

*Judgment Sheet*  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
 HYDERABAD**

C.P. No.D-441 of 2018

*[Muhammad Ramzan & Others Vs. District & Sessions Judge, Sanghar & Ors.]*

**PRESENT:**

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Arshad Hussain Khan

Date of hearing: 16.08.2023.

Date of decision: 16.08.2023.

Petitioners: Nemo.

Respondents No.1 to 2: Through Mr. Rafique Ahmed Dahri AAG Sindh.

Respondents.3 to 5: Nemo.

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.-** The petitioners through instant constitutional petition have called in question the order dated 21.03. 2017, passed by 1<sup>st</sup> Senior Civil Judge, Sanghar, dismissing Execution Application No. 03 of 2015, filed by the petitioners and the order dated 06.12.2017, passed by District Judge, Sanghar, whereby upholding the order of 1<sup>st</sup> Senior Civil Judge, civil appeal No. 29 of 2017, filed by the petitioners, was dismissed.

2. From the record, it appears that the petitioners on 16.04.2005 filed F.C. Suit No. 27 of 2005, before the court of 1<sup>st</sup> Senior Civil Judge Sanghar, for specific performance of the contract and permanent injunction against the private respondents with the following prayers:-

- “a) That, this honourable court may be pleased to direct the defendants to perform their remaining part of contract by executing the registered sale deed in respect of the suit land in favour of the plaintiffs and to receive the remaining consideration amount of Rs.2, 05, 000/- from the plaintiff on their failure , the Nazir of this honourable Court may be directed to execute the registered sale deed in respect of the suit land in favour of the plaintiffs and the plaintiffs may be allowed to deposit the remaining consideration amount of Rs.2,05,000/- with the Nazir of this Court.
- b) That the defendants may be restrained from selling, leasing, alienating the suit land to anyone else, except the plaintiffs and also from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit land in whatsoever manner by the salves or their agents, associates, subordinates, supporters and successor in interest by issuing permanent injunction against the.
- c) That the costs of the suit be borne by the defendants.

d) That any other relief, which this Honourable Court deems fit and proper may be awarded to the plaintiffs.”

3. The suit remained not contested and eventually decreed as prayed, vide judgment dated 19.12.2009. Thereafter, the petitioners on 26.05.2015, filed Execution Application No.03 of 2015, which was subsequently dismissed by the court being barred by limitation, vide order dated 21.03.2017. The petitioners challenged the said order in Civil Appeal No. 29 of 2017 before the court of District Judge Sanghar, however, the said appeal was also dismissed, vide order date 06.12. 2017. The petitioners having aggrieved by the abovesaid orders filed the present constitutional petition.

4. Heard learned AAG and with his assistance perused the record; the counsel for the petitioners has chosen to remain absent without any intimation, whereas none has shown appearance on behalf of the private respondents despite service.

5. Precisely the question of limitation for filing execution application of a judgment and decree passed in a suit for specific performance of the contract is involved in the present case.

6. The stance of the petitioner in the case is that although the execution application for enforcement of judgment and decree was filed after a delay of more than five years, however, this delay does not affect the vested and substantive rights of the decree holders/petitioners from filing the execution application.

7. There is no cavil with the proposition that the limitation for filing of an execution application is not provided in limitation law as after enforcement of Law Reforms Ordinance, 1972 (XII of 1972) first application for execution of a decree would be governed by residuary Article 181 of Limitation Act, 1908, which provides period of 03 years. From perusal of Article 181 of the Limitation Act, 1908 read with Section 48 of the C.P.C., it becomes clear that for filing first application for execution, three (03) years limitation will apply and any subsequent application will be run by the limitation provided in Section 48, C.P.C. which prescribes a period of six years.

8. The Supreme Court of Pakistan in the case of *Mehboob Khan v. Hassan Durrani* [PLD 1990 Supreme Court 778], while dilating upon the issue in detail, inter alia, has held that:

"The position that emerges from the above discussion is that, as already stated, the first application for execution of a decree would be governed by the residuary Article 181 and the rest of the applications made, thereafter, will be governed by the six years' time limit prescribed by Section 48. Although the original purpose underlying section 48, read along with Articles 181 and 182 of the Limitation Act, before the amendment of the law was to provide maximum limit of time for execution of a decree. But in the changed position as a result of Law Reforms Ordinance, the only effect of section 48 would be to provide limitation for subsequent execution applications after the first one. The result would be that if no application at all is made within the period prescribed by Article 181, the execution application made, thereafter, would be barred under the said Article and as such there would be no occasion to avail of the benefits of the extended time provide by section 48, C.P.C. In other words once an application for execution is made within time so prescribed, any number of applications for execution can be presented within the six years period from the date of decree. This construction, in my opinion is the only construction that can be placed on the consequent legal position arising out of the amendments made by the omission of Article 182 and substitution of six years period in section 48, C.P.C. Otherwise the provisions for repeated applications every three years or taking steps in aid of execution provided for in Article 182 having disappeared section 48 would be become redundant and ineffective."

9. This view was also reiterated in case of *House Building Finance Corporation of Pakistan v. Rana Muhammad Iqbal through L.Rs.*[2007 SCMR 1929]. The Supreme Court of Pakistan in case of *National Bank of Pakistan v. Mian Aziz-ud-Din and 7 others*[1996 SCMR 759], held as under:

"It was consequently held that the first application for execution of a decree would be governed by residuary Article 181 of the Limitation Act and rest of the applications made, thereafter would be governed by the six years period of limitation prescribed by section 48, C.P.C. As would appear from the above observations, the expression "fresh application" occurring in section 48, C.P.C. was also interpreted as not including the first execution application but any subsequent application, after the first application, that was presented before the court. It, therefore, clearly follows that if no application for execution of a decree was made within the period of three years prescribed by Article 181, any application made thereafter would be barred under the said Article and no benefit under section 48, C.P.C. can be availed by the applicant in such a case. It is only after the first application is made within the period prescribed by Article 181 of the Limitation Act, that subsequent applications can be filed within the period provided by section 48, C.P.C. Consequently, the view taken by the High Court and the Special Court that the execution application filed by the petitioners beyond the period of three years was time barred, is not open to exception".

10. It is not the case of the petitioner that the operation of the decree was ever suspended in appeal or its execution was kept in abeyance by the appellate court. Being so, the petitioner was at liberty to execute the decree as the limitation was continue to run from the date of decree unless it was suspended or its execution was kept in abeyance. Under Article 181 of the Limitation Act, 1908, as discussed, the petitioner could file the first execution application within three (03) years from the date of judgment and decree passed in his suit on 19.12.2009; the period of three years would obviously expire on 18.12.2012 as there was no order for suspending operation of the decree nor its execution was ever stayed. The limitation under the rule kept on running against the petitioner and ultimately it expired on 18.12.2012. The execution application, which was first application, having been filed on 26.05.2015 i.e. after more than five years from the date of the decree in suit, as there was no appeal preferred against the said judgment and decree, as such, the execution application was hopelessly time barred.

11. In the case in hand, the 1st Execution Application No.03 of 2015 was made beyond the period of Limitation [i.e. 3 years] as prescribed under Article 181 of the Limitation Act, 1908 [IX of 1908], as such, the conclusion drawn by both the learned courts below are not open to any exception under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Hence, in view of the above discussion, both the 'impugned orders' in our opinion are quite in accordance with law. This being the position, the concurrent findings of the two courts below do not call for interference. Consequently, instant Petition is liable to be dismissed along with the pending application[s].

Foregoing are the reasons for our short order dated 16.08.2023, whereby the petition along with listed application was dismissed with no order as to cost.

JUDGE

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