

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**C.P No.S-400 of 2025**

*[Muhammad Saleem and another v. Mst.Shakeela Begum and otehrs]*

Petitioners by : Mr. Farhad Ali Abro, Advocate

Respondents by : Nemo

Date of Hearing : **13.02.2026**

Date of Decision : **13.02.2026**

## **ORDER**

**ARBAB ALI HAKRO, J:-** The petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling into question the legality, propriety and judicial soundness of two orders: first, the order dated 13.01.2025 passed by the learned Senior Civil Judge -III, Hyderabad (“**trial court**”), whereby the applications filed under Section 12(2) CPC and Order I Rule 10 CPC were allowed and the preliminary decree dated 17.10.2023 was set aside and second, the order dated 19.08.2025 passed by the learned Model Civil Appellate Court -II/V-Additional District Judge, Hyderabad (“**revisional court**”), dismissing the petitioners’ application for condonation of delay and consequentially, their Civil Revision No.73 of 2025 as time-barred.

2. The record reflects that respondents No.1 to 7 instituted F.C. Suit No.1380 of 2023, seeking declaration, partition, separate possession, mesne profits, rental income, and injunctive reliefs in respect of several immovable properties jointly owned by the deceased Naeem Akhtar and his brothers, the present petitioners. The plaintiffs asserted that, following Naeem Akhtar's death on 17.01.2001, the petitioners continued to manage the joint properties and business but failed to render accounts or distribute the shares among the legal heirs.

3. Upon service of summons, the petitioners/defendants filed written statements admitting the plaintiffs’ entitlement to partition, subject to withdrawal of certain prayers relating to mesne profits and rental income. The plaintiffs

accordingly withdrew the prayer clauses C, D, and F, whereafter the Trial Court passed a preliminary decree dated 17.10.2023 under Order XII Rule 6 CPC, appointing the Nazir as Commissioner to effect partition.

4. Subsequently, the legal heirs of Mst. Khursheed and Mst. Zeezdan, both daughters of Muhammad Sagheer, the original owner of the suit properties, filed applications under Section 12(2) CPC and Order I Rule 10 CPC, alleging that the decree had been obtained by fraud and by concealment of their status as co-sharers. The trial court, through an order dated 13.01.2025, accepted the applications, set aside the preliminary decree and directed that the applicants/interveners be impleaded as defendants.

5. Aggrieved, the petitioners sought to challenge the said order through Civil Revision No.73 of 2025. However, the revision was filed with a delay of 12 days, accompanied by an application for condonation of delay under Section 5 of the Limitation Act. The petitioners pleaded the illness of petitioner No. 1 and the late receipt of certified copies as the reasons for the delay.

6. The revisional court, through the impugned order dated 19.08.2025, declined to condone the delay, holding that no sufficient cause had been shown and that the explanation offered was neither plausible nor supported by material. It was further observed that petitioner No.2 could have independently pursued the revision even if petitioner No.1 was unwell.

7. Learned counsel for the petitioners contended that the revisional court failed to appreciate that the delay was neither deliberate nor mala fide and that the petitioners were prevented by circumstances beyond their control. He submitted that the certified copies, though prepared on 06.02.2025, were delivered only on 22.04.2025, and the petitioners could not have filed the revision earlier. He argued that the revisional court adopted a hyper-technical approach, ignoring the settled principle that matters should be decided on merits rather than on technicalities. It is further argued that the trial court's order dated 13.01.2025 was patently without jurisdiction, as the applications under Section 12(2) CPC were allowed without framing issues or recording evidence, despite serious allegations of fraud being contested

by the petitioners. Counsel submitted that the revisional court ought to have examined the legality of the trial Court's order rather than non-suiting the petitioners on limitation alone. Learned counsel maintained that respondents No.13 and 14 had not disclosed the date or source of knowledge regarding the decree, nor produced any independent corroboration of their allegations. He submitted that the trial court acted in undue haste, and that the revisional Court's refusal to entertain the revision has resulted in a grave miscarriage of justice.

8. I have heard the learned counsel for the petitioners at length and have carefully examined the material placed on record, including the impugned orders dated 13.01.2025 and 19.08.2025, as well as the proceedings of F.C. Suit No.1380 of 2023.

9. The first question that arises is whether the revisional Court was justified in dismissing the revision petition as time-barred without examining the legality of the trial court's order. The revisional Court proceeded on the premise that the petitioners failed to establish "*sufficient cause*" for the delay of twelve days. It was observed that the certified copies were prepared on 06.02.2025 but collected on 22.04.2025, and that petitioner No.2 could have pursued the matter even if petitioner No.1 was unwell. The revisional court thus held that the explanation was neither plausible nor supported by material.

10. The revisional court's approach must be tested against the statutory command of Section 115 CPC, particularly the second proviso, which mandates that an application invoking revisional jurisdiction must be filed within ninety days. The Supreme Court in the case of **the Province of Punjab**<sup>1</sup> has held that the ninety-day period is mandatory for an aggrieved party and that a revision filed beyond this period is liable to be dismissed unless the delay is satisfactorily explained.

11. The revisional court, therefore, was correct in examining whether the petitioners had shown sufficient cause for the delay. The petitioners relied primarily on the illness of petitioner No.1 and the delayed delivery of the

---

<sup>1</sup> Province of Punjab through District Officer Revenue, Rawalpindi and Others v. Muhammad Sarwar (2014 SCMR 1358)

certified copies. However, the revisional court found that the medical documents were either irrelevant or insufficient, and that petitioner No. 2 offered no explanation for his inaction. The revisional court's reasoning is consistent with the principle that each day of delay must be explained with clarity, a principle reiterated in the impugned order itself. The revisional court thus cannot be faulted for holding that the petitioners failed to discharge the burden placed upon them under Section 5 of the Limitation Act.

12. Even otherwise, the petitioners' reliance upon Section 5 of the Limitation Act for condonation of delay is fundamentally misconceived. The legal position is now firmly entrenched that Section 5 has no application to a revision filed under Section 115 CPC, for the reason that the ninety-day limitation prescribed in the second proviso to Section 115(1) constitutes a special law within the contemplation of Section 29(2) of the Limitation Act. The Supreme Court in the case of Allah Dino<sup>2</sup> authoritatively held that where a special statute prescribes its own period of limitation, the general power of condonation under Section 5 stands excluded unless expressly incorporated, which Section 115 does not do. Thus, the revisional Court was not merely justified but legally bound to decline condonation, for the statutory scheme leaves no room for the importation of Section 5 into revisional proceedings. The petitioners' application for condonation was therefore incompetent in law, and the revisional court's refusal to entertain it accords fully with the controlling statutory framework and binding precedent.

13. The trial court vide order dated 13.01.2025, allowed applications under Section 12(2) CPC and Order I Rule 10 CPC, the preliminary decree was set aside, and the interveners were impleaded as defendants. The question is whether, even while dismissing the revision as time-barred, the revisional court was required to examine whether the trial court acted without jurisdiction or with material irregularity.

---

<sup>2</sup> Allah Dino v. Muhammad Shah (2001 SCMR 286)

14. The Supreme Court in the case of **Hafiz Malik Kamran Akbar**<sup>3</sup> has clarified that the framing of issues and recording of evidence in a Section 12(2) CPC application are not mandatory in every case; the matter rests on the Court's satisfaction. The trial Court may, depending on the nature of the allegations, decide the application summarily if the material on record sufficiently establishes fraud, misrepresentation, or concealment. The trial court in the present case found that the interveners were admittedly daughters of Muhammad Sagheer, the original owner of the suit property and that their names had been omitted from the foti-khata-badal without any proof of relinquishment. It further found that the preliminary decree was obtained on the basis of admission and that the plaintiffs and defendants had collusively concealed the existence of co-sharers. These findings are supported by the record, as reflected in the trial court's observation that *"there is nothing on record either both applicants/interveners have surrendered/relinquished their shares"*.

15. The trial Court's conclusion that the decree was obtained by concealment of material facts and that the interveners were necessary parties is consistent with the jurisprudence that fraud vitiates even the most solemn proceedings. The Supreme Court in **Hafiz Malik Kamran Akbar** (supra) reaffirmed that any person adversely affected by a decree, whether or not a party to the original proceedings, may invoke Section 12(2) CPC. The trial Court, therefore, acted within its jurisdiction in entertaining the applications and setting aside the decree.

16. The petitioners' grievance that the trial Court acted "in haste" or without framing issues does not withstand scrutiny in light of the Supreme Court's pronouncements. The trial court was entitled to decide the matter summarily if the material before it sufficiently established concealment. The trial court's reasoning is detailed, reasoned and grounded in the record. No jurisdictional defect, illegality, or material irregularity is apparent.

---

<sup>3</sup> Hafiz Malik Kamran Akbar and others v. Muhammad Shafi (deceased) through L.Rs and others (PLD 2024 SC 262)

17. The revisional court, therefore, even if it had examined the matter on merits, could not have interfered with the trial court's order, for the trial court neither exceeded its jurisdiction nor failed to exercise it, nor acted illegally or with material irregularity. The revisional court's refusal to condone delay thus does not result in any miscarriage of justice, for even on merits the petitioners had no case.

18. The petitioners' challenge to the orders through constitutional jurisdiction must also be assessed in light of the settled principle that constitutional jurisdiction is not a substitute for statutory remedies, nor is it available to circumvent limitation. The petitioners' own conduct, which admitted the plaintiffs' claim, facilitated the preliminary decree and remained silent until the interveners surfaced, further weakening their claim to equitable relief.

19. The cumulative effect of the record, the statutory framework and the binding precedents is that the petitioners have failed to demonstrate any jurisdictional defect, illegality, perversity or violation of law in either of the impugned orders. The trial court acted within its lawful authority, and the revisional Court correctly declined to entertain a time-barred revision.

20. For the reasons recorded above, the petition is devoid of merit; consequently, it is **dismissed** in *limine* along with pending application (s).

**JUDGE**