

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No. 295 of 2017

Applicants : Ghulam Haider & others, through Aqeel Ahmed Siddiqui, Advocate.

Respondent No.4 : Rasheed Peter (Since Deceased, though legal heirs), through Shahida Parveen Abdul Ghani, Advocate.

Date of hearing : 05.03.2021

Date of Decision : 19.03.2021

ORDER

YOUSUF ALI SAYEED, J. - Vide this application under Section 115 CPC, the Applicant has invoked the revisional jurisdiction of this Court, impugning the Order made on 13.9.2017 by the learned Vth Additional District Judge, Hyderabad, dismissing Civil Misc. Appeal No. 13 of 2015 preferred by the Applicant against the Order made on 9.5.2017 by the learned Vth Senior Civil Judge, Hyderabad in Execution Application No. 42 of 2014, whereby that proceeding was dismissed as being barred by limitation.

2. Succinctly stated the salient facts, as relevant for the purposes of the matter at hand, are that the Applicant had apparently filed F.C. Suit No. 196 of 2007, which was decreed on 12.01.2010. The Execution Application then came to be filed on 10.4.2013, hence the Executing Court dismissed the same as being barred by limitation in terms of Article 181 of the Limitation Act, 1908 (the "**Act**"), which prescribes a period of three years for such purpose, with that finding being upheld on appeal.

3. Learned counsel for the Applicant contended that the fora below had erred in their concurrent determinations of the matter by considering Article 181 of the Limitation Act to be applicable. He contended that the Execution Application was in fact a second application, hence governed by Section 48 CPC. He further contended that the Trial Court has failed to appreciate S.17 of the Act, with regard to death of person and disability of a person whose right to sue / institute or making an application dies before the right accrued; that both the Trial Courts failed to appreciate that fraud has been played by the Respondent with the applicant by which the Applicant was restrained to file the execution application or initiate any proceedings against them, as envisaged under S.18 of the Act; that the application under Section 5 of the Act for condonation had been filed before the Appellate Court, but had not been decided. In support of his contention, he placed reliance on the Judgments of the Honourable Supreme Court in the cases reported as Bakhtiar Ahmed v. Mst. Shamim Akhtar and others 2013 SCMR 5 and United Bank Limited v. Fateh Hayat Khan Tawana and others 2015 SCMR 1335.

4. Conversely, learned counsel for respondent submitted that the orders of the Executing and Appellate Courts were well reasoned and set out the correct imposition of law on the subject of limitation as applicable to the instant case. It was pointed out that the very Execution Application which had been filed itself reflected that it was the first execution application, as such, it was argued that Article 181 of the Limitation Act was squarely applicable. In support of her contention, she has relied upon the cases of Honourable Supreme Court reported as Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others PLD 2015 Supreme Court 212 as well as the judgments of learned Division Benches of this Court in the cases reported as Muhammad Usman v. Amanullah and 15 others 2020 YLR 979 and Saeeda Salahuddin through constituted attorney v. Flight Lt. (Retd.) Farouk Aziz Effendi (Late) through LRs and others 2020 SLC Note 40.

5. Having heard the arguments advanced at bar and considered the material on record, it merits consideration that the very Execution Application preferred by the Applicant itself disclosed that it was the first application filed in that regard, in as much as it was stated in Column 8 thereof that no other application had been made after the decree. Furthermore, this point was not even raised as a ground before the Appellate forum. As to the point raised with reference to Sections 17 and 18 of the Act, the same are patently misconceived, as the period of limitation had evidently lapsed during the lifetime of the original decree holder, as noted in the impugned Judgment of the Appellate Court, and no credible case of fraud has even been pleaded, hence cannot be raised. Learned counsel was even otherwise at a loss to articulate any case in that regard. The plea as to the pendency of an unattended Application under Section 5 of the Act in the Appeal is also of absolutely no avail as it was the underlying Execution Application that was held to have been time barred, and there was no issue of limitation afflicting the Appeal preferred against its dismissal, hence there was no call for such any such application and its fate is accordingly of no consequence.
6. Under the circumstances, no case for exercise of the Revisional jurisdiction of this Court stands made out in terms of S.115 CPC, and the Revision Application is accordingly dismissed.

JUDGE

Hyderabad
Dated _____