

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-3050 of 2021

For orders as to the maintainability of petition.

22.10.2021

Petitioner Nusrat-ul-Nisa through Mr. Nadeem Ahmed Azar, Advocate
Respondent Noor Shafi Ahmed Shaikh through Mr. Sohail ur Rehman,
Advocate.

ORDER

AHMED ALI M. SHAIKH, CJ.- Through instant Petition Petitioner has called into question the order dated 21.04.2021 penned down by the learned III Additional District Judge, Karachi East, in Revision Application No.50 of 2021, affirming the order dated 02.03.2020 passed by the III Senior Civil Judge, Karachi East, in Civil Execution No.27 of 2017 (Suit No.447 of 2007), dismissing the objections of the Petitioner filed in terms of Order XXI read with Section 151 CPC and Article 183 of the Limitation Act.

2. Brief but relevant facts of the case are that the Respondent No.1 filed Civil Suit No.447 of 2007 (the “**Suit**”) against the Petitioner for declaration, possession, permanent injunction, recovery of articles in alternate Rs.10,00,000.00 and mesne profit. The learned III Senior Civil Judge, Karachi East after full-fledged trial decreed the Suit vide Judgment dated 28.4.2010 followed by decree drawn on 04.10.2010. Against said Judgment and Decree Petitioner filed Civil Appeal No.371 of 2010 (the “**Appeal**”), which was firstly dismissed for non-prosecution on 28.8.2013, and subsequently application seeking its restoration was also dismissed vide order dated 30.03.2016.

3. The Respondent filed Execution Application No.27 of 2017, which, after failure of the Petitioner to file objections despite repeated opportunities, was allowed by the executing Court vide order dated 13.04.2018. From the material available on record it further appears that on 26.2.2021 Petitioner filed objections to the execution application under Order XXI read with Section 151 CPC and Article 183 of the Limitation Act. However, the trial Court vide order dated 02.03.2020,

rejected the same. Ultimately, the petitioner filed Civil Revision which too met with the same fate vide order impugned herein.

4. After notice the Respondent No.1 filed comments annexing therewith copies of different orders passed by the Courts below. The Respondent No.1 claimed that after dismissal of Application seeking restoration of the Appeal, the Petitioner filed second application for identical relief alongwith an application under Section 5 of the Limitation Act. However, the Appellate Court after hearing dismissed the said two Applications vide order dated 21.04.2021.

5. Learned counsel for the Petitioner submitted that the impugned orders dated 02.03.2020 and 21.4.2021 passed by the Courts below are against the settled principle of law besides the executing Court as well as the revisional Court failed to take into consideration the vital question that the Execution Application was hopelessly time barred. He submitted that the Petitioner was unaware about the pendency of the execution proceedings till writ of possession was issued against her. He lastly contended that since the orders impugned were passed in post-haste and mechanical manner the same be set-aside.

6. Conversely, the learned counsel for the Respondent No.1 opposed the Petition on the ground that the execution has already been allowed by the trial Court vide order dated 13.04.2018, which order has attained finality.

7. We have heard the learned counsel for the parties and perused the material available on record. It is matter of record and not denied by the learned counsel that the Petitioner was well aware about the Judgment and Decree passed by the trial Court in the Suit against her. Against the said Judgment and Decree the Petitioner filed the Appeal, which was dismissed for non-prosecution on 28.08.2013. Thereafter the petitioner attempted twice to restore the Appeal to its original position but in vain. However, in 2017 the Respondent No.1 filed Execution Application which allowed vide order dated 13.04.2018 followed by writ of possession with police aid issued by the trial Court. The Petitioner then filed objections under Order XXI Rule 151 CPC and Article 183 of the Limitation Act. In the objections, which vide order dated 02.03.2020 were discarded by the trial Court, the Petitioner in paragraph No.6 has taken the plea that:-

“Appeal was dismissed as the J/D was fail (sic) to approached (sic) to her appeal as the J/D become victim of Black Magic (SIFLYEE) and she became unconscious Mind since last 8/9 years.”

8. It is pertinent to mention here that the Petitioner did not challenge the order dated 13.04.2018 whereby execution application was allowed and said order was also not the focus of the Civil Revision preferred by him. It is also noteworthy that the point of limitation was never properly raised in the Revision Application as the grounds mentioned are silent on this aspect.

9. Against rejection of said objections Petitioner filed Civil Revision Application No.50 of 2021, which after hearing was declined by the learned III Additional District Judge, Karachi East, vide order dated 21.04.2021, concluding paragraph of which is reproduced hereunder:-

“Now applicant through present Revision Application seeks the relief of this Court to set aside the order dated 02.03.2021 whereby learned Executing Court issued direction for issuing writ of possession with police aid. Admittedly, execution had already been allowed and previous application for restoration of appeal had already been dismissed by this Court and said order has attained finality, therefore this Court in Revisional Authority is not competent to interference in the execution proceedings. In the given circumstances of the case the trial Court acted in this case in accordance with law. Therefore, revision application in hand is dismissed being meritless. Consequently stay of execution order is recalled. Let such order be sent to Executing Court for information and compliance.”

10. The Respondent No.1 alongwith their comments to the Petition also annexed a photocopy of the order dated 21.04.2021 passed in the Appeal whereby the learned III Additional District Judge threw out the second Application filed by the Petitioner/Appellant seeking resurrection of the Appeal. It further transpired that the said order is subject matter of a separate proceedings i.e. Revision Application No.132 of 2021 pending in this Court. However, the said fact was neither mentioned in the memo of the Petition nor pointed out during hearing by the learned Counsel for the Petitioner.

Since the Judgment and Decree passed in the civil suit has attained finality, the execution application has been allowed and order of issuance of writ of possession with police aid has been affirmed by the Revisional Court, we do not find any merit in the instant petition, which is accordingly dismissed. Office is directed to place a copy of this order in aforesaid Revision Application and endorse a note on the order sheet for perusal of the Bench seized of the matter.

Chief Justice

Judge