

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD**  
**Civil Revision Application No. S-238 of 2024**

Applicant: Ali Asghar Shah alias Jumon Shah (since deceased) through his legal heirs (a) Ali Muhammad, (b) Shafi Muhammad, (c) Wali Muhammad, (d) Mst. Bibi Saran, (e) Mst. Bibi Husna, (f) Mst. Bibi Makal. Through Mr. Noor Ahmed Memon, Advocate.

Respondent No.7to13: Muhammad Hanif son of Ghulam Rasool Shah and others through Mr. Muhammad Ishaque Khoso, advocate.

For Official Respondents: Mr. Muhammad Yousif Rahpoto, A.A.G.

Date of hearing: 12-08-2025

Date of Judgment: 16-09-2025

**JUDGMENT**

**Jan Ali Junejo, J. ---** This Civil Revision Application has been preferred under Section 115 of the Code of Civil Procedure, 1908, challenging the order dated 05-08-2024 (hereinafter referred to as the “*Impugned Order*”) passed by the learned District Judge, Badin (hereinafter referred to as the “*Revisional Court*”) in Civil Revision Application No. 02 of 2024, whereby the learned District Judge dismissed the revision application and upheld the order dated 12-12-2023 passed by the learned Senior Civil Judge, Badin (hereinafter referred to as the “*Executing Court*”) in Execution Application No. 05 of 2020.

2. The brief facts leading to this revision application are that the respondents/decreed holders filed Old F.C. Suit No. 54 of 2010 (New F.C. Suit

No. 137 of 2013) claiming their shares in the suit land against the applicants/judgment debtors. After contest, the suit was decreed in favor of the plaintiffs/respondents vide judgment and decree dated 23-12-2013. The applicants/judgment debtors filed Civil Appeal No. 7 of 2014, which was dismissed by the learned 2nd Additional District Judge, Badin vide judgment dated 30-09-2014. Subsequently, the applicants filed Civil Revision No.224 of 2014 before this Court. The decree holders filed Execution Application No. 05 of 2020, which was initially dismissed by the learned Senior Civil Judge, Badin on the ground of limitation. This dismissal was upheld by the District Court. However, upon further revision by the decree holders (Civil Revision No. 195 of 2022), this Court vide order dated 23-10-2023 allowed the revision, set aside both the impugned orders, and remanded the matter to the executing court for deciding the execution application on merits.

3. Following the remand, the learned Senior Civil Judge, Badin vide order dated 12-12-2023 allowed the execution application. The applicants challenged this order through Civil Revision No. 02 of 2024 before the District Court, which was dismissed vide order dated 05-08-2024. Hence, this revision application.

4. The learned counsel for the applicant has argued the execution application was filed after the expiry of six years from the date of decree, making it barred by limitation under Article 188 of the Limitation Act, 1908. It is further contended that the learned courts below committed material illegality by allowing the execution application without proper consideration of the law of limitation and is liable to be dismissed.

5. The learned counsel for the respondents has argued that the issue of limitation has already been determined by this Court in Civil Revision No. 195 of 2022, wherein it was held that in inheritance matters between legal heirs,

limitation would not be strictly construed. It is further argued that no stay order has been passed by any superior court against the execution of the judgment and decree dated 23-12-2013. It is further contended that mere filing of an appeal or revision does not automatically operate as a stay of execution proceedings. It is further contended that the executing court has rightly followed the directions of this Court in the earlier revision application.

6. Having considered the arguments advanced by learned counsel for the parties and carefully examined the record, it is observed that this Court, in Civil Revision No. 195 of 2022, vide order dated 23-10-2023, has already adjudicated upon the issue of limitation in the context of inheritance matters. The relevant excerpt from the said order is reproduced as under:

*“Both courts, learned trial and appellate court have overlooked one important factor. The matter pertains to distribution of the inheritance amongst the legal heirs/ parties hereto. Once the judgment and decree is given in favour of a party which is maintained up-to the appellate court and in the Revisional jurisdiction no stay is operating, the Execution proceeding should not have been dismissed on the ground of limitation, inter alia, because it is also an established Rule by now as decided in number of decisions, that for inheritance matters, limitation will not be strictly considered. It is also worth mention here that the inheritance matters/. Cases are governed by the Islamic Law of inheritance, if the parties are Muslims, which is on a higher pedestal than the ordinary statue. The Legislature has also expressed the intention by enacting The Enforcement of Shariah Act, 1991.*

*In view of the above discussion, both the impugned decisions suffer from material irregularities and legality which requires correction in this supervisory jurisdiction. Consequently, the Revision Application is allowed, both the decisions are set aside. Mater is remanded to the Executing Court for deciding the Execution No. 05 of 2020, on merits, as per law, and within four (04) weeks from the date of receipt of this order.”*

7. The applicants have not assailed the order dated 23-10-2023 before the Honourable Supreme Court of Pakistan. Consequently, the finding on the question of limitation has attained finality and is binding upon all parties to the *lis*. The executing court was duty-bound to implement the directions contained in that order with letter and spirit. The question of limitation and the maintainability of the execution application has been comprehensively dealt

with and decided by this Court in Civil Revision No. 195 of 2022. The principle of res judicata prevents the re-litigation of the same issues between the same parties. The applicants cannot be permitted to raise the same contentions repeatedly in successive proceedings. This Court reiterates its earlier finding that inheritance matters are governed by Islamic law, which takes precedence over ordinary statutory provisions. The Enforcement of Shariah Act, 1991, reinforces the legislative intent to give primacy to Islamic principles in matters of inheritance. In such matters, technical objections of limitation should not be allowed to defeat substantive rights of inheritance. Reliance is placed on the case of ***Mohammad Boota (deceased) through L.Rs. and others v. Mst. Fatima daughter of Gohar Ali and others (2023 SCMR 1901)***, wherein the Honourable Supreme Court of Pakistan observed that: “.....no limitation runs against matters involving inheritance rights of a female where she has been defrauded of her right by her family. It has also been held in *Khan Muhammad through LR.s. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476)* that in cases of inheritance, it is well settled that a claimant becomes a co-owner/co- sharer of the property left by the predecessor on his death and the sanction of inheritance mutation is meant for updating the revenue record for fiscal purposes. Where a person has been denied the right of inheritance that would give them cause of action and that no limitation would run against a co-sharer”. It is a well-settled proposition that upon the death of a property owner, succession opens instantly, and the property automatically vests in the legal heirs without requiring any formal intervention or act by the Revenue Authorities or any other State agency. Furthermore, the passage of time does not extinguish inheritance rights, as all co-heirs immediately and automatically become co-sharers in the estate upon the demise of their predecessor-in-interest. Limitation, therefore, does not commence from the date of death nor from the date of mutation (if any), but rather from the point when the rights of any such co-sharer or co-inheritor are explicitly denied. In the case of ***Zohra Bibi and another v. Haji Sultan Mahmood and others (2018***

SCMR 762), the Honourable Supreme Court of Pakistan authoritatively held as under:

*“The cardinal principle of Mohammadan law is that the inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by the dint of settled law. Sanction of inheritance mutation, issuance of succession certificate etc. are the procedural matters regulated by the procedural laws just to make the records in order and also for fiscal purposes”.*

8. The right of inheritance under Muslim law is a continuing right. The cause of action to claim this right arises upon the death of the predecessor but recurs perpetually so long as the heir is excluded from or denied his/her lawful share. Consequently, no limitation applies to suits instituted to establish such inheritance rights where the claimant has been defrauded, denied, or excluded from his/her inheritance. This principle is recognized in the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, which provides that Muslim personal law governs all questions of succession, notwithstanding any custom or usage, and is reinforced by the Enforcement of Shari’ah Act, 1991, which affirms the primacy of Sharia over conflicting limitations. Since execution proceedings are a continuation of the original suit determining rights under Muhammadan Law, decrees or orders arising from such suits are likewise exempt from the law of limitation, reflecting both statutory mandate and judicial consensus.

9. Furthermore, the present Civil Revision Application is not maintainable and is expressly barred under Section 115(3) of the Code of Civil Procedure, 1908, as the learned District Judge has already exercised revisional jurisdiction under Section 115(2), CPC by dismissing Civil Revision No. 02 of 2024 vide Impugned Order dated: 05-08-2024. Section 115(3), of the Code says: *“If any application under subsection (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them”*. The statutory scheme prohibits a second

revision against an order passed in the exercise of revisional powers by the District Court, and no further recourse under Section 115, CPC is permissible once the District Court has adjudicated the matter in its revisional capacity. Neither the Applicant nor his counsel ever sought to convert this Civil Revision Application into a Constitutional Petition. Consequently, this Court cannot, *sua sponte*, assume constitutional jurisdiction, and the application is not maintainable on this basis.

10. Section 115 of the Code of Civil Procedure, 1908 vests the High Court with revisional jurisdiction to call for the record of any case decided by a subordinate court where no appeal lies, provided such court has assumed jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted illegally or with material irregularity in the exercise thereof. This jurisdiction is supervisory, not appellate; it does not permit re-appreciation of evidence or substitution of concurrent findings unless vitiated by jurisdictional error, misreading or non-reading of evidence, or a perverse conclusion.

11. There is no cavil to the proposition that an executing Court is ordinarily not empowered to travel beyond the terms of the decree, as consistently held by the Honourable Superior Courts. However, while exercising jurisdiction under Section 47, C.P.C., the executing Court may examine the executability of a decree *if it is satisfied that the decree is a nullity in the eyes of law, has been passed by a Court lacking jurisdiction, its execution would not advance any legal right of the decree-holder, or it has been rendered in violation of any statutory provision*. Only in such circumstances may the executing Court lawfully refuse to execute the decree. Reliance is placed on the case *Habib Bank Limited v. Mst. Parveen Qasim Jan and others* (2014 SCMR 322). Similarly, in case of *Fakir Abdullah and others v. Government of Sindh through Secretary to Government of Sindh, Revenue Department, Sindh Secretariat, Karachi and others* (PLD 2001 Supreme Court 131), the Honourable Supreme Court of Pakistan observed as under:--

*“There is no cavil with the proposition that a Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, few of them have been referred by the learned counsel for the petitioners in his arguments but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree-holder if refused to be executed or the decree has been passed in violation of any provision of law, say as in the instant case apparently petitioners obtained an ex parte decree in their favour without showing that what was their legal character to institute the suit in terms of section 42 of the Specific Relief Act and if the relief so claimed by them is not granted how he/they will be prejudiced or if the Court came to conclusion that by granting the relief to the decree-holder the functioning of Government administration has been interfered with according to section 56(d) of Specific Relief Act”.*

12. It is a settled principle that success in a civil suit is rendered illusory if the decree-holder is unable to obtain the actual relief granted by the court. The very object of civil adjudication is not merely to declare rights in theory but to ensure their enforcement in practice. Therefore, to make civil justice meaningful and effective, the scheme of the Code of Civil Procedure must be understood as encompassing not only the expeditious disposal of suits but also the prompt execution of decrees. Unless the decree-holder is able to enjoy the fruits of the decree without unreasonable delay, the solemn adjudication of the court is reduced to a paper declaration, depriving the litigant of substantive justice. The emphasis of civil jurisprudence must therefore shift from a narrow focus on disposal of suits to a broader vision of securing relief to the litigant in real terms. This requires a conceptual change in the administration of civil litigation: the court's duty does not end with the pronouncement of a decree but extends to ensuring that such decree is translated into effective relief. Order XXI of the Code being a complete code designed to ensure that execution proceedings culminate in real and enforceable relief without multiplicity of suits. Thus, unreasonable delay in execution proceedings is not a mere procedural defect but a denial of substantive justice. The courts must, therefore, approach execution with the same urgency and seriousness as the trial of suits, ensuring that the decree-holder is not left to wage another long battle to enforce what has already

been adjudicated in his favour. The efficiency and credibility of the civil justice system depend as much on the speedy disposal of execution proceedings as on the expeditious trial of suits, for it is only through effective execution that the rule of law is truly vindicated.

13. Order XXI of the Code of Civil Procedure is recognized as a complete code in itself dealing exclusively with the law of execution of decrees and orders. The legislature, in its wisdom, has provided an exhaustive scheme under this Order covering the rights, obligations, remedies, and procedures relating to execution. The provisions therein lay down the manner in which a decree may be executed, whether by delivery of property, attachment and sale, arrest and detention of the judgment-debtor, or appointment of a receiver. It also addresses objections by the judgment-debtor, claims by third parties, questions relating to delivery of possession, execution of cross-decrees, transferee decrees, resistance or obstruction in execution, and even the rights of auction purchasers. The superior Courts have consistently held that all questions arising between the parties to the suit or their representatives relating to execution, discharge, or satisfaction of the decree must be determined by the executing court under Order XXI itself, thereby barring the institution of a separate suit for such matters. This principle ensures that execution proceedings are not unnecessarily prolonged through collateral challenges, but are decided conclusively within the framework of the execution court. Judicial pronouncements, including those of the Supreme Court, have emphasized that Order XXI is a self-contained code, and the remedies provided therein are exhaustive, leaving little room for resorting to general provisions of the CPC except where specifically permitted. For instance, objections under Sections 47 and Rules 97 of Order XXI comprehensively cover disputes regarding executability of a decree or resistance to possession, and any party aggrieved is bound to avail of these remedies instead of initiating independent litigation. Thus, Order XXI embodies the principle that execution is



the culmination of litigation and must be carried out speedily, effectively, and without multiplicity of proceedings. In this sense, it is rightly described as a complete code, providing for all situations and their corresponding resolutions within its own ambit.

14. Order XXI Rule 22 of the Code of Civil Procedure, 1908, lays down the requirement of issuing a notice to the judgment-debtor before execution of a decree, particularly in circumstances where execution is sought after the lapse of a certain period or when execution is being initiated against a legal representative of the judgment-debtor. The purpose of this provision is to safeguard the principles of natural justice, by affording the judgment-debtor or his representative an opportunity to show cause as to why the decree should not be executed against him. Thus, Rule 22 ensures that execution proceedings are not carried out behind the back of the party against whom coercive process is sought to be enforced. At the same time, the legislature, conscious of the need to balance fairness with efficiency, incorporated a proviso to sub-rule (1). This proviso empowers the executing court to dispense with the issuance of such notice if, in its judicial discretion, it considers that requirement unnecessary or redundant in the facts of the case. Importantly, the court must record reasons in writing for exercising this discretion. The mandate to record reasons ensures accountability and transparency in the exercise of judicial power, while simultaneously preventing abuse of process by judgment-debtors who may otherwise employ dilatory tactics to delay execution. Accordingly, it becomes expedient to reproduce the language of Order XXI Rule 22(1) CPC along with its proviso to appreciate the legislative intent:

*“22. Notice to show cause against execution in certain cases.— (1) Where an application for execution is made —*

*(a) more than one year after the date of the decree, or*

*(b) against the legal representative of a party to the decree, [or where an application is made for execution of a decree filed under the provisions of*

*section 44A,] the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:*

*Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.*

*(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issuance of such notice would cause unreasonable delay or would defeat the ends of justice”.*

15. This Court has, on numerous occasions, reaffirmed the principle that issuance of a show cause notice to the Judgment Debtor may be dispensed with under the Proviso to Rule 22(1) of Order XXI of the Code, provided the stipulated conditions are fulfilled. Specifically, if the execution application is filed within one year of the last order and the Executing Court is satisfied that issuing such notice would result in unreasonable delay or defeat the ends of justice, the requirement may be waived.

16. It is a well-settled principle of law that the mere filing of an appeal or revision does not, by itself, operate as a stay of proceedings under the decree or order impugned. Unless specifically ordered by the Appellate or Revisional Court, the execution of such decree shall not be suspended merely because an appeal has been preferred. However, where sufficient cause is shown, the Appellate or Revisional Court is empowered to order a stay of execution of the decree to prevent irreparable loss or miscarriage of justice.

17. An executing Court is legally bound to implement a decree in its true letter and spirit and is not empowered to withhold or postpone execution merely on the ground that an appeal, revision, or constitutional petition is pending, unless a specific and valid stay order has been granted by the competent

Appellate or Revisional Court. The rationale behind this principle is to uphold the finality and enforceability of judicial determinations, ensuring that a successful litigant is not deprived of the fruits of litigation merely due to the pendency of further proceedings. It is a matter of judicial concern that judgment debtors frequently employ delaying tactics, such as filing frivolous applications, seeking repeated adjournments, or relying upon pending proceedings without obtaining any formal stay order, to frustrate the object of a decree. Such conduct not only causes undue hardship to decree-holders but also undermines the sanctity and efficacy of judicial decisions. Allowing such practices to continue unchecked would encourage abuse of process, erode public confidence in the justice system, and render decrees illusory rather than effective. Therefore, it is imperative that Executing Courts ensure that execution applications are diligently processed and not adjourned or kept pending indefinitely in the absence of explicit stay orders from superior forums. The judicial mandate requires prompt and lawful enforcement of decrees to protect the integrity of the judicial process and secure the rights of decree-holders. Reliance is placed on the guiding principle laid down by the Honourable Supreme Court of Pakistan in the case of *Muhammad Abdullah v. Yatim Khana Khalqia, Sargodha through its Manager and others* (2004 SCMR 471), wherein it was observed as under:

*“Having noticed unfortunate facts of this case as also the gimmickry of the petitioner whereby in an unscrupulous manner he successfully stalled the execution and deprived the respondent Yatim Khana for more than two decades, I am constrained to observe that unless and until this malady in the judicial system is remedied at the earliest otherwise it would be too late to mend the same as the poor litigants are losing their confidence in the prevalent judicial system. To ameliorate this situation, I suggest that some legislative measures should be made whereby the decree-holder is protected from the evil gimmicks of the judgment-debtor and propose as under:--*

*(a) That the trial Court while passing the decree should also give order/direction to the judgment-debtor for the implementation of the same which naturally would be few days more than the period provided for appeal/revision. The arrangements should also be made that the certified copies of the order are provided to the respective parties without any delay.*

*(b) If the decree is stayed by the Appellate Court then the trial Court should close the chapter. In the similar manner the Appellate Court if upholds the decree should also give sometime for its implementation and fix the case before itself and ensure its compliance unless the operation of the decree is suspended by a higher forum.*

*(c) That the provision of section 12(2), C.P.C. which provides for challenge to the decree on the ground of fraud, misrepresentation and lack of jurisdiction should also be construed strictly and in case such an application is filed by any of the parties, the same should be scrutinized by the Court passing the decree minutely and if the same is found to be frivolous or vexatious, it should be dismissed summarily with a heavy fine". Emphasis supplied.*

18. After careful consideration of the arguments advanced by both sides and examination of the record, this Court finds that:

- The question of limitation has been conclusively determined by this Court in Civil Revision No. 195 of 2022, and the same cannot be re-agitated.
- The executing court has correctly followed the directions of this Court and has not committed any illegality or material irregularity.
- The learned District Judge has rightly dismissed Civil Revision No. 02 of 2024 as no grounds for interference were made out.

19. In light of the foregoing discussion, this Court finds no merit in the present Civil Revision Application, which is accordingly DISMISSED. The orders passed by the learned courts below are hereby affirmed. There shall, however, be no order as to costs.

**JUDGE**