

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

C.P. No.D-5830 of 2022

Syed Sarfaraz Hussain
Versus
Nazir Ahmed & another

Date of Hearing: 11.12.2023

Petitioners: Through Mr. Ghulam Sarwar Chandio
Advocate along with petitioner No.2 Syed
Vazarat Hussain Zaidi in person

Respondent No.1: Through Mr. Muhammad Daud Narejo along
with Mr. Muhammad Yousuf Narejo
Advocates

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition is arising out of an order passed by IInd Additional District Judge Karachi East in Civil Revision No.17 of 2022 whereby the order of the executing Court dismissing the execution application, as being barred by time, was maintained.

2. Heard the counsel.

3. It appears that the parties were under litigation since 1976 and conclusively the adjudication came to an end (though in some ancillary proceedings, they (parties) went up to Supreme Court), by an order of this Court on 08.08.2016 in Revision Application No.89 of 1991 when comprehensive order was passed in respect of restoration application seeking restoration of the petition, though earlier several applications for restoration of petition were also considered.

4. It is petitioners' case that effect of Section 15 of the Limitation Act was not provided by the original executing Court as well as by the revisional Court, which considered the execution application as being barred by time. It is their case that all time that was spent during the proceedings wherein decree remain suspended ought to have been excluded from calculating the limitation, which effect has not been given and provided by the two Courts below.

5. When confronted above, learned counsel for respondents concedes that it may have been the case that Article 15 of the Limitation Act was not applied but if the case is being remanded, as stated by counsel, it should be without prejudice to their rights. In case the respondents pleads that even otherwise, after giving effect of Section 15 of the Limitation Act, the execution is barred by time, the Court may consider it, and they (respondents) have all the rights to plead their case before the two forums below afresh.

6. Thus, in view of above and as not opposed by the respondents' counsel the two orders i.e. judgment of the Revisional Court dated 31.05.2022 in Revision Application No.17 of 2022 as well as of the Executing Court dated 15.12.2021 passed in execution application No.01 of 2020 are hereby set aside and the case is remanded to the executing Court. The executing Court is directed to decide the execution application afresh after applying principle as required in terms of Section 15 of the Limitation Act and taking into consideration the observation as made hereinabove.

7. Petition stands disposed of in the above terms.

Judge

Judge