

[Lahore]

Before Ch. Muhammad Iqbal, J

MUHAMMAD ARSHAD (deceased) through Legal Heirs ---Petitioner

versus

Haji ABDUL GHAFOR and others ---Respondents

C.R. No. 48464 of 2019, heard on 25th November, 2024.

Civil Procedure Code (V of 1908)---

---Ss. 47 & 48 ---Limitation Act (IX of 1908) First Sched., Art. 181---
Specific Relief Act (I of 1877), S. 12---Decree of specific performance---Second execution petition---Limitation---Scope---
 Executing Court dismissed the objection petition of the respondents, however, the same was accepted by the District (First Appellate) Court and execution petition, being second one, filed by the petitioners/decreed-holders was dismissed declaring the same barred by limitation---Plea of the judgment-debtor (objection petitioner/respondent) was that earlier decree-holder filed execution petition which was dismissed for non-prosecution, then second execution petition was filed beyond limitation prescribed by law---Validity---Admittedly, suit for specific performance of the petitioners (decree-holders/plaintiffs) was decreed on 22.12.1999 and they filed execution petition on 13.01.2000 for satisfaction of said judgment and decree which petition was dismissed due to non-prosecution on 26.04.2002---However, record revealed that, against the original judgment and decree, the respondents (defendants/judgment debtors) preferred first appeal which was dismissed by the District (First Appellate) Court on 25.05.2009 and their Regular Second Appeal was dismissed on 05.10.2009, which was not further challenged by the respondent---It was after the dismissal of the appeal of the respondents by the District (First Appellate) Court (on 25.05.2009) that the petitioner/ decree-holder promptly filed second execution petition on 05.06.2009 for execution of decree (dated 22.12.1999)---Under Article 181 of the Limitation Act, 1908, the period provided for first execution petition was three years from passing of the decree and under S. 48, C.P.C, the second execution petition had to be filed within 6 years of the judgment and decree---If the decree has been challenged before the higher forum and stay is granted, then filing of execution petition subsequently cannot be held to be barred by time---Thus, in the present case, execution petition of the petitioners was well within time---High Court set-aside the impugned judgment passed by

the District Court; consequently, the order passed by the Civil/Executing Court was upheld---Revision was allowed, in circumstances. [pp.346, 347] A, B & C

Anjuman Ghulaman Mustafa v. Darul Islamia Society and others PLD 2024 SC 489; F.A. Khan v. The Government of Pakistan PLD 1964 SC 520; Mahboob Khan v. Hassan Khan Durrani PLD 1990 SC 778; Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and 5 others 1992 SCMR 241 and Nazim-ud-Din and others v. Sheikh Zia-Ul-Qamar and others 2016 SCMR 24 ref.

Usman Nasir Awan, for Petitioner.

Ch. Ali Muhammad, for Respondents.

Date of hearing: 25th November, 2024.

JUDGMENT

CH. MUHAMMAD IQBAL, J.---Through this civil revision, the petitioners have challenged the validity of the judgment dated 15.06.2019 passed by the learned Additional District Judge, Daska who accepted the appeal of the respondents, set aside the order dated 16.01.2019 passed by the learned Civil Judge, Daska/Executing Court, accepted the objection petition of the respondents and dismissed the execution petition filed by the petitioners being barred by limitation.

2. Brief facts of the case are that the petitioners filed a suit for specific performance which was decreed on 22.12.1999. The respondents filed an appeal which was dismissed by the learned Additional District Judge, Daska on 25.05.2009. The respondents assailed the said judgments and decrees of the lower judicial fora through R.S.A No.91/2009 which was dismissed by this Court vide order dated 05.10.2009. The petitioners / decree holders filed execution petition on 13.01.2000 which was dismissed due to non-prosecution on 26.04.2002. The petitioners filed second execution petition on 05.06.2009 which was dismissed by the executing Court and allowed four objection petitions of the respondents and declared that the second execution petition is barred by limitation. The petitioners filed appeals which were allowed by the learned Additional District Judge, Daska vide judgment dated 12.04.2014. Against the said order, C.R.No.2219/2014 was filed by the respondents which was allowed by this Court vide order dated 16.10.2017 and the case was remanded to the executing Court to decide the objection petitions after framing issues. The executing Court in post-remand proceedings dismissed the objection petitions of the respondents vide order dated 16.01.2019. The respondents filed appeal which was accepted by the learned Additional District Judge, Daska vide judgment

dated 15.06.2019, the order dated 16.01.2019 passed by the executing Court was set aside and by accepting the objection petitions of the respondents, the execution petition of the petitioners was dismissed being barred by limitation. Hence, this civil revision.

3. Arguments heard. Record perused.

4. In this case, the question requires the consideration is that "Whether the second execution petition filed by the petitioners was well within time or otherwise?"

Admittedly, suit for specific performance of the petitioners was decreed on 22.12.1999 and the petitioners/decreed holders filed execution petition on 13.01.2000 for satisfaction of the above said judgment and decree which petition was dismissed due to non-prosecution on 26.04.2002. Against the original judgment and decree, the respondents/judgment debtors preferred first appeal which was dismissed by the appellate Court on 25.05.2009 and being dissatisfied with the above dicta respondent lodged a Regular Second Appeal (R.S.A) No.91/2009 which was dismissed by this Court on 05.10.2009. The said judgment dated 05.10.2009 was not further challenged by the respondents. For execution of decree dated 22.12.1999 the petitioner/ decree holder filed second execution petition on 05.06.2009 after the dismissal of the appeal of the respondents by the appellate Court *vide* judgment and decree dated 25.05.2009. Under Article 181 of the Limitation Act, 1908 the period provided for first execution petition is three years from passing of the decree and under Section 48 C.P.C. second execution petition has to be filed within 06 years of the judgment and decree. As per record, the appeal of the respondents was dismissed on 25.05.2009 and thereafter the petitioners promptly filed execution petition on 05.06.2009. This question has been answered by the Hon'ble Supreme Court of Pakistan in a latest judgment titled as Anjuman Ghulaman Mustafa v. Darul Islamia Society and others (PLD 2024 SC), the relevant portion whereof is reproduced as under:

"3. In the present case, the decree of the Court of first instance was first challenged in appeal and then in revision before the High Court. After exhausting all statutory remedies under the Code of Civil Procedure, 1908, none of the parties considered it appropriate to avail of constitutional remedy before this Court. In such a situation, the case of Abdul Qayyum urges us to remember that till such time, an appeal or revision from a decree is not filed, or such proceedings are pending but no stay order has been issued, such decree remains capable of execution but when the Court of last instance passes the decree only that

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decree can be executed, irrespective of the fact, that the decree of the lower Court is affirmed, reversed or modified. In light of this principle, the application, brought by the decree-holder/respondent for the execution of the decree cannot be held to be barred by time. It is clarified that if the decree/order passed in revision had been challenged by filing a petition for leave to appeal before this Court, the position would have been different, and the period of limitation would have been governed by the principle laid down in the case of • Bakhtiar Ahmad, which expounds that unless the Supreme Court stays the proceedings of the decree or converts the petition into an appeal, the period of limitation cannot be deemed to have been clogged. Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application. However, if the leave is granted, the petition is converted into an appeal and allowed, in which case, the order of the Supreme Court will merge into the order of the lower forums and, thus, the period of limitation will start from the order of the Supreme Court. Since, in the case under consideration, the remedy before this Court was not availed of, the latter precedent does not apply to it."

Reliance is also placed on cases cited as F.A. Khan v. The Government of Pakistan (PLD 1964 SC 520), Mahboob Khan v. Hassan Khan Durrani (PLD 1990 SC 778) and Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and 5 others (1992 SCMR 241).

As elaborated above, the material point (question) so formulated is hereby decided in the manner that the execution petition of the petitioners was well within time.

5. From the above, it is established that the impugned judgment passed by the appellate Court suffers from patent illegality and irregularity as such the same is liable to be set-aside. Reliance is placed on the case of Nazim-ud-Din and others v. Sheikh Zia-Ul-Qamar and others (2016 SCMR 24).

6. Resultantly, this civil revision is allowed, the judgment dated 15.06.2019 passed by the learned Additional District Judge, Daska is hereby set aside and the order dated 16.01.2019 passed by the learned Civil Judge, Daska is hereby upheld. No order as to costs.

MQ/M-138/L

Revision allowed.

Suit for