

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D-3652 of 2010**

1. For order on CMA No.12005/2019 (Urgent appln. is granted)
2. For order on CMA No.35010/2018 (Review)
3. For order on CMA No.35011/2018 (Limitation)
4. For order on CMA No.31537/2018 (Contempt)

Waleed Saad .....Petitioner

V/s

Chief Secretary,  
Government of Sindh,  
Karachi & 06 others

.....Respondents

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**Date of hearing: 22.04.2019**

**Date of Order: 22.04.2019**

Mr. Imran Taj advocate for the Petitioner  
S.M. Abid, Applicant in person  
Mr. Muhammad Yousuf Rahopoto, Assistant A.G.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through the listed applications at Sr. No.2 and 3 filed under Sections 114 read with Section 151 CPC and under Section 5 of the Limitation Act respectively, the Applicant namely S.M. Abid seeks review of the order dated **17.10.2018** passed by this Court as well as condonation of delay in filing review application.

2. We have gone through the contents of the order dated 17.10.2018. For convenience, the operative part of the order is reproduced as under: -

*“Contention of the applicant that in applications under Section 12(2) CPC limitation does not count, is wholly misconceived and not in accordance with law. It is an admitted position that the applicant has filed the instant*

*application under Section 12(2) CPC for recalling the order dated 27.10.2011 after a period of almost 7 years and no plausible reason has been furnished for filing such a belated application. An application under Section 12(2) CPC cannot be filed at the convenience of a party, as the bona fides of an application is always to be kept in view while entertaining a belated application. It has categorically been mentioned under Article 181 of the Limitation, 1908 that where from the application for which no period is provided the same is governed under the said Article and period of limitation for the same is 3 years. It has now become a settled proposition of law that for filing an application under Section 12(2) CPC limitation is 3 years. In our view limitation for filing application under 12(2) CPC is governed under article 181 of the Limitation Act which is 3 years. No plausible explanation has been furnished for filing such a belated application. We in this behalf can safely refer to the decisions given by the Hon'ble Supreme Court in the cases of Muhammad Akram Malik Vs. Dr. Ghulam Rabbani (PLD 2006 SC 773), Tanveer Jamshed and another Vs. Raja Gulam Haider (1992 SCMR 917) and Mst. Amtul Kair and another Vs. Safia Khatoon and others (1991 SCMR 1022) wherein limitation for filing an application under section 12(2) CPC is directed to be governed under Article 181 and under the said Article limitation is 3 years. Reference may also be made to the decision given in the case of Abdul Aziz and 6 others Vs. The Member, Board of Revenue and 15 others (1998 SCMR 1078) wherein the Hon'ble Apex Court has clearly observed that wherein the Hon'ble Apex Court has clearly observed that period of limitation for application under Section 12(2) CPC is 3 years.*

*Even for arguments' sake, if it is assumed that the present application has been filed within limitation period when the matter came into the knowledge of the applicant, we have noted that the applicant has miserably failed to deduce any document or provide any material to substantiate his claim that when the matter has come into his knowledge about the order of the High Court. We categorically asked the applicant about the date on which it came into the knowledge however, no satisfactory reply was given in this behalf, hence the assertion of the applicant that he has filed present application within three years after the matter came into his knowledge has not been substantiated with cogent material hence could not be considered at this belated stage when admittedly this application has been filed after almost 7 years of the dismissal of the instant petition when the application is totally silent about the date on which the applicant came to know about the alleged fraud or misrepresentation if any played with the Court.*

*So far as the claim of the applicant that the order was obtained by way of misrepresentation or fraud is concerned here again the instant application appears to be wholly misconceived and not maintainable. Perusal of the order dated 27.10.2011 clearly reveals that the petition was dismissed at the request of the counsel for the petitioner as he "did not press this petition" and thereafter petition was dismissed as "not pressed" along with the listed application. We have categorically asked from the applicant that how a matter which was dismissed on the request of the counsel for the petitioner as not pressed could be called to be an order obtained by way of fraud or misrepresentation. No plausible reply is available with the applicant except saying that he is prejudiced with the said order. Question is as to what fraud and misrepresentation was played with the Court by not pressing the petition which resulted in dismissal of the same*

*along with the listed application. Again the same has not been substantiated with any plausible explanation justifying for recalling of the order dated 27.10.2011 under Section 12(2) CPC.*

*We, therefore, in view of the facts recorded above, do not find any merit in the instant application and have found the same wholly misconceived and not maintainable, hence the same is dismissed with a cost of Rs.10,000/- to be deposited in "Dam Fund Account".*

*2. Adjourned. Interim order passed earlier to continue till the next date of hearing."*

3. The Applicant S.M. Abid, who is present in person, while attacking the aforesaid order passed by this Court has taken the plea that this Court while passing the order dated 17.10.2018 did not consider the fact that the Petitioner deceitfully succeeded to obtain orders from this Court in order to usurp the subject land of the Petitioner situated in Sachal Sarmast Cooperative Housing Society ("**SSCHS**"), admeasuring 44 Acres 38 Ghuntas through misrepresentation of facts; that the Petitioner had no *locus standi* to obtain orders from this Court after disposal of the instant petition on 27.10.2011. In support of his contentions, he relied upon various documents attached with the application and argued that the Petitioner had fraudulently claimed succession of his grandfather by concealing that late Haji Ahmedullah being Secretary of SSCHS divided the land in question into 800 plots of different sizes and allotted the same to the Members of the Society; that the judgment dated 28.2.1980 passed in Suit No.530 of 1978 reveals that since the Defendants in the aforesaid suit had not put their appearance inspite of service and the Petitioner succeeded in obtaining the orders from this Court by playing fraud.

4. We inquired from the Applicant, who is present in person, as to how this review application is maintainable against the order dated 17.10.2018 passed by this Court on the premise that we simply dismissed the application of the Applicant under Section 12(2) CPC as we did not see any inherent defect in the order dated 27.10.2011 passed by this Court. He in reply to the query, has attempted to re-argue the matter on merit, which we cannot allow, as we are only concerned with the grounds of review as to whether the order dated 17.10.2018 passed by this Court needs to be reviewed?

5. We have heard the Applicant on the listed applications and have perused the material available on record and the grounds taken by him.

6. We have noticed that the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC).

7. Upon perusal of the order dated 17.10.2018 passed by this Court, which explicitly shows that we simply dismissed the application of the Applicant (CMA No.13634 of 2018 under Section 12(2) CPC) on the premise that no fraud and misrepresentation was played with this Court by not pressing the petition which resulted in dismissal of the same along with the listed application, an excerpt of the order dated 27.10.2011 passed by this Court is reproduced as under: -

*“Learned counsel for the petitioner states that Secretary Land Utilization Department, Government of Sindh vide its letter dated 27.09.2011 has given direction that in terms of the decree passed in Suit No.530 of 1978, the*

*property in question may be mutated in record of right. Hence the petitioner does not press this petition.*

*The petition stands dismissed as not pressed alongwith listed application.”*

8. We have also noticed that the Applicant through the instant review application has attempted to call in question the validity of the orders dated 27.10.2011 and 17.10.2018 passed by this Court without assailing the same before the Appellate Forum.

9. We again posted another question to the Applicant as to how he is prejudiced by the aforesaid orders passed by this Court and referred to the order dated 10.4.2019 passed by this Court whereby Investigating Officer of NAB appeared before this Court and submitted that after completion of inquiry the matter has been referred to high ups for conversion of the same into investigation or otherwise. He replied that the Petitioner under the garb of orders passed by this Court pressurized the Revenue Authorities to mutate the subject land in his favour in the record of right. He next submitted that he has already filed certain judicial proceedings against such acts of the Petitioner as well as Revenue Authorities and he will also take appropriate remedies as available to him under the law; that this Court can take suo moto notice to review the order and recall notices, mutations and benefits fraudulently acquired by the Petitioner on the basis of contempt application dated 15.10.2012 for the simple reason that after dismissal of the instant petition this Court did not issue any directions; that the delay, if any, caused in pursuing the matter may be

condoned. However, he emphasized that the order passed by this Court needs to be reviewed and recalled.

10. Be that as it may, the grounds taken by the Applicant in the listed application were considered at the time of hearing of the application (CMA No.13634 of 2018 under Section 12(2) CPC) and the request of the Applicant was declined vide order dated 17.10.2018 on merits. Therefore, the question of reviewing the order does not merit consideration.

11. For the aforesaid reasons, we are not persuaded by the contention of the Applicant that any case of review is made out. Therefore, this review application alongwith application for condonation of delay, merit dismissal as, in our view, our order dated **17.10.2018** was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

12. At the request of the learned counsel for the Petitioner, the application listed at Sr. No.4 is adjourned to a date to be fixed by the office.

**JUDGE**

**JUDGE**