

IN THE HIGH COURT OF SINDH AT HYDERABAD

R.A. No.S-99 of 2022 : Muhammad Zakir and others V/S M.Iqbal
For the applicant : Mr.Wali Muhammad Khoso, Advocate.
For the respondent : Mr. Nouman Raja Khan
Dates of hearing : 16.11.2023.
Date of announcement : 16.11.2023.

ORDER

Agha Faisal, J. Briefly stated, the applicant filed F.C.Suit No.152/2020 before learned Senior Civil Judge Shahdadpur,pleading accrual of cause of action in 2007.Vide order dated 19.02.2021 the plaint was rejected *inter alia* on account of being barred by limitation. It is pertinent to reproduce the relevant portion of the order herein below:

"It is pertinent to mention here that the old previous litigation is going on between the parties and all suits were filed by the plaintiffs which were dismissed from different forums. Learned counsel for the defendant submitted that the Suit of plaintiff is barred under Limitation Act and the plaintiffs has no cause of action to file Suit against the defendant, further record shows that the application U/S 133 Cr.P.C filed by the defendant against the4 plaintiffs which was dismissed on 07.04.2009, whereas the plaintiffs filed instant Suit against the defendant after passing 11 years. The plaintiffs also filed civil Suit for compensation against the defendant which was also dismissed as withdrawn but they did not approach to this Court within the period of limitation. The plaintiffs filed civil Suit No.156/2011 which was withdrawn with permission to file fresh vide order dated 13.01.2017 but it does not mean that the plaintiffs may file civil Suit against the defendant at any time. Once Limitation start from the date of order it cannot be discontinued. CrI;Misc: application dismissed by the learned Judicial Magistrate on 07.09.2009, the plaintiffs did not file any Suit against the defendant, nor filed any application at any forum. The Suit of plaintiffs is not maintainable, plaint does not disclose cause of action against the defendant and Suit is purely barred under the Limitation Act".

Civil Appeal 29 of 2021 was filed before learned Additional District Judge Shahdadpur and same was dismissed vide judgment dated 15.03.2022, the operative part of which is reproduced herein below:

"I have considered the submissions of learned Advocate for both the parties and have gone through the material available on record. A perusal of contents of plaint filed by the appellant/plaintiff against the3 respondent/defendant reveals that the appellants filed Suit for recovery of damages of Rs.7500,000/- on grounds that the respondent filed CrI;Misc.applcation U/S 133 Cr.P.C which was dismissed by the learned Judicial Magistrate-1 Shahdadpur on 07.09.2009. The respondent challenged such order in CrI: Revision No.01/2009 which was also dismissed by this Court vide order dated 06.10.2010. The respondent again challenged both orders before Honourable High Court Circuit Court Hyderabad in C.P.No.D-372/2011 which was also dismissed in non-prosecution vide order dated 09.10.2019. The respondent filed re-joinder on application U/O 7 Rule 11 CPC wherein submitted that the appellants filed Suit No.156/2011 for recovery of damages on same cause of action before this Court, after filing written statement, the appellants filed statement for withdrawal of Suit which was allowed and Suit of appellants was dismissed as withdrawn with permission to file fresh vide order dated 13.01.2017. The appellants father namely Kifayatullah also filed civil Suit No.7/2007 against the respondent which was also dismissed by the learned trial Court vide order dated 04.05.2011. Moreover, record shows that the old previous litigation is going on between the parties and all suits were filed by the appellants which were dismissed from different forums. Learned counsel for the respondent submitted that appellants/plaintiffs filed the Suit for recovery of compensation of Rs.7500,000/- as damages against the respondent/defendant after passing the 11 years. Suit of the appellants/plaintiffs also filed civil Suit for compensation against respondent/defendant which was also dismissed as withdrawn but they did not approach to learned trial Court within the period of limitation. The appellant/plaintiff filed Civil Suit No.156/2011 which was withdrawn with permission to file fresh vide order dated 13.01.2017. The father of appellants/plaintiffs namely Kifayatullah also filed civil Suit No.07 of 2007 against the respondent/defendant at any time. That the section 3 of the Limitation Act is mandatory in nature and every Suit instituted after prescribed period of Limitation shall be dismissed, although the ground of limitation had not been set up as a defence, if the plaint appears to be barred by limitation. The Suit of the appellants/plaintiffs is hopelessly time barred and barred by Limitation Act the question of limitation is apparent on the face of the record, the Court can proceed without any further proceedings or inquiry. The appellants/plaintiffs have to show that their Suit is in time and their Suit was not filed after period prescribed by law of limitation, once period of limitation starts running it will not stop. The learned trial Court also appreciate in their order dated 19.02.2021 that appellants/plaintiffs filed the instant Suit against the respondent/defendant after passing 11 years. Once limitation starts from the date of order it cannot be discontinued. The civil appeal of appellants/plaintiffs is not maintainable, plaint does not disclose cause of action against the defendant and Suit is purely barred under the Limitation Act.

{Relied upon case law 2006 SCMR 783, which is reproduced as under:
Limitation Act (IX of 1908)

---S.3---Limitation---Duty of Court---Scope---Duty of Court is to determine question of limitation irrespective of the fact whether such plea was raised or not by virtue of S.3 of Limitation Act, 1908 [p.787]B.

The learned trial Court has rightly observed and Suit of appellant/plaintiff is not maintainable. In the circumstances, I find that the learned trial Court has passed impugned order legally and as such, the same do not require interference of this Court.

In view of the above facts and circumstances, the order of the learned trial Court is maintained and does not require any interference, I do not find any merits in this appeal and same is dismissed, with no order as to cost".

It is stated by the learned counsel that since valuable rights were at stake, therefore, the applicant ought not to have been non-suited on the mere technicality of limitation, hence, this revision.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². The Superior Courts have held that an appeal barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicants before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

The delay in preferring the suit has been adequately particularized in the initial order of rejection of plaint and subsequently in the appellate judgment. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / date relied upon to render the findings of the suit being time barred.

The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned orders are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law⁹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is

¹ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

² *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁴ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁵ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁶ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁷ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁸ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

⁹ Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

found to be misconceived and devoid of merit, hence, hereby dismissed, along with listed application/s.

Judge

A.Rasheed/stenographer