

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

Civil Revision No. 87/2012

Applicant : Noor Muhammad, through attorney,
Gul Muhammad, in person.

Respondent : Allah Warayo through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 88/2012

Applicant : Noor Muhammad, through attorney,
Gul Muhammad, in person.

Respondent : Manzoor Ahmed, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 89/2012

Applicant : Noor Muhammad, through attorney,
Gul Muhammad, in person.

Respondent : Abdul Rauf, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 90/2012

Applicant : Gul Muhammad, in person.

Respondent : Abdul Rauf, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 91/2012

Applicant : Muhammad Haneef, through
attorney, Gul Muhammad, in
person.

Respondent : Abdul Rauf, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 92/2012

Applicant : Noor Muhammad, through attorney,
Gul Muhammad, in person.
Respondent : Faiz Muhammad, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 93/2012

Applicant : Muhammad Haneef, through attorney,
Gul Muhammad, in person.
Respondent : Faiz Muhammad, through Mr. Aftab
Ahmed Channa, Advocate.

Civil Revision No. 94/2012

Applicant : Gul Muhammad, in person.
Respondent : Allah Warayo through Mr. Aftab Ahmed
Channa, Advocate.

Civil Revision No. 95/2012

Applicant : Muhammad Haneef, through attorney,
Gul Muhammad, in person.
Respondent : Allah Warayo through Mr. Aftab Ahmed
Channa, Advocate.
Date of Hearing : 16.03.2018

J U D G M E N T

YOUSUF ALI SAYEED, J:- These Revision Applications all proceed on an identical footing in terms of assailing the Orders of the learned Vth Additional Sessions Judge, Sukkur in Appeal Number 91 and 93 of 2011 and Appeal Numbers 23 to 29 of 2012 preferred by the present Applicants against the Orders of the learned 1st Civil Judge, Pano Aqil in Suit Numbers 21 and 22 of 2007 and Suit Numbers 11 to 17 of 2008 instituted by the Applicant, whereby the Applications under Order 7, Rule 11 CPC filed in each of the aforementioned Suits by the respective Respondents were allowed.

2. Upon the presentation of these Revision Applications, the office had raised a preliminary objection as to maintainability thereof on the point of limitation, in as much as the Impugned Orders of the Appellate forum in Appeal Number 91 and 93 of 2011 were made on 11.01.2012 and in Appeal Numbers 23 to 29 of 2012 on 18.01.2012, whereas the instant Revisions came to be presented on 08.08.2012, well beyond the period of 90 days prescribed in terms of S.115 CPC.

3. In response to this objection it was simply contended by the Applicant in Civil Revision No. 90 /2012, who appeared in person for himself and in his purported capacity as attorney of the Applicants in other connected matters, that the law of Limitation would not apply when an order was void, as was alleged to be so in the case of the underlying Orders made by the learned Civil Judge on the Applications under Order 7, Rule 11 CPC in the matters at hand, and that, alternatively, even if the same were applicable, the delay could be condoned under the provisions of the Limitation Act, 1908, for which purpose separate applications had been filed. As to the period of delay, it was pointed out that the certified copies of the Appellate Orders had been made available on 16.05.2012 and the Revision Applications had then been presented on 08.08.2012, and it was contended that in view of the intervening delay in provision of certified copies, the period of limitation had then lapsed during the period of summer recess of the Court and when the matter was viewed in that perspective the period of delay was only two days, as the date of presentation was said to be two days after the opening day.

4. Turning firstly to the argument that no limitation runs against a void order, whilst there are numerous judicial pronouncements to that effect, in as much as such an order is non-existent in the eyes of law, it is important to consider whether in terms of the well settled principles enumerated on that point, the Impugned Order of the Appellate Court in these Revisions, which is the relevant order for purposes of limitation, can be characterized as void or as a nullity in law.

5. In this regard, it is axiomatic that there is a clear a distinction between an illegal order and a void order, for whilst every void order would certainly be illegal, every illegal order would not necessarily be void. According to Black's Law Dictionary, the term "void" means null, ineffectual, nugatory, having no legal force or binding effect, unable in law.

6. Whilst orders passed without lawful authority, without jurisdiction, or against the principles of natural justice may be void, every order made by a competent judicial forum that suffers from some error cannot necessarily be so regarded. The distinction was explained by the Honourable Supreme Court in Muhammad Swaleh v. United Grain Fodder Agencies, PLD 1964 SC 97, with reference to the grounds of revision set out in section 115, C.P.C. Their lordships observed that when a Court or a Tribunal assumes jurisdiction not vested in it by law or fails to exercise jurisdiction so vested, its order may be void and a nullity in law. However, when it acts illegally or with material irregularity in the exercise of its jurisdiction, the ensuing order may be voidable but would not be void.

7. In the case of M/s. Conforce Ltd. v. Syed Ali Shah etc., PLD 1977 SC 599, it was stated by the Apex Court that

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"...we would observe that a void order or an order without jurisdiction is only a type of an illegal order passed by a Court and the fact that it has been passed and that it may, therefore, create rights cannot be altered by describing it as void or without jurisdiction. And, further, the expressions "void orders" and "orders without jurisdiction" are overworked expressions."
(at Page 601 D)

8. Subsequently, in the case of Land Acquisition Collector, Nowshera & Others v. Sarfaraz Khan & Others, PLD 2001 SC 514, it was observed by the Honourable Supreme Court that:

“It is settled law that the bar of limitation would not operate in respect of void orders but not in respect of erroneous orders. The question of ' limitation may not, therefore; arise in respect of a judgment which is a nullity in law, void or ultra vires the statute or the constitution. In point of fact, if an order is without jurisdiction and void, it need not even be formally set aside as has been held in the cases of Ali Muhammad v. Hussain Bakhsh PLD 1976 SC 37 and Ch. Altaf Hussain and others v. The Chief Settlement Commissioner PLD 1965 SC 68.” (at Page 517 A)

9. It is evident from the aforementioned precedents that a mere irregular, incorrect, erroneous or illegal order does not necessarily fall within conception of the term “void”, and that the law of limitation would apply to such orders.

10. In the instant case, the only argument advanced in support of the submission regarding limitation is that the earlier Orders of the learned Civil Judge made under Order 7, Rule 11 are void. In my view, this has no bearing on the aspect of limitation in as much as such matter is to be reckoned with reference to the Order of the Appellate forum rather than that of the Court of first instance. Needless to say, the Appellate Court was certainly fully competent to adjudicate upon the subject matter of the proceedings and to make the Orders that have since come to be impugned through these Revision Applications. No assertion to the contrary has even been made by the Applicants in this regard.

11. It need scarcely be mentioned that it is imperative for the proper working of any system of justice that in a context such as the one at hand a party aggrieved by an order passed by a competent judicial forum be required to assail such order in a timely manner through appropriate proceedings, as prescribed, and cannot be allowed to escape the consequence of his own indolence and circumvent limitation by recourse to a plea that the order sought to be questioned is void and hence is not subject to any statute of limitation.

12. In view of the foregoing discussion, it is apparent that the line of argument taken by learned counsel for the Appellant is misconceived, and that the period of limitation prescribed under S.115 CPC would be applicable.

13. Turning now to the question of the period of delay and whether the same can and ought to be condoned, in terms of the supporting miscellaneous Applications under the Limitation Act it was contended that the period of delay was only of two days in as much as the period of limitation had lapsed during the summer recess of this Court and that instead of presenting the Applications on the opening day, the same had been presented two days thereafter due to the ill health of the attorney of the Applicants. It was submitted that such delay could and ought to be condoned.

14. Hypothetically, even if for the sake of argument the aforementioned plea is assumed to be valid, the same is evidently fallacious in as much as all of the Revisions, barring one, have been filed on behalf of the named Applicants through the purported attorney, and whilst his status and competence to act in such capacity was brought into question before the Appellate forum, and indeed found not to have been satisfactorily established, hence the dismissal of the Appeals, the ground taken in the Affidavits filed in support of these miscellaneous Applications seeking condonation of delay in each of these Revisions is the ill-health of the said attorney, whereas the Applicants themselves were apparently not under any disability and could thus have acted with due diligence, nor has any averment even been made to the contrary.

15. Moreover, when this aspect is examined in further depth, it comes to the fore that the contention as to lapse of limitation during the period of recess/vacation is itself misconceived if not mala fide, in as much as it is apparent from the stamp on the certified copies of the Impugned

Orders of the Appellate Court filed and relied upon by the Applicants in the respective Revisions that whilst the Impugned Orders of the Appellate forum in Appeal Number 91 and 93 of 2011 were made on 11.01.2012 and in Appeal Numbers 23 to 29 of 2012 on 18.01.2012, the applications for certified copy had been submitted by the attorney of the Applicant on 14.03.2012, and that whilst cost was estimated on 19.03.2012, stamps were belatedly supplied by the Applicants on 16.05.2012. Whilst the copying stamp on each of the certified copies filed by the Applicants in the respective Revisions appear to have been tampered, apparently with the motive of ostensibly providing a foundation for the plea as to lapse of the period of limitation within the vacation period, be that as it may, even if such certified copies are accepted and relied upon, it is evident for the reasons aforementioned that the period of limitation had continued to run against the Applicants due to the delay in applying for certified copies and the default on their part in supply of stamps, and had thus already lapsed prior to the date on which the certified copies were eventually made ready following supply of stamps. As such, the period of delay extends well beyond the period of two days in respect of which condonation had been sought in terms of the miscellaneous Applications filed in the respective Revisions.

16. Furthermore, as regards these Applications seeking condonation, it has to be borne in mind that the applicable period of limitation is prescribed in terms of S.115 CPC itself rather than under the Limitation Act, and it merits consideration that in the judgment reported as Allah Dino and others v. Muhammad Shah and others 2001 SCMR 286, the Honourable Supreme Court has held as follows:-

“There is no cavil with the arguments that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a whole. But where the law under which proceedings has been launched prescribes itself a period of limitation like under section 115, C.P.C then benefit of section 5 of Limitation Act cannot be availed unless it has been made applicable as per section 29(2) of the Limitation Act, as held in the case (i). The Canara Bank Ltd v. The Wardon Insurance Co, Ltd (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v Mst.Mumtaz (PLD 1982 SC 572), (iii) Ali Muhammad and another v Fuai Hussain and others (1983 SCMR 1239), (iv) Controller of Customs (Appraisement) v. Messrs Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Muhammad Ashraf v. The State and 3 others (1999 MLD 330).

17. In the case reported as Hafeez Ahmed and others v. Civil Judge, Lahore and others PLD 2012 SC 400, a five member Bench of the Apex Court examined S. 115 CPC and S. 29 of the Limitation Act, and held that:-

“Civil Procedure Code, 1908, though being a general law for all legal and practical purpose, for having prescribed period of limitation for filing a revision petition would be considered a special law for purpose of Limitation Act, 1908. Had legislature intended to treat C.P.C. as a general Law for purposes of Limitation Act, 1908, then same in First Schedule would have been prescribed a period of limitation for filing a revision application. Provision of Ss.4, 9, to 18 & 22 of Limitation Act, 1908 would, thus, apply even to revision petition filed under S.115 C.P.C, however, S.5 Limitation Act, 1908, for not finding mentioned in S.29 therefore, shall, not be applicable to revision under S.115.

18. In the light of what has been discussed hereinabove, it is evident that the Revisions are clearly barred by limitation by a period of delay that extends well beyond that portrayed for the purpose of condonation, and that no case for condonation has been made out on merit and the Applications in that regard even otherwise cannot be maintained in view of inapplicability of S.5, as aforementioned. Accordingly, the Applications under S.5 of the Limitation Act are dismissed and consequently the Revision Applications are also dismissed as being time barred, along with all other pending miscellaneous applications, but with no order as no costs.

JUDGE

Sukkur.
Dated _____