

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Revision Application No.S-140 of 2020

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Date	Order with signature of Judge
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Rehmatullah ----- Applicant

versus

Santosh Kumar ----- Respondent

1. For orders on office objection No.1 at Flag "A"
2. For orders on CMA No.746/2020
3. For orders on CMA No.747/2020
4. For hearing of main case

Mr. Gul Mir Jatoi, Advocate for applicant.

Mr. Hadi Bux Bhatt, Advocate for respondent No.1.

Date of hearing : 09.12.2021

Date of decision : 09.12.2021

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**ORDER**

**KHADIM HUSSAIN TUNIO, I-** Through captioned revision application, the applicant has impugned the judgment and decree dated 24.02.2020 passed by learned District Judge/Civil Model Appellate Court Naushahro Feroze in Civil Appeal No. 359 of 2019, whereby the appeal of the applicant was dismissed, hence this revision application.

2. Brief facts of the present revision application are that the applicant/plaintiff's father had purchased a shop, record of which lied in the applicant/plaintiff's name. After his father's death in 1993, the plaintiff ran the shop till 2003 which is when the defendant No.1 filed a rent application No. 5 of 2003 against the applicant/plaintiff which was dismissed on 06.04.2004, whereafter the defendant appealed the same through rent appeal which too was dismissed vide order dated 21.09.2004. Thereafter, the defendant

No.1, filed another rent application bearing No. 16 of 2005 while showing the judgment and decree passed in FC Suit No. 86 of 1997 dated 28.08.1997 to establish his ownership and the rent controller allowed the application. Thereafter, the applicant filed FC Suit No. 119 of 2019 for declaration and permanent injunction; however the plaint of suit of the applicant/plaintiff was rejected under Order VII Rule 11 CPC vide order dated 18.11.2019. Being aggrieved, the applicant/plaintiff appealed the same through Civil Appeal No. 359 of 2019 which too was dismissed vide judgment dated 24.02.2020.

3. Learned counsel for the applicants argued that the learned Senior Civil Judge has dealt with the matter in a hasty manner; that the courts below have not given consideration to the relevant documents and facts of the case; that false and fictitious documents were managed by the respondent No. 1 in respect of the suit property; that the rent Controller has no authority to decide the ownership as it is a duty vested in Civil Court. He, therefore, prays that the impugned order/judgment may be set aside.

4. Learned counsel for the Respondent/Defendant No. 1, while supporting the impugned judgment and decree, argued that the impugned judgments passed by the learned two Courts below are legal and do not require any interference by this Court; that the instant revision application is time-barred.

5. I have heard the learned counsel for either parties and have perused the record.

6. Since the question of the appeal being time-barred is concerned, it would be pertinent to discuss the same before indulging into a discussion on merits. At the very outset, it is observed that at the time of filing the revision application, an objection was raised by the office regarding the 113 days delay and its maintainability on said basis. An application u/s 5 of the Limitations Act is filed along with the instant revision application

for condonation of delay and the reason listed therein for condonation is given that the country was under lockdown due to COVID-19. It is rather astonishing to note that Pakistan's first COVID-19 wave started in late May of 2020 and the nationwide lockdown only came about on the first day of April and as is evident from the record, the impugned judgment was passed on 24<sup>th</sup> of February 2020, which still leaves a total of 5 days of February and the whole month of March unexplained. The Hon'ble Apex Court has extensively dealt with the issue of limitation in case titled, *Lahore Development Authority v. Mst Sharifa Bibi and another* (PLD 2010 Supreme Court 705) and observed that the law of limitation is a rule of procedure, a branch of adjective law. It controls and regulates the process of litigation and time lines to prosecute a cause, failing which the matter must be closed. A litigant must take legal recourse with due diligence, as the laws assist those who are vigilant and not those who sleep over their rights. Law of limitation cannot be considered a mere formality, rather, required to be dealt with being mandatory in nature with the specific purpose to help the vigilant and not the indolent. While deciding whether delay has been sufficiently explained, the Court must find itself satisfied that the litigant explained delay of each and every day and has not just furnished a general explanation for it. In the case of *Mst. Bhakan and others v. Mst. Ghulam Janat and others* (2005 SCMR 1662), the Hon'ble Supreme Court was pleased to observe that:-

It may be noted that office has returned the file to learned Advocate-on-Record as it was not filed in accordance with the Supreme Court Rules, 1980 and in such view of the matter it is the petitioner who is bound to suffer for not instituting the proceedings according to rules, therefore, *we are not inclined to condone the delay because in the application delay of each day has not been explained satisfactorily.* Reference in this behalf may be made to the case of Muhammad Raza and others v. Mst. Aalia and others 1987 SCMR 1818.

*(emphasis supplied)*

7. Further reliance, in this regard, is sought from the cases reported as *Messrs Tribal Friends Co. v. Province of Balochistan*

(2002 SCMR 1903), *Messrs Lanvin Traders Karachi v. Presiding Officer, Banking Court 2 Karachi and others* (2013 SCMR 1419), *Mst. Sirajun-Munira v. Pakistan* (1998 SCMR 785) and the more recent case of *Tahsinullah v. Mst. Parveen (through her legal heirs) and others* (Civil Appeal No. 46-P of 2020).

8. Besides the question of limitation itself, I have gone over the judgment passed by the learned Appellate Court which appears to be based on sound reasoning while observing that the applicant/plaintiff had failed to file any title documents along with the plaint to show that he was in fact the owner of the shop in question. The findings of the two Courts below are also found to be concurrent. I would like to hold that High Court is not supposed to interfere in the findings on controversial question of facts, even if such findings are primeous. The scope of revision, in case of concurrent findings, is very narrow and the courts may only interfere with the findings if there is any misreading or non-reading of evidence, which caused a mishap or miscarriage of justice. At this juncture, it would be appropriate to reproduce the case law titled as **Muhammad Din v. Muhammad Abdullah (PLD 1994 SC 291)**, wherein it was held that:

"4. It is well-settled law that a concurrent finding of fact by two Courts below cannot be disturbed by the High Court in second Civil Appeal much less in exercise of the revisional jurisdiction under section 115, C.P.C., unless the two Courts below while recording the finding of fact have either misread the evidence or have ignored any material piece of evidence on record or the finding of fact recorded by the two Courts below is perverse. The jurisdiction of the High Court to interfere with the concurrent finding of fact in revisional jurisdiction under section 115, C.P.C. is still narrower. The High Court in exercise of its jurisdiction under section 115, C.P.C. can only interfere with the orders of the subordinate Courts on the grounds, that the Court below has assumed jurisdiction which did not vest in it, or has failed to exercise the jurisdiction vested in it by law or that the Court below has acted with material irregularity effecting its jurisdiction in the case, (See *Umar Dad Khan v. Tilla Muhammad Khan*, PLD 1970 SC 288, *Muhammad. Bakhsh v. Muhammad Ali*, 1984 SCMR 504, *Muhammad Zaman v. Zafar Ali Khan* PLD 1986 SC 89 and *Abdul Hameed v. Ghulam Muhammad* 1987 SCMR 1005). Under this jurisdiction the High Court only corrects the jurisdictional errors of subordinate Courts. The fact that the High Court while

reappraising the evidence on record reached a conclusion different from those arrived at by the two Courts below, could never be a ground justifying interference with a finding of fact much less a concurrent finding recorded by the two Courts below on the basis of evidence produced before them, in exercise of its revisional jurisdiction under section 115, C.P.C."

9. The same view has again been reiterated in case titled as **Farhat Jabeen v. Muhammad Safdar and others (2011 SCMR 1073)** it has been held that:

"Heard... it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."

10. I would like to hold that the courts below were justified in holding that no cause of action had accrued to the applicant as it is an undisputed fact at this point that the only document the applicant possessed was a sale agreement which can in no way be considered a title document. Since the applicant was not the owner of the suit property, it could not be held that he had a cause of action to file the suit.

11. In the light of above discussion and circumstances, the learned two courts below rightly dismissed the suit of the applicant, while assigning sound reasons and the same call for no interference by this court. Resultantly, present revision application was dismissed by short order dated 09.12.2021. Above are the reasons for the same.

**J U D G E**