

of declaring the property an ETP has not been followed, resultantly such an arbitrary and malice-infested order cannot be considered valid.

10. In the circumstances, the instant Revision Application is allowed. The impugned judgments and decrees of both the Courts below are set aside. Let F. C. Suit No.38/2010 be decided on merit without being prejudiced by the presence of the order dated 29.01.2000 passed by Chairman ETP.

JK/N-17/Sindh Revision allowed.

2024 Y L R 652

[Lahore]

Before Faisal Zaman Khan, J

MUSARRAT BIVI
and 3 others---Petitioners

versus

ADDITIONAL DISTRICT JUDGE,
BHOWANA and another---Respondents

Writ Petition No. 27296 of 2023, decided on 20th April, 2023.

(a) Limitation Act (IX of 1908)---

---S. 3---Limitation---Scope---It is the duty of every Court and forum to itself look into question of limitation irrespective of the fact whether any objection in such regard has been raised or not. [p. 655] A

Government of N.W.F.P. and others v. Akbar Shah and others 2010 SCMR 1408; Muhammad Sami v. Additional District Judge, Sargodha and 2 others 2007 SCMR 621; Faizum alias

Toor v. Nander Khan and others 2006 SCMR 1931; Almas Ahmad Fiaz v. Secretary Government of the Punjab, Housing and Physical Planning Development, Lahore and another 2006 SCMR 783; Haji Ghulam Rasul and others v. Government of the Punjab through Secretary, Auqaf Department, Lahore and others 2003 SCMR 1815; Dilmir v. Ghulam Muhammad and 2 others PLD 2002 SC 403; Syed Iftikhar Hussain v. Ijaz Ahmad Cheema and another 1996 SCMR 943; Hakim Muhammad Buta and another v. Habib Ahmad and others PLD 1985 SC 153; Ahsan Ali and others v. District Judge and others PLD 1969 SC 167; Saqib Ali v. Government of Punjab and others 2023 PLC (C.S.) 310; Shahin Shah v. Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar and others 2022 SCMR 1810; Lal Khan through legal heirs v. Muhammad Yousaf through legal heirs PLD 2011 SC 657; Qaiser Mushtaq Ahmad v. Controller of Examination and others PLD 2011 SC 174 and Muhammad Amjad v. Senior Superintendent of Police (Operations), Lahore and others 2010 PLC (C.S.) 838 rel.

(b) Limitation---

---Void order---Scope---Even a void order has to be assailed within the period of limitation prescribed under law. [p. 656] B

Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala v. Khalid Mehmood and others 2023 PLC 65; Muhammad Sharif and others v. MCB Bank Limited and others 2021 SCMR 1158; Abid Hussain v. Secretary Ministry of Defence,

Government of Pakistan through Chief of Air Staff, Islamabad 2021 SCMR 645; Haji Wajdad v. Provincial Government through Secretary Board of Revenue, Government of Balochistan Quetta and others 2020 SCMR 2046; Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi 2015 PTD 107; Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi 2014 SCMR 1594; Gen. (R) Parvez Musharraf v. Nadeem Ahmed (Advocate) and another PLD 2014 SC 585 and Messrs Blue Star Spinning Mills Ltd. v. Collector of Sales Tax and others 2013 SCMR 587 rel.

(c) Punjab Pre-emption Act (IX of 1991)---

---S. 5---Constitution of Pakistan, Art. 199---Constitutional petition---Right of pre-emption--- Ex parte decree--- Limitation---Suit filed by respondent/plaintiff for possession of suit land through pre-emption was decreed ex parte against petitioners/defendants--- Validity--- Conduct of petitioners/defendants was not only dilatory and negligent but the same was also contumacious---Petitioners/defendants failed to give any sufficient cause for not pursuing suit or for filing application for setting aside ex parte judgment and decree after considerable delay---Law helps the vigilant and not the indolent--- Petitioners / defendants had been employing devious and dilatory tactics therefore, delinquency on their part was not only very much conspicuous but the same was also unexplained---High Court in exercise of Constitutional jurisdiction under Art. 199 of the Constitution, declined to interfere in the judgment and decree passed by Trial Court, as such

jurisdiction was discretionary and equitable in nature---Constitutional petition was dismissed in circumstances. [pp. 656, 657] C, D & E

Evacuee Trust Property Board and others v. Mst. Sakina Bibi and others 2007 SCMR 262 and Muhammad Hussain and 2 others v. Mst. Zarina Akbar and 6 others 2017 CLC 1426 distinguished.

State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others 2012 SCMR 280; Lahore Development Authority v. Mst. Sharifan Bibi and another PLD 2010 SC 705; Rehmat Din and others v. Mirza Nasir Abbas and others 2007 SCMR 1560; Muhammad Nawaz and others v. The State 2004 SCMR 945; Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145; Aftab Iqbal Khan Khichi and another v. Messrs United Distributors Pakistan Ltd., Karachi 1999 SCMR 1326; Abdul Rashid v. Pakistan and others 1969 SCMR 141; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others PLD 1989 SC 166; Inayat Khan and others v. Allah Ditta and others 2007 SCMR 655; Ch. Muhammad Shafi v. Shamim Khanum 2007 SCMR 838; Muhammad Maqsood Sabir Ansari v. District Returning Officer, Kasur and others PLD 2009 SC 28; Tasnim Jalal and others v. Deputy Director, A.N.F. and others 2010 SCMR 72; Muhammad Fiaz Khan v. Ajmer Khan and another 2010 SCMR 105; Javed Masih and others v. Additional District Judge, Lahore and others 2010 SCMR 795; Moulvi Muhammad Azeem v. Alhaj Mehmood Khan Bangish and another 2010 SCMR

817; Dr. Ayesha Sabir v. Fida ul Haq 2010 SCMR 1811 and Muhammad Arif v. Uzma Afzal and others' 2011 SCMR 374 rel.

Usman Nassir Awan for
Petitioners.

ORDER

FAISAL ZAMAN KHAN, J.---

Through this petition *ex parte* judgment and decree dated 23.10.2021, order dated 16.12.2022 and judgment dated 17.03.2023 passed by the learned Civil Judge, Bhowana and learned Additional District Judge, Bhowana, respectively, have been assailed. By virtue of the former judgment and decree a suit for possession through pre-emption instituted by respondent No.2 against the petitioners has been decreed *ex parte*, whereas, through the latter order an application for setting aside *ex parte* judgment and decree was dismissed, which was subsequently upheld through the latter judgment.

2. Succinctly, the facts of the case are that a suit for possession through pre-emption was instituted by respondent No.2 against the petitioners, in which initially petitioners appeared before the learned trial Court and filed their written statement, whereafter issues were framed and evidence was produced by respondent No.2, however, petitioners failed to cross-examine the witnesses as they opted not to appear before the learned trial court, which culminated into initiation of *ex parte* proceedings against them subsequent to which, through the impugned judgment and decree the suit was decreed *ex parte* by the learned Civil Judge, Bhowana (not impleaded as a party in this petition). Feeling aggrieved of the

impugned *ex parte* judgment and decree petitioners filed an application for setting aside the same, which was dismissed vide impugned order dated 16.12.2022. Against the said order, petitioners filed a civil revision, which also met the same fate and was dismissed by respondent No.1 through the impugned judgment dated 17.03.2023, hence, this petition.

3. At the outset of hearing learned counsel for the petitioners has been confronted with the fact that the application for setting aside *ex parte* judgment and decree was barred by time and since no explanation has been put forth for explaining the delay caused in filing the said application, therefore, both the courts below have rightly dismissed the application on the point of limitation.

4. While conceding to the above, learned counsel for the petitioners has taken a stance that since the impugned *ex parte* judgment and decree could not have been passed by the learned trial court, therefore, in view of judgments reported as Evacuee Trust Property Board and others v. Mst. Sakina Bibi and others (2007 SCMR 262) and Muhammad Hussain and 2 others v. Mst. Zarina Akbar and 6 others (2017 CLC 1426) no limitation would run against such judgment and decree, therefore, both the courts below erred in law in dismissing the application for setting aside the *ex parte* judgment and decree on the point of limitation.

5. Arguments heard. Record perused.

6. From the perusal of available record, it transpires that after institution

of suit by respondent No. 2, petitioners filed their written statement and out of divergent pleadings of the parties as many as 06 issues were framed, whereafter, evidence was produced by respondent No.2, however, none appeared on behalf of the petitioners to cross-examine the same, consequent to which, on 19.12.2020 *ex parte* proceedings were ordered to be initiated against the petitioners and ultimately through the impugned judgment and decree dated 23.10.2021 the suit was decreed *ex parte*. In order to challenge the said judgment and decree, after inordinate and unexplained delay petitioners on 29.03.2022 filed an application under Order IX, Rule 13, C.P.C. Perusal of the said application reveals that neither any date nor any source of knowledge qua the passing of *ex parte* judgment and decree has been mentioned in the said application. Moreover no application under section 5 of the Limitation Act, 1908 (ACT) has been filed seeking condonation of delay.

7. Under Article 164 of the Act, an application for setting aside *ex parte* judgment and decree can be filed within 30 days from the date of passing of the *ex parte* judgment and decree or where the summons were not duly served, from the date of knowledge of the judgment and decree.

8. In the instant case summons were duly served upon the petitioners in furtherance of which they filed their written statement. In these circumstances the application under Order IX, Rule 13, C.P.C. was to be filed within 30 days from the date of passing of the *ex parte* judgment and decree dated 23.10.2021, whereas, the same was filed on

29.03.2022 i.e. beyond the period of limitation, that too without filing an application for condonation of delay, therefore, the delay caused in filing the application under Order IX, Rule 13, C.P.C. could not be condoned. Even otherwise, no reasons have been given that why the petitioners opted not to appear before the trial court despite the fact that they filed their written statement.

9. In view of Section 3 of the Act, it is the duty of every court and forum to itself look into the question of limitation irrespective of the fact that whether any objection in this regard has been raised or not. For reference reliance can be placed on Government of N.W.F.P. and others v. Akbar Shah and others (2010 SCMR 1408), Muhammad Sami v. Additional District Judge, Sargodha and 2 others (2007 SCMR 621), Faizum alias Toor v. Nander Khan and others (2006 SCMR 1931), Almas Ahmad Fiaz v. Secretary Government of the Punjab, Housing and Physical Planning Development, Lahore and another (2006 SCMR 783), Haji Ghulam Rasul and others v. Government of the Punjab through Secretary, Auqaf Department, Lahore and others (2003 SCMR 1815), Dilmir v. Ghulam Muhammad and 2 others (PLD 2002 SC 403), Syed Iftikhar Hussain v. Ijaz Ahmad Cheema and another (1996 SCMR 943), Hakim Muhammad Buta and another v. Habib Ahmad and others (PLD 1985 SC 153) and Ahsan Ali and others v. District Judge and others (PLD 1969 SC 167).

10. The Supreme Court of Pakistan in judgments reported as Saqib Ali v. Government of Punjab and others (2023 PLC (C.S.) 310) Shahin Shah v.

Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar and others (2022 SCMR 1810), Lal Khan through legal heirs v. Muhammad Yousaf through legal heirs (PLD 2011 SC 657), Qaiser Mushtaq Ahmad v. Controller of Examination and others (PLD 2011 SC 174) and Muhammad Amjad v. Senior Superintendent of Police (Operations), Lahore and others (2010 PLC (C.S.) 838) has held that each and every day consumed for approaching a court beyond the period of limitation has to be explained, which the appellant miserably failed to do.

11. It has also been settled by the Apex Court that even a void order has to be assailed within the period of limitation prescribed under the law. Reliance in this regard can be placed on Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala v. Khalid Mahmood and others (2023 PLC 65), Muhammad Sharif and others v. MCB Bank Limited and others (2021 SCMR 1158), Abid Hussain v. Secretary Ministry of Defence, Government of Pakistan through Chief of Air Staff, Islamabad (2021 SCMR 645), Haji Wajdad v. Provincial Government through Secretary Board of Revenue, Government of Balochistan Quetta and others (2020 SCMR 2046), Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi (2015 PTD 107), Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi (2014 SCMR 1594), Gen. (R) Parvez Musharraf v. Nadeem Ahmed (Advocate) and another (PLD 2014 SC 585) and Messrs Blue Star Spinning Mills Ltd. v. Collector of Sales Tax and others (2013 SCMR 587).

12. Placing the above case law in juxtaposition with the facts of the present case, it is abundantly clear that the conduct of the petitioners was not only dilatory and negligent, but the same is also contumacious, as they have miserably failed to give any sufficient cause for not pursuing the suit or for filing the application for setting aside *ex parte* judgment and decree after considerable delay, therefore, both the courts below have rightly decided against the petitioners.

13. It is also well established principle that law helps the vigilant and not the indolent and in the case in hand since the petitioners have been employing devious and dilatory tactics, therefore, the delinquency on their part is not only very much conspicuous but the same is also unexplained, thus, this petition is not maintainable. Reliance in this respect can be placed on judgments reported as State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (2012 SCMR 280), Lahore Development Authority v. Mst. Sharifan Bibi and another (PLD 2010 SC 705), Rehmat Din and others v. Mirza Nasir Abbas and others (2007 SCMR 1560), Muhammad Nawaz and others v. The State (2004 SCMR 945), Nazakat Ali v. WAPDA through Manager and others (2004 SCMR 145) and Aftab Iqbal Khan Khichi and another v. Messrs United Distributors Pakistan Ltd., Karachi (1999 SCMR 1326).

14. Even otherwise, the jurisdiction exercised by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan is discretionary and equitable in nature and cannot be invoked or exercised in routine. Reliance can be

placed on Abdul Rashid v. Pakistan and others (1969 SCMR 141), Nawab Syed Rainaq Ali and others v. Chief Settlement Commissioner and others (PLD 1973 SC 236), Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others (PLD 1989 SC 166), Inayat Khan and others v. Allah Ditta and others (2007 SCMR 655), Ch. Muhammad Shafi v. Shamim Khanum (2007 SCMR 838), Muhammad Maqsood Sabir Ansari v. District Returning Officer, Kasur and others (PLD 2009 SC 28), Tasnim Jalal and others v. Deputy Director, A.N.F. and others (2010 SCMR 72), Muhammad Fiaz Khan v. Ajmer Khan and another (2010 SCMR 105), Javed Masih and others v. Additional District Judge, Lahore and others (2010 SCMR 795), Moulvi Muhammad Azeem v. Alhaj Mehmood Khan Bangish and another (2010 SCMR 817), Dr. Ayesha Sabir v. Fida ul Haq (2010 SCMR 1811) and Muhammad Arif v. Uzma Afzal and others (2011 SCMR 374).

15. As regards the judgment referred by the learned counsel for the petitioners, since the same have been overruled by the judgments mentioned *supra*, thus, the same cannot be relied upon.

16. Since the learned counsel for the petitioners has not been able to point out any jurisdictional defect or procedural impropriety in the impugned judgments/decree/order, therefore, no interference can be made by this Court.

17. In view of the above, this petition being meritless is dismissed *in limine*.

MH/M-12/L

Petition dismissed.

2024 Y L R 657

[Sindh (Hyderabad Bench)]

Before Muhammad Saleem Jessar and
Omar Sial, JJ

EVACUEE TRUST PROPERTY
BOARD, GOVERNMENT OF
PAKISTAN through Assistant
Administrator---Petitioner

versus

WAHABUDDIN
and others---Respondents

C.Ps. Nos. D-263, D-264 and D-265 of
2006, decided on 17th March, 2022.

*Evacuee Trust Properties
(Management and Disposal) Act
(XIII of 1975)---*

---Ss. 6, 7, 8 & 10(1)(b)---Disputed property not owned by a charitable trust---PTD was issued in favour of private respondents as they were bona fide claimants and their claims could not be cancelled as the same were issued after completion of all codal formalities---Chairman, Evacuee Trust Properties Board, declared the properties of private respondents as evacuee trust property and cancelled their PTDs issued in favour of private respondents---Such orders were assailed before the Secretary, Ministry of Minorities who set-aside the said orders---Evacuee Trust Properties Board (the Board) claimed that property in dispute was reserved for Panchayat (for amenity purpose of Hindu community), hence was a trust property and was not transferable---Legality---In order to declare an evacuee property as an evacuee trust property, it must be shown that the property was