

supervisory jurisdiction at the time of disposing off the Revision Application.

7. On the other hand, whilst strongly opposing the Petition, learned counsel for the Respondent No.1 has submitted that the learned Civil Judge has not committed any illegally or irregularity in passing Judgment and Decree in the Underlying Suit. He pointed out that the learned Civil Judge has quite evidently considered the matter of limitation and recorded a finding in his Judgment dated 30.10.2015 to the effect that "the point of limitation is not related in this case as the same had been filed within time" and thus held that the Underlying Suit had been filed properly and was maintainable in law. Learned counsel for the Respondent No.1 contends that no case for review was therefore made out within the bounds of S.114, and there was accordingly no scope for interference.

8. Learned counsel for the Respondent No.1 has also submitted that, even otherwise, the plea that the Underlying Suit was barred by limitation is baseless in as much payments were being made by the Petitioner on an ongoing basis, with the last payment made being on 06.06.2012. As such, in view of S.20 of the Limitation Act, the Underlying Suit was filed within the 3-year period of limitation. In this regard, he has drawn our attention to the relevant finding made by the learned Civil Judge in his Judgment dated 30.10.2015 to the effect that "the cause of action accrued in the month of June, 2012 when the defendant paid a sum of Rs.48,250/- leaving balance a sum of Rs.605,200/- and where after in the month March, 2013 when the defendant failed to make payment which is still continue". He pointed out that this finding as to the cause of action is directly related to the finding on limitation. He also relied on the legal notice and reply thereto with regard to the amount claimed, which correspondence was part of the record.

9. Learned counsel concluded that, as such, it was apparent that the dismissal of the Review Application was absolutely just and

proper and did not give rise to any ground for exercise of revisional jurisdiction under S.115, hence the present Petition is misconceived and liable to be dismissed.

10. Having perused the Judgment, we are of the opinion that the argument advanced on behalf of the Petitioner as to there being a failure on the part of the learned Civil Judge to consider the point of limitation is misconceived, in as much as it is evident from a plain reading thereof that a reasoned finding on the matter has quite clearly been recorded in terms of what has been noted by us herein above, as has been recognized in the subsequent Orders of 21.09.2016 and 25.11.2016 disposing off the Review Application and Revision Application respectively, where the scope of review also appears to have been appropriately borne in mind by the learned judicial officers.

11. Confronted with this reality, learned counsel for the Petitioner sought to draw our attention to various documents on record in an endeavor to demonstrate that the dictates of the proviso to S.20 of the Limitation Act 1908 as to a signed acknowledgment had not been met in the facts and circumstances giving rise to the Underlying Suit, and the said section was hence inapplicable for the purpose of computing the period of limitation. In support of this contention he placed reliance on a Judgment of a single-bench of this Court in the case of Muhammad Suleman v. Habib Bank Limited, reported at 1987 MLD 2757, as well as a judgment of the Indian Supreme Court in the case of Sant Lal Mahton v. Kamla Prasad & Others, reported at AIR (38) 1951 SC 477.

12. We are afraid that this line of argument, whilst perhaps constituting a viable ground for an appeal, is simply not permissible within the scope of these proceedings, in as much it is beyond the ambit of Order XLVII, Rule 1, C.P.C to delve deeply into the evidence in relation to a claim that there is an error apparent on the face of the record. As per the very case set up by the Petitioner, the Review Application was advanced and could be entertained only on the ground of error apparent on the face of the record and not on any other ground. Such error must be one

that immediately strikes the onlooker and does not require any long-drawn process of reasoning on points where there may conceivably be two reasonable opinions.

13. It is well settled that review proceedings have to be strictly confined to the scope of Order 47 Rule 1 CPC, which is very limited, and cannot be used as a substitute for a regular appeal. As such, a review will not lie merely due to a Court having taken an erroneous view on a question of fact or law, or on the ground that a different view could have been taken on such a point.

14. Furthermore, the term 'mistake or error apparent' does not extend to every erroneous decision, but by its very connotation signifies an error which is so evident that its detection does not require any detailed scrutiny and elucidation. An error which is not self-evident and has to be extracted from the record and detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the exercise of power under Order 47 Rule 1 CPC.

15. We consider it unnecessary to burden this judgment with discussion of earlier decisions where this settled position is set out. Suffice it to mention that various learned Benches of this Court reiterated the same principle in the cases of Dr. Masroor Ahmed Zai v. Province of Sindh through Chief Secretary and 2 Others, reported at 2016 CLC 1861, Engr. Inam Ahmad smani v. Federation of Pakistan & Others, reported at 2013 MLD 1132, Mst. Doda Begum v. Israr Hussain Zaidi & Others, reported at 2014 CLC 1407, and Mian Shiraz Arshad v. VIIIth Civil and Family Judge, Karachi (South), reported at 2009 YLR 1016.

16. In view of foregoing discussion, this Petition is found to be misconceived and hence is dismissed. There will be no order as to costs.

JUDGE

JUDGE

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Dated _____