

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

Present:

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

C.P No. D-4284 of 2015

Petitioners : K-Electric (formerly KESC) and
Karachi Electric Supply Corporation
through Ghulam Muhammad Dars
and Muhammad Yasir Advocates.

Respondent No.1 : M/s Naveena Export (Pvt.) Limited
through Khalil Ahmed Siddiqui, and
Zulfiqar Ali Shar, Advocates.

Date of hearing : 30.03.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made by the IVth Additional District Judge Karachi (East) on 15.05.2015, dismissing Civil Revision No.27 of 2015 filed by the Petitioner against the Judgment and Decree dated 26.01.2015 passed in Civil Suit No.760 of 2009 (the “**Suit**”) by the IIIrd Senior Civil Judge, Karachi (East).

2. As it transpires that the Suit was one for declaration permanent injunction and damages, where the Plaintiff/ Respondent No.1 had impugned a demand made by the Petitioner for payment on account of alleged arrears of electricity dues, and to restrain the Petitioner from disconnecting the supply of electricity to its premises.

3. The Suit was decreed as prayed, but no appeal was preferred. Instead, the Petitioner resorted to filing the aforementioned Revision after lapse of the period of limitation prescribed for filing of an appeal, which inevitably came to be dismissed on the ground that a revision was not maintainable when an appeal lay against the Judgment and Decree. The operative part of the order of the Revisional Court reads as follow:

“I have heard the learned counsel for the applicant and perused the record carefully. It appears that applicant has filed the instant revision against the judgment and decree, instead of filing civil appeal u/s 96 CPC which lies against the judgment and decree. The judgment and decree were passed on 26.01.2015, but no appeal was filed by the applicant within stipulated period of 30 days, however instant revision was filed on 27.03.2015 after expiry of appeal period. The learned counsel for the applicant has not been able to satisfy this court as to whether revision has been filed within the period as specified in filing of appeal u/s 96 CPC no doubt there is no bar in converting revision application into appeal if there is no deficiency of court fee stamp and there is no question of limitation involved, revision can be treated as an appeal. It has been held in PLD 1994 SC 164, that if deficiency of court fee and bar of limitation is not involved then it would only be formality for treating revision as an appeal. In this context I am also fortified by the case law reported in 2001 CLC 1878. In the instant case no any cogent substance has been placed on record to satisfy this court as to why revision application has been preferred while during the specified period of appeal 30 days applicant remained silent. The valuable rights not only of applicant but that of respondent are also involved and the court has to safeguard valuable rights of the parties, as the court is custodian of the rights of people as well. He who seeks justice must approach the court with clean conscience and nobody is permitted to twist the provision of law as per his own design. Law is to safeguard the paramount interest of justice. There is no denial to the fact that legal percept are devised with view to impart certainty, consistency and uniformity to administration of justice to secure it against arbitrariness and individual judgment and malafide.

In view of the above discussion, the instant revision application is dismissed with no order as to cost. Case laws relied upon the learned counsel for the applicant are distinguishable for the facts and circumstances of the instant case.”

4. Proceeding with his submissions, learned counsel for the Petitioner argued that the Revision was competent as it was averred that the trial court had lacked jurisdiction in view of Section 26(6) of Electricity Act, 1910, as per which any dispute between a supplier and its consumer was to be referred to the Electric Inspector, hence the Court had been *coram non judice*. In support of that contention, reliance was placed on the cases reported as Water and Power Development Authority and others v. M/s. Kamal Food (Pvt.) Ltd. Okara and others PLD 2012 SC 371 and Water and Development Authority through Chairman, WAPDA and 4 others v. Abdul Shakoor through Legal Heirs PLD 2008 Lahore 175. It was submitted that the Revision could have been converted into appeal despite lapse of the period of the limitation period for filing of an appeal, as the judgment and decree was a void order and limitation would not operate in respect thereof. On that note, reliance was placed on the cases of Mst. Khurshid Bibi v. Muhammad Rafique 1987 SCMR 1545 and Muhammad Anwar and others v. Mst. Ilyas Begum and others PLD 2013 SC 255. However, no explanation was advanced as to why the Petitioner had not preferred an appeal.

5. Conversely learned counsel for the Respondent No.1 argued that the Revision had not been maintainable and was rightly dismissed. He submitted that the dispute underpinning the Suit did not fall within the parameters of Section 26 of Electricity Act, 1910 and that the Civil Court seized of the Suit had been fully competent and vested with jurisdiction in the matter. He refuted the contention that the judgment and decree constituted a void order and that limitation would not operate and argued that the Petitioner had been negligent in failing to file an appeal and had sought to cover that lapse through the Revision.

6. We have considered the arguments advanced, and examined the record. In the absence of an appeal against the underlying Judgment and Decree and in light of a challenge alternatively mounted by way of the Revision, the case advanced by the Petitioner is founded on the contention that the Revisional Court erred in not converting the Revision into an appeal on the ground of limitation as it failed to appreciate that the underlying Judgment and Decree was void, hence limitation did not operate as a bar.

7. The scope of our inquiry proceeds accordingly, and for purpose of addressing the proposition one may look to the judgments of the Honourable Supreme Court in the cases reported as S. Sharif Ahmad Hashmi v. Chairman, Screening Committee, Lahore and another 1978 SCMR 367, Messrs Blue Star Spinning Mills Limited v. Collector of Sales Tax and others 2013 SCMR 587, and Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi 2014 SCMR 1594.

8. In Hashmi's case (Supra), it was inter alia observed as follows:

Additionally I have to observe here that the petitioner assumed in his arguments before us that a Court always struck down a void order regardless of the consequences of its decision. The assumption is a total fallacy, because a void order is only a type of an illegal order. This is described as void, because it is so illegal that it does not exist in the eye of the law, but this does not alter the fact that it was passed and by describing it as void Courts cannot alter the fact that the order was passed. And an order, which has been passed can create consequences, therefore, there cannot be a hard and fast rule that void order must always be struck down. The true position has been clarified by Munir, C. J., with usual lucidity (I say so with respect) in Yousaf Ali v. Muhammad Aslam Zia, where Munir, C. J., observed at page 117:

"And if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must, unless some statute or principle of law recognising as legal the changed position, of the parties is in operation, fall to the ground because such orders have as little foundation as the void order on which they are founded."

This passage does not mean that a void order is always to be struck down regardless of the consequences of such a decision, but that a void order must be struck down provided there is no statute or principle of law which would make it unjust or inequitable to strike down the void order. This qualification is very important, and that is why, for example, a writ may be refused against a void order if this would enable the petitioner to circumvent the provisions of a statute of limitation. (See this Court's judgment in Civil Appeals 150 and 166 of 1970 (Jalal-ud-Din and others v. Mst. Noor Sain and others) and Jalalud-Din and others v. Shames-ud-Din and others respectively. Similarly in Ghulam Mohi-ud-Din v. Chief Settlement Commissioner and others (PLD 1964 SC 829) a writ petition had been filed against an order which this Court held was void. Nonetheless the writ petition was dismissed on the ground that it was barred by acquiescence on the part of the petitioner. There is also ample authority for the proposition that a writ against a void order may be dismissed if the petitioner is estopped by his conduct from challenging it or if he has been guilty of laches.

9. More relevantly, in Ghulam Hussain's case (Supra), the matter arose from the dismissal of a Special Customs Reference Application as being time barred. The ground raised before the Honourable Supreme Court was that the underlying order of the Customs Authorities holding the petitioner to be guilty of a violation of the Customs Act vide attribution of the offence of smuggling was without jurisdiction and void, therefore, there was no question of the Reference being time barred. In that context, relying on its earlier judgment in the Blue Star Spinning case (Supra), the Apex Court held as follows:

“It is now a well settled law that there is distinction between a void order and a voidable order and it has been held by this Court that party could not sleep over to challenge a void order and it was bound to challenge the same within the stipulated/prescribed time period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In this connection reference may be made from the judgment of this Court reported as "Messrs Blue Star Spinning Mills Limited v. Collector of Sales Tax and others (2013 SCMR 587)", wherein this Court held as under:--

"The Court specifically adverted to the arguments raised by the petitioner's learned counsel that no limitation runs against a void order and held that this is not an inflexible rule; that a party cannot sleep over to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. This is in line with the law laid down by this Court in Chief Settlement Commissioner v. Muhammad Fazil (PLD 1975 SC 331) wherein it is observed that "direct proceedings for having a decision invalidated or set aside may be either by way of appeal, revision or review, initiated by the affected party, in accordance with the relevant law; or they may take the form of suo motu recall of the order by the Court or authority which made it or, lastly action to be taken by way of a regular suit before a Court of general jurisdiction for a declaration as to the invalidity of the order." Similarly in Muhammad Raz Khan v. Government of N.-W.F.P. (PLD 1997 SC 397) at page 400 this view was reiterated in terms as follows:-

"We earnestly feel that unless certain constraints apply against right of challenging void order specially relatable period of knowledge, the same may create complication leading to dangerous results. Principle of justice and fair play does not help those who were extraordinary negligent in asserting their right and despite becoming aware about alleged void order adverse to their interest remain in deep slumber. Therefore, according to our considered opinion, facility regarding extension of time for challenging order cannot be legitimately stretched to any length of unreason period at the whims, choices or sweet will of affected party. Thus, order termed as nullity or void could at best be assailed by computing period of limitation when he factually came to know about the same. When a person presumes that adverse order is a nullity or totally devoid of lawful authority and ignores it beyond the period specified by law of limitation, then he

does so at his own risk. Therefore, in all fairness terminus a quo will have to be fixed, the date of knowledge alleged void order; which too must be independently established on sound basis. in this behalf we derive strength from the observations contained in PLD 1975 Baghdad-ul-Jadid 29 (Syed Sajid Ali v. Sayed Wajid Ali) and 1978 SCMR 367 (S. Sharif Ahmad Hashmi v. Chairman Screening Committee."

10. Needless to say, 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 judicial forum be required to assail that order in a timely manner through appropriate proceedings, as prescribed. As such, a party cannot be allowed to escape the consequence of its own indolence and failure to avail a prescribed remedy so as to adopt a course of action other than that envisaged under the law, and then retrace its steps while seeking to circumvent limitation through recourse to the plea that the order sought to be questioned is void.

11. In view of the foregoing, we are of the view that the Petition is devoid of force and no interference in the Order of the Revisional Court is warranted. As such, the Petition stands dismissed.

Judge

Chief Justice