

**Order Sheet**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Revision Application No. 109 of 2008**

**Date of hearing : 11.03.2013.**

**Applicant : Naimatullah Khan through his legal heirs,  
through Mr. Shamsuddin Memon,  
Advocate.**

**Respondents 1 to 10 : Ashfaq Ahmed and 09 others  
through Mr. Muhammad Umer Daudi,  
Advocate.**

**Respondent No.11 : Called absent.**

**Respondents 12 to 14 : Through Mr. Muhammad Azeem  
Panhwar, State Counsel.**

## ORDER

**NADEEM AKHTAR, J.-** This Order shall dispose of two applications ; namely, C.M.A. Nos. 228 of 2010 and 444 of 2010. The applicants have filed C.M.A. No. 444 of 2010 under Section 151 CPC praying that this Revision Application may be entertained by this Court *suo motu* under its inherent and supervisory jurisdiction. C.M.A. No. 228 of 2010 has been filed on behalf of respondents 1 to 10 praying that this Revision Application may be dismissed as the same is barred by time.

2. The relevant facts of this case are that respondents 1 to 10 filed II.C. Suit No.104/1997 against the applicants and the official respondents for declaration and injunction praying that the sale deeds dated 30.06.1996 executed by the respondent No.11 Ittefaq Hussain in favour of Naimatullah Khan (the deceased), the predecessor-in-interest of the applicants, in respect of properties bearing Nos. 1139/F, 1139/2, 1139/3 and 1139/4, Ward 'F', Hyderabad, be declared as illegal and void, and that the official respondents be restrained from mutating the said properties on the basis of the said sale deeds. The suit filed by respondents 1 to 10 was dismissed by the trial court vide judgment delivered on 28.02.2005 and decree prepared / signed on 08.03.2005. Being aggrieved with the judgment and decree of the trial court, respondents 1 to 10 filed Civil Appeal No. 89 of 2005, which was allowed vide judgment delivered on 06.08.2008 and decree prepared / signed on 26.08.2008. Against the judgment and decree passed by the appellate court, whereby the judgment and decree of the trial court have been set aside, the applicants have filed this Revision Application.

3. The main controversy at this stage is whether this Revision Application was filed by the applicants within time, or whether the same is barred by time. The impugned judgment was delivered on 06.08.2008, and the impugned decree was prepared / signed by the appellate court on 26.08.2008 after 20 days of the judgment. The applicants applied for the certified copies of the impugned judgment and decree on 01.11.2008, that is, after 86 days of the impugned judgment and after 66 days of the impugned decree. The fee was estimated on 03.11.2008, which was paid and the stamps were supplied by the applicants on the same day. The copies were certified on 05.11.2008, and the same were delivered to the applicants on 12.12.2008. This Revision Application was presented on 24.12.2008, that is, 12 days after receiving the certified copies. After excluding the time consumed in obtaining the certified copies, if the period is computed from the date of the impugned judgment, this Revision Application was filed on the 98<sup>th</sup> day. However, if the period is computed from the date of the impugned decree, this Revision Application was filed on the 78<sup>th</sup> day.

4. Through C.M.A. No. 228 of 2010, respondents 1 to 10 have raised a preliminary objection that this Revision Application is barred by time. Mr. Muhammad Umer Daudi, the learned counsel for respondents 1 to 10, submitted that the word “decision” used in the second Proviso of Section 115(1) CPC in this case shall mean only the impugned judgment and shall not include the impugned decree, as the “decision” was given and announced on 06.08.2008 when the impugned judgment was delivered. He submitted that the applicants ought to have filed this Revision Application within 90 days from the date of the impugned judgment / decision and not from the date of the impugned decree. He further submitted that the period of 90 days specifically provided in the second Proviso of

Section 115(1) CPC for filing a Revision Application is mandatory, and since this Revision Application was not filed within the said mandatory period of 90 days from the date of the impugned judgment / decision, the Application is barred by time. He then submitted that the delay in filing a Revision Application cannot be condoned under the provisions of the Limitation Act, 1908, (**the Act**), as the provisions of the Act are not applicable to Revision applications. The learned counsel argued that the time consumed in obtaining the certified copies cannot be excluded from the mandatory period of 90 days provided in Section 115 CPC, as the benefit of Section 12(2) of the Act is applicable only to appeals, applications for leave to appeal and applications for review, and not to Revision Applications. It was prayed on behalf of respondents 1 to 10 that this Revision Application may be dismissed in view of the above.

5. In support of his submissions, the learned counsel for respondents 1 to 10 cited and relied upon (1) *Mst. Roshi and others V/S Mst. Fateh and others, 1982 SCMR 542*, (2) *Hafiz Ali Ahmed through legal heirs V/S Muhammad Abad and others, PLD 1999 Karachi 354*, (3) *Muhammad Islam V/S Amir Sher Bahadur, 2004 MLD 1029*, and (4) *Said Muhammad V/S Sher Muhammad and 2 others, 2001 MLD 1546*. The case of *Mst. Roshi* (supra) has no relevance with the facts and circumstances of this case, as the effect of non-compliance of Rule 31 of Order XLI CPC was discussed therein. The case of *Hafiz Ali Ahmad* (supra) is not applicable in the present case as the Revision Application in the said case was filed in the year 1986, that is, prior to the amendment made in the year 1992 in Section 115 CPC by adding the second Proviso in Section 115(1) CPC, whereby the limitation of 90 days was introduced for the first time for filing Revision Applications. I may add here that the effect of the afore-mentioned amendment in the year 1992 is

discussed in the later part of this order. In *Muhammad Islam* (supra) and *Said Muhammad* (supra), it was held by the learned Single Judges of the Peshawar and Lahore High Courts, respectively, that the benefit of Section 12(2) of the Act was not available to Revision Applications.

6. On the other hand, Mr. Shamsuddin Memon, the learned counsel for the applicants, strongly asserted that this Revision Application is not barred by time and is not liable to be dismissed, as the same was filed within time. He submitted that the applicants had applied for the certified copies of the impugned judgment and decree within time ; they paid the cost and supplied the stamps on the same day when the fee was estimated ; and after excluding the time in obtaining the certified copies, the Revision Application was filed within 90 days of the decree. He further submitted that the impugned judgment and decree have been passed in violation of the settled principles of natural justice, as the applicants were condemned unheard. He contended that the applicants, who are the legal heirs of the original defendant No.1 / the deceased, were never served before the appellate court. The learned counsel pointed out from the record that there was no order by the appellate court for pasting of the notice, but the notice was pasted at the old address of the applicants where they were not residing. The service was held good by the appellate court on the basis of pasting of the notice, whereafter the appellate court proceeded with the appeal and passed the impugned judgment and decree in the absence of the applicants and without hearing them. The learned counsel argued that the service could not be held good on the applicants and the appeal could not be decided in their absence on the basis of pasting of the notice without a specific order by the appellate court for substituted service by way of pasting. In the end, it was submitted by the learned counsel for the applicants that, without

prejudice to his above submissions, this Court in its inherent and supervisory jurisdiction can entertain this Revision Application *suo motu*, even if it is barred by time.

7. The cases cited and relied upon by the learned counsel for the applicants in support of his submissions were (1) *Muhammad Mian V/S Syed Shamimullah and 2 others, 1995 SCMR 69*, (2) *Haji Ibrar Hussain and another V/S Abdur Rashid and 9 others, 1990 MLD 1482*, and (3) *Mst. Baggi V/S Mst. Jan Begum and 7 others, 1985 CLC 1573*. In *Muhammad Mian* (supra), it was held by the Hon'ble Supreme Court that a Revision Application, even though filed beyond the period of 90 days, could be entertained if the Court was satisfied as to the reasons for delay ; such supervisory jurisdiction can be invoked by the Court *suo motu*, and the Court can also make such order in the case as it thinks fit. The order of the High Court, whereby the Revision Application was dismissed on the ground of limitation, was set aside by the Hon'ble Supreme Court and the case was remanded to the High Court for decision on merits. In *Haji Ibrar Hussain* (supra), it was held by a learned Single Judge of the Lahore High Court that in the presence of exceptional circumstances or where the order sought to be reviewed was palpably illegal, void or without jurisdiction, High Court would not refuse to exercise its revisional powers under Section 115 CPC to rectify the error. In *Mst. Baggi* (supra), it was held by a learned Single Judge of the High Court of Azad Jammu and Kashmir that if it is accepted by consensus that ordinarily a period of 90 days may be observed for filing a Revision Petition, even then High Court is vested with inherent jurisdiction to entertain the Petition at any time.

8. I shall first deal with the objection raised by the learned counsel for respondents 1 to 10 that the applicants ought to have filed this Revision Application within 90 days from the date of the impugned judgment and not from the date of the impugned decree, as the decision was given and announced on 06.08.2008 when the impugned judgment was delivered, and the word “decision” used in the second Proviso of Section 115(1) CPC in this case shall mean only the impugned judgment and shall not include the impugned decree. As observed earlier, this Revision Application was filed on the 98<sup>th</sup> day if the period is computed from the date of the impugned judgment after excluding the time consumed in obtaining the certified copies, and on the 78<sup>th</sup> day if the period is computed from the date of the impugned decree. Therefore, if the period is computed from the date of the impugned judgment, there was a delay of eight (08) days in filing this Revision Application. But if the period is computed from the date of the impugned decree, then the Revision was filed twelve (12) days prior to the expiration of 90 days, and as such the same was filed within time. The questions now arise as to whether or not the impugned decree falls within the definition of the word “decision” used in the second Proviso of Section 115(1) CPC, and whether by computing the period of 90 days provided in the said Proviso from the date of the impugned decree, can this Revision be treated to have been filed within time ? Fortunately, I was able to trace a reported case of this Court that answers these questions. It was held *inter alia* by a learned Single Judge of this Court in *Muhammad Siddique and others V/S Muhammad Bux and others, 2003 MLD 542*, that judgment in the first appeal was never complete without decree, as in the absence of decree, it was not even executable ; the decree is, therefore, an essential component of the decision ; the first appeal could be treated as a matter decided finally only after the preparation of decree ; thus the decision referred in Section 115 CPC is the combination of judgment and decree ; any of them singly cannot be

treated as a decision ; and since the judgment and decree both collectively are to be treated as decision, the time shall start to run from the date of decree following the judgment. In my humble opinion, the principles laid down in the aforementioned reported case appear to be not only logical, but also in consonance with the provisions of Rules 35, 36 and 37 of Order XLI CPC, which *inter alia* provide that the decree of the appellate court shall be signed and dated by the Judge or Judges who passed it, and shall bear the date on which the judgment was pronounced, the number of the appeal, the names and descriptions of the parties, a clear specification of the relief granted or other adjudication made, the amount of costs incurred etc. ; furnishing of certified copies of the judgment and decree in appeal by the appellate court to the parties on their application ; and sending the certified copies of the judgment and decree by the appellate court to the court which passed the decree appealed from. In view of the above, the objection raised on behalf of respondents 1 to 10 has no force, and as such the same is rejected. It is held that the limitation for filing this Revision Application was rightly computed from the date of the decree.

9. The next objection of Mr. Muhammad Umer Daudi was that the time consumed in obtaining the certified copies cannot be excluded from the mandatory period of 90 days provided in Section 115 CPC, as the benefit of Section 12(2) of the Act is applicable only to appeals, applications for leave to appeal and applications for review, and not to Revision Applications. On this point, there are a number of reported cases, including the two Single Bench cases of the Peshawar and Lahore High Courts cited by Mr. Daudi, that support his contention. However, the law on this point has now changed and the Hon'ble Supreme Court in a number of recently reported cases has been pleased to hold authoritatively that the benefit of section 12(2) of the Act is also applicable to Revision



Applications filed under Section 115 CPC. Some of the latest authorities of the Hon'ble Supreme Court on this point are discussed below in brief :

**A. PLD 2012 Supreme Court 400 (5 JJ.)**

*Hafeez Ahmad and others V/S Civil Judge, Lahore and others.*

This is one the most recent authorities of a Larger Bench comprising of five learned Judges of the Hon'ble Supreme Court. In this case, several Revision Applications were dismissed by the High Court without attending to the merits of the cases, on the ground that they were filed beyond the period of limitation prescribed by Section 115 CPC, and that neither Section 5 nor Section 12(2) of the Limitation Act, was applicable to any of the Applications. It was held by the Hon'ble Larger Bench that Sections 4, 9 to 18 and 22 of the Limitation Act, 1908, would be applicable even to a Petition filed under Section 115 CPC. It was further held that the time consumed for obtaining certified copies of pleadings, documents and order required in support of such Petition would thus be excluded. As far as Section 5 of the Limitation Act, is concerned, it was held that the same shall not be applicable to such Petition as it does not find mention in Section 29 of the Limitation Act, 1908.

**B. 2012 SCMR 1942 = PLD 2010 Supreme Court 582**

*Province of Punjab through Collector Toba Tek Singh and others V/S Muhammad Farooq and others.*

A Revision Application filed by the Government of Punjab was dismissed by the learned High Court on the grounds that the same was barred by 35 days ; as the period of limitation of 90 days was specifically mentioned in CPC itself, Section 5 of the Limitation Act, concerning the condonation of delay, would not be applicable as provided by Section 29(2) of the Limitation Act ; and the time between filing of application and delivery of the copy thereof cannot be excluded within the contemplation of Section 12(2) of the Limitation Act, because the word 'Revision' is not mentioned in the said Section. It was observed by the Hon'ble Supreme Court in the cited case that it is a known fact that no period of limitation was ever provided for the Revisional Court to revise any order of the subordinate court, as Revision is considered to be a matter between the Superior Court and the lower court. The Hon'ble Supreme Court specifically observed that the limitation of 90 days for filing a Revision Application was provided in the year 1992 through Civil Procedure (Amendment) Act (III of 1992), and that no notice was taken to amend the corresponding Section 12(2) of the Limitation Act, and to include therein the Revision as well. It was held that at the time of enactment of the Limitation Act, the word 'Revision' was rightly omitted because no period of limitation was provided therefor, but it does not mean that the period spent for obtaining the copies cannot be computed for filing a Revision. Finally, it was held by the Hon'ble Supreme Court that since Section 115 CPC has been amended by providing a limitation, therefore, the time, as mentioned in Section 12(2) of the Limitation Act, should be excluded while computing the period in question.

**C. PLD 2010 Supreme Court 1186**

**Mst. Banori V/S Jilani through legal heirs and others.**

It was held *inter alia* in this case by the Hon'ble Supreme Court that any person seeking revision of a decision made by a subordinate court could do so through an application to be filed by him ; such an application was to be filed within ninety (90) days of the decision in question ; it was the obligation of the concerned subordinate court to provide a copy of such decision to such a person within three days of the making of the said decision ; and since no one could be allowed to suffer on account of an act of a court, therefore, the time taken by the concerned court in providing such a copy to such a person after being informed for the purpose, would be excluded from the said period of ninety (90) days. The order passed by the High Court dismissing the Revision Application as being time barred by denying the applicant the benefit of Section 12(2) of the Act, was set aside in appeal by the Hon'ble Supreme Court.

10. In view of the authorities of the Hon'ble Supreme Court discussed above, it is clear that the benefit of Section 12(2) of the Limitation Act, 1908, is available to Revision Applications also, that is, the time consumed in obtaining the certified copies is to be excluded in computing the limitation for filing Revision Applications. I would like to add here that exclusion of time under Section 12 of the Limitation Act can be claimed only if the application for copy is made at the time when the right to appeal subsists, as held by a learned Division Bench of the Dacca High Court in *Aswini Kumar Kodalia and another V/S Hari Gopal Chakravarty, PLD 1952 Dacca 398*. The impugned decree was prepared / signed on 26.08.2008, and the application for certified copies was filed on 01.11.2008. If the limitation is reckoned from 26.08.2008, this Revision Application

was filed within time in view of the benefit available to the applicants under Section 12(2) of the Limitation Act, 1908.

11. The contention raised by the learned counsel for the applicants that this Revision Application can be entertained by this Court *suo motu* even if it is barred by limitation, appears to be correct in view of the authorities of the Hon'ble Supreme Court discussed above. In Hafeez Ahmad (supra), the Hon'ble Supreme Court was pleased to hold *inter alia* that revisional power conferred on the High Court is essentially a supervisory power to correct jurisdictional errors, illegalities and irregularities creeping into the decision of the courts subordinate to the High Courts ; and the power under Section 115 CPC was basically a power exercisable *suo motu*, therefore, no restriction whatsoever was placed on the sources from which the information regarding any error, illegality or irregularity of the kind mentioned in Section 115 CPC could reach the High Court. In Province of Punjab through Collector (supra), it was held *inter alia* by the Hon'ble Supreme Court that as the job of a court is to do ultimate justice, it can look into the matter itself despite the fact that some application filed by a party might be barred by time ; any such application can be considered by the Court as a mere information ; if merits of the case demand that the challenged order be set aside, a High Court should not avoid hearing under Section 115(1) CPC for which no limitation is provided, merely because the application is filed by some body who is bound by limitation ; and that the stringent implication of law of limitation can easily be avoided by the court taking *suo motu* action under Section 115(1) CPC in cases where merit so demands. In Mst. Banori (supra), the Hon'ble Supreme Court was pleased to hold that *suo motu* jurisdiction under Section 115 CPC could be exercised by the High Court or the District Court if the conditions of its exercise are satisfied, and that they are never robbed of their

*suo motu* jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor ; such petition could be treated as an information even it suffers from procedural lapses or loopholes ; and that revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the court seized of a revision petition exercises its *suo motu* jurisdiction to correct the errors of the jurisdiction committed by a subordinate court.

12. In view of the above discussion, it is held that this Revision Application was filed within time and as such the same is maintainable. If it is accepted that this Revision Application was filed with a delay of eight (08) days in case the limitation is reckoned from the date of the impugned judgment, that is, from 06.08.2008, even then this Court has the power in its inherent and supervisory jurisdiction to entertain the Application *suo motu*. Resultantly, C.M.A. No. 228 of 2010 filed by respondents 1 to 10 is dismissed, and C.M.A. No. 444 of 2010 filed by the applicants is disposed of in the above terms.

J U D G E