

# IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No. 147 of 2022

[Muhammad Shafi Nagori through Legal Heirs *versus* Muhammad Ayoub and others]

Date of hearing : 30.01.2024.

Applicant : Muhammad Shafi Nagori, through his Legal Heirs, through Malik Waseem Iqbal, Advocate.

Respondent No.1 : Muhammad Ayoub, through Syed Ehsan Raza, Advocate.

Respondents No.2 & 3 : Nemo.

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** Through the present Civil Revision Application, the Appellant has challenged the Order dated 09.09.2022 [the “**Impugned Order**”] passed in Civil Appeal No.184 of 2021, whereby, the Order dated 17.09.2021 of the learned Executing Court [in Execution Application No.13 of 2020] dismissing the Application of present Respondent No.1, filed under Section 3 of the Limitation Act [1908], has been overturned, as a result of which the above Execution Application of the Appellant has been dismissed.

2. Mr. Malik Waseem Iqbal, Advocate, representing the Applicant(s), has argued that the limitation of three years, in terms of Article 181 of the Limitation Act, would be counted when the last order was passed, which is of 22.02.2022, by this Court in Revision Application No.39 of 2014 preferred by the present Respondent No.1, dismissing the same and maintaining the Judgment and Decree of the Appellate Court, in favour of the Applicant. The Execution Application is filed on 19<sup>th</sup> August 2020, that is, six months after the above Order [passed in Revision proceeding], and is

within time. In support of his arguments, he has cited the case law reported in\_

- i. 1992 S C M R 241  
[*Maulvi Abdul Qayyum versus Syed Ali Asghar Shah and 5 others*] – Abdul Qayyum case
- ii. 2013 S C M R 5  
[*Bakhtiar Ahmed versus Mst. Shamim Akhtar and others*] – Bakhtiar case
- iii. 2021 C L C 909  
[*Director General (Headquarters) Civil Works Organization, Rawalpindi through Authorized Officer versus Muhammad Afsar and others*]; and
- iv. P L D 2009 Karachi 397  
[*Ferozuddin and 11 others versus Mazhar Hussain Shah and 5 others*].

3. On the other hand, Syed Ehsan Raza, Advocate, representing Respondent No.1, has controverted the above arguments and has supported the Impugned Order. Contended that Execution proceeding initiated by the Applicant itself is time barred as it is filed after a period of three years in violation of Article 181 [*ibid*]; because the limitation period is to be counted from date when the first time the Applicant got the Decision in his favour, that is, through the Judgment and Decree dated 3<sup>rd</sup> March 2014, given by the Appellate Court; which was maintained by this Court in the above Revision Proceeding and in the intervening period since no stay was operating, thus, the above Execution Proceeding should have been filed much earlier [*three years after the Appellate Court Decision of 03.03.2014*], but, initiated after six years, is barred by time; that Respondent No.1 [judgment debtor] should not be at mercy of decree holder/ the Applicant, as far as the implementation of judgment and decree is concerned. He has cited the following case law\_

- i. P L D 1985 Supreme Court 153  
[*Hakim Muhammad Buta and another versus Habib Ahmed and others*]; and
- ii. P L D 2020 Sindh 652  
[*Mst. Noor Jehan and others versus Miss Shahnaz and 3 others*] – Mst. Noor Jehan.

4. Undisputed facts are that present Applicant has filed Suit No.409 of 2005 against the Respondents, *inter alia*, for declaring Sale Agreement dated 09.01.1999 between the Respondents as forged and fictitious document and direction to Respondent No.1 [Muhammad Ayoub] for handing over the subject property to the Applicant, which the latter has purchased through a Sale Deed executed by Respondent No.3 [Mrs. Parveen]; subsequently, Respondent No.1 also instituted a Suit No.896 of 2007 and both Suits were decided by a consolidated Judgment dated 30.03.2013, dismissing the Suit of present Applicant and decreeing that of present Respondent No.1, which Judgment was challenged by the Applicant by filing two Civil Appeal Nos.137 and 140 of 2013, which were decided by the Appellate Court in favour of the Applicant, by decreeing the Applicant's Suit and dismissing the Suit filed by Respondent No.1 vide Judgment and Decree dated 03.03.2014, which was challenged by the Respondent No.1 in Civil Revision Application No.39 of 2014, before this Court, but unsuccessfully and the Judgment dated 22.02.2020 of this Court has upheld the Appellate Decision. These Judgments are available at pages-107, 203 and 309 of the *Lis* record.

5. The Applicant filed Execution Application No.13 of 2020, presented on 19.08.2020, for implementation of the Judgment and Decree dated 3<sup>rd</sup> March 2014 [*of the Appellate Court*], which was maintained in Revision [*supra*], was opposed by the Respondent No.1, *inter alia*, by filing the Application under Section 3 of the Limitation Act [1908], that the Execution proceeding itself is time barred as it is filed after a period of three years from the Judgment and decree in violation of Article 181 of the Limitation Act. After hearing the parties, the learned Executing Court vide Order dated 17.09.2021 [*at page-25-C*] dismissed the above Application of Respondent No.1, which is overturned through the Impugned Order.

6. Précis of the case law cited by the Applicant's Counsel is that rule of merger equally applies to the decree passed in revisional jurisdiction [besides the Appellate Court]. The issue at hand has been comprehensively decided in the Abdul Qayyum case [*supra*] in which an execution petition was filed on 5<sup>th</sup> January 1987, after the judgment and decree of the High Court dated 18.11.1986 was pronounced; the Decree of the Trial Court was of 27<sup>th</sup> April 1981, which was challenged in appeal unsuccessfully [vide order dated 18.10.1981], followed by the above revision order of the High Court. The executing court declined the request of respondent [of the reported judgment] and allowed the Execution which was appealed against without any success, but, eventually in the revisional jurisdiction the learned High Court reversed the decisions emanating from the Execution Proceeding. While interpreting Article 181 [of the Limitation Act], it is held, that the time period will start when the right to accrue arise to file the execution, which "*legitimately arises when Revision against a decision of the lower Court is, one way or other, disposed of.*"; whereas, in Bakhtiar's case [*ibid*] the Honourable Supreme Court has further clarified that time to file the Execution proceeding will start when finally a matter is decided through appeal or revision by the High Court and the time consumed in pursuing civil petition before the Supreme Court, unless the impugned decision is under suspension, is not excluded from computing the limitation; the CPLA [Civil Petition Leave to Appeal] was dismissed, because, the petitioner filed the execution petition on 3<sup>rd</sup> December 2007, after the leave refusal Order dated 31<sup>st</sup> March 2005, whereas, through the judgment dated 17<sup>th</sup> March 2003, the civil revision preferred by the same petitioner was partly accepted / decreed; the Apex Court is of the view that the right accrued to file the execution proceeding from the date of judgment of the High Court.

7. The crux of the case law relied upon by the Respondent's Counsel is about the scope of Revisional Jurisdiction of this Court under Section 115 of CPC, which is different from appellate jurisdiction and is restricted; during pendency of civil revision in the High Court, the Executing Court decided the execution proceeding, as no stay was operating, is approved by this Court [*the reported judgment of Mst. Noor Jehan, ibid, is cited by the Respondent's counsel, to augment his arguments, that even a Civil Revision was pending before this Court, where no stay was granted, the Applicant could have pursued his execution application, but he did not, hence, the same is barred by Limitation*]; Section 3 of the Limitation Act is mandatory and it is the duty of the Court to notice the point of limitation, whether the plea of limitation was raised or not and that the waiver of the question of limitation is not permissible, even where the period of limitation is prescribed by a special or a local law.

8. To the facts of present *Lis*, the case law cited by the Applicant's counsel is applicable, because, undisputedly Civil Revision was finally decided by this Court on 22.02.2020, **six months** thereafter the Execution Application was filed [as discussed in the foregoing paragraphs], and since, the revisional proceeding is also covered by the principle of Merger as held above, hence, the Execution Application was within time and is not adversely affected by Article 181 of the Limitation Act. The Appellate Court did not appreciate the case law in overturning the Decision of the Executing Court and thus the Impugned Order is illegal and cannot be sustained.

9. The present *Lis* should also be looked at from another angle. Once the Judgment and Decree is given in favour of an individual, which has attained finality, in particular concerning his proprietary right, cannot be

eclipsed, except, when there is an express provision of substantial law, that also requires liberal interpretation, so that the legitimate ownership right is safeguarded, because proprietary rights are governed and protected under Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973, and not merely by an ordinary statute.

10. Consequently, the Impugned Order of the Appellate Court is set aside and that of the Executing Court, is restored.

**Judge**

**Karachi.**

**Dated: 06.01.2025.**

*Riaz / P.S.*