

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Civil Revision No. S-69 of 2017

For hearing of main case.

For the Applicant. : Mr. Ghulam Murtaza Korai.

For the private Respondents. : M/s Mian Abdul Salam Arain
and Rana Muhammad Umar
Rajput.

For the official Respondents. : Mr. Zulfiqar Ali Naich,
Assistant Advocate General.

Date of Hearing : 24-08-2026

Date of Order/Judgment : 19-10-2026

JUDGMENT

Muhammad Faisal Kamal Alam, J:- The Applicant has challenged the Order dated 11.4.2017, passed by the learned Additional District Judge [Ubaro] in Civil Miscellaneous Appeal No.3 of 2016 [preferred by the Respondents], allowing the same, with the result that the Execution Application No. 6 of 2014, filed by the present Applicant is dismissed.

2. Essential facts for deciding the present Revision are that the Applicant filed a First Class Suit [FCS No. 24 of 2000] against the present private Respondents No. 1 to 10, *inter alia*, that [Late] Abdul Wahid, the Father Of the present private Respondents during his lifetime had to pay back an amount of rupees three hundred thousand towards purchase of cotton seeds, pesticides for his agriculture land and in default to transfer half share in the Agriculture Land. The above Suit for specific performance was filed in the year 2000 on the basis of an alleged 'Iqrarnama dated 10-6-1995', whereas, above Abdul Wahid passed away in July 1998.

3. The suit was resisted by filing a lengthy Written Statement, in which the main stance of private Respondents [Defendants] was, that nothing was outstanding, but the Applicant in league with one Adam Ali, the business Partner of the Deceased Father had charged exorbitant and penal interest, with the object to usurp their agriculture Land. It is averred that under compelling circumstances, the Respondent No.1 being the elder Son, sold his Fiat Tractor to the Applicant and the said Adam Ali.

4. Eventually, the above Suit was allegedly compromised [disputed by the private Respondents], vide a **Compromise Decree dated 31st March 2003**. It would be advantageous to mention the salient Terms of the alleged Compromise.

- ❖ The Respondents No.1 to 10 jointly and individually are held to be liable to pay the sum of rupees two hundred thousand to the Applicant/ Plaintiff, out of which rupees one hundred and fifty thousand would be paid on or before 25th of May 2003 and the remaining amount payable by 22nd January 2004.
- ❖ In case of default, the Respondents had to pay a penalty of rupees fifty thousand. Consequently, the Parties hereto agreed to withdraw criminal cases filed against each other.

5. The terms of the compromise was never implemented but in the meantime it was challenged by the private Respondents by filing Application under Section 12, subsection 2 of the Civil Procedure Code **[12-2 Application]**, on the ground that except for the Respondent No. 1 no one has either accepted the terms of the above Compromise nor signed the same, besides, the said Respondent No.1 was not an attorney of remaining Respondents/ Family Members. Even the learned Counsel representing the private Respondents has submitted his Personal Affidavit [PAGE 199 of the Record and Proceeding (R & P) FILE], about his non-appearance on the above date of the alleged Compromise, he did not identify the Respondent No.1 and his Signature “**is managed**”.

6. The present Applicant filed the Execution Application for the implementation of the Compromise Decree (*supra*) being Execution Application No.06 of 2014, on 12.11.2014, which was objected to by the present Respondents, on the ground that it is time barred and should have been filed within three years from the date of the alleged Compromise Decree. The learned Executing Court agreed with the arguments of the present Applicant and allowed the Execution with the direction that the Compromise Decree be executed in accordance with law, which was challenged successfully in afore referred Civil Misc. Appeal No.03 of 2016 by the present Respondents.

7. The main question in this Civil Revision is that whether or not the Execution Application was within time.

8. Mr. Ghulam Murtaza Korai, Advocate for Applicant states, that since 12(2) Application was filed by Respondent, challenging the very Compromise Decree therefore, after the culmination of proceeding under the said 12(2) Application, the execution could have been filed. Narrated the history, that many years were consumed in this process, because, earlier 12(2) Application was allowed on 14.11.2007, but, set-aside in revisional jurisdiction, invoked by the Applicant. The case was remanded to the Trial Court; due to non-prosecution the 12(2) Application was dismissed on 24.01.2010 and restoration Application under Order 9 Rule 9 of CPC was eventually dismissed vide Order dated 26.11.2013. After a year the Execution Application was filed [on 12-11-2014], which is within time in view of Article 181 of the Limitation Act (1908), prescribing three years limitation. Consequently, the impugned Appellate judgment is not within parameters of law and has overlooked the record; therefore, the jurisdiction was not properly exercised, which should be corrected in this revisional proceeding. He has placed reliance upon case law reported as Muhammad Nazir and another v. Qaiser Ali Khan and 4 others, 2003 SCMR 436.

9. Mr. Abdul Salam Arain and Mr. Rana Muhammad Umar Rajput, Advocates, on the other hand disputed the contention of the Applicant's Advocate and states that when there was no restraining Order by any Court, then Execution Application should have been filed within three years from the dated of a decree, as envisaged in Article 181 [*ibid*]. State that even under Section 48(2) of CPC the maximum time is 06 years for preferring the Execution Proceeding, in the eventualities mentioned under Section 48. The only exception mentioned under Sub-Section (2) of Section 48 is that where a judgment debtor has fraudulently prevented the execution of the decree, then the prescribed time of 06 years can be extended. No such factor is present in this *LIS*, where the present Respondents prevented the Applicant from initiating the execution proceeding. Supports the impugned Judgment, as the execution proceeding is hopelessly time barred. Cited the reported Decision of *Maqbool Ahmed v. Shahzad Tabasum*- NLR 1995 Civil 217.

10. Mr. Zulfiqar Ali Naich, learned AAG Sindh, while representing the Official Respondents has agreed to this extent, that time limit for initiating execution proceeding is three years and he has cited the Supreme Court judgment handed down in the case of *National Bank of Pakistan v. Mian Aziz-ud-din and 7 others* -1996 SCMR 759.

11. Arguments heard, record perused.

12. Although in the impugned Judgment background of the litigation is mentioned, but for the ease of reference it is precisely discussed in this paragraph. **12(2) Application** was filed by the present private Respondents on 26.05.2003, that is, two months after the purported Compromise Decree, challenging the same on the ground of fraud and misrepresentation. After hearing, the 12(2) Application was allowed vide Order dated 14.11.2007 and the above Compromise Decree was set-aside. This Order was successfully challenged by the present Applicant in Civil Revision No.02 of 2008, and by the Order dated 13.11.2008, the case was remanded to the Trial Court with directions to decide the matter after framing of issues and

recording of evidence. However, the 12(2) Application was dismissed by the Trial Court for non-prosecution on 24-11-2010 and its restoration Application, preferred under Order 9 Rule 9 of CPC, by the private Respondents was also dismissed, so also subsequent Application under Section 151 of CPC for recalling the dismissal order of Restoration Application, vide Order of 30-11-2011. This time the present private Respondents preferred to challenge the above Orders, in Civil Revision No.1 of 2012, which ultimately was allowed [vide Order dated 7th December 2012], directing the Trial Court to re-hear the above Restoration Application. Eventually, after hearing the said Restoration Application was dismissed through the Order of 26-11-2013. Subsequently and admittedly, the Execution Application (*supra*) was preferred by the Applicant on 12.11.2014.

13. Case law considered.

In the reported decision cited by the Applicant's Counsel, the precise facts are that Respondents (of the reported case) filed the suit for specific performance against the appellants which was decreed but in the Appeal status quo Order was passed. The Appeal was subsequently dismissed on 15.10.1997 whereafter respondents/decreed-holders applied to the Executing Court but the appellants objected to and stated that the decision of the High Court was challenged before the Supreme Court and the Executing Court postponed execution proceedings till 01.04.1998, directing the respondents to deposit the balance sale price as no stay was granted by the Supreme Court, which was challenged by the appellants, that the Order be recalled; simultaneously, the respondent also filed an application to deposit the deficit decretal amount but that was not accepted and the execution application was dismissed with the observation that decree-holders committed default and they can withdraw the amount already deposited earlier. This Order was challenged by the respondent/decreed-holder through a Civil Revision before the High Court which was allowed, and the said decision of High Court was ultimately challenged before the Supreme Court in the above cited case. The Supreme Court was of the view that when no time is fixed for depositing the sale price, then non-depositing of the remaining sale price till dismissal of Appeal by the High Court should not have any penal consequence. It has been observed, that the respondents/decreed holder immediately on dismissal of the Appeal by the High Court filed an Execution Petition and sought permission to deposit the remaining sale price which was not earlier deposited due to the status quo Order given by the High Court. In this

Judgment the Apex Court also dealt with the question of limitation and is of the view that objection about the Execution Petition being time barred as not filed within three years of the date of decree, has no substance. The ratio decidendi for this finding is that since Appeal is the continuation of Suit, the decree in the suit would only be finalized on the disposal of Appeal as decree of the Court of first instance had merged into the decree of Appellate Court which alone could be executed. But, it is also clarified, that when there is no stay Order in the field “*the decree would remain capable of execution*”. It is observed by the Honourable Supreme Court that since the decree was finalized on dismissal of Regular First Appeal by the High Court on 15.10.1997, in which *status quo* Order was passed, therefore, the decree could not be executed, therefore, Execution Petition was filed on 02.03.1998 which was not time barred under Article 181 of the Limitation Act.

The judgment cited by the learned Counsel for the private Respondents is handed down by the learned Single Bench of the Lahore High Court (Bhawalpur Bench) in a Civil Revision. Facts of the reported decision is somewhat similar to the facts of present *LIS*; respondent No.1 and petitioner (of the reported Judgment) entered into an agreement to sale; the litigation started, in which a compromise was effected on 01.06.1986, followed by the decree of the same date. On 04.02.1991 the petitioner filed an application under Section 12(2) of CPC alleging that the decree was obtained through fraud and was a result of collusion of the respondent No.1 and respondent No.2. It was contested, issues were framed and evidence was recorded and vide Order dated 25.07.1992 the Court rejected petitioner’s Application under Section 12(2) of CPC. Respondent No.1 then instituted suit for mandatory injunction on 16.01.1993 against the Government of Punjab for transfer of the plot in question, in which petitioner also filed an Application to be impleaded as one of the defendant which was accepted. During pendency of the suit of respondent No.1, the latter applied for Execution of decree (**of 01.6.1986, supra**), which was objected to on the ground of limitation. Ultimately on 02.02.1994, the Execution petition was dismissed being time barred, however the decision was overturned by the learned District Judge Bhawalpur, which was challenged in the revision petition before the High Court. The learned High Court is of the view, that the decision of District Judge was not correct, as no law has been cited by the District Judge for excluding the time spent by the petitioner in pursuing his Application under Section 12(2) CPC. When there was no legal bar preventing the decree-holder to file execution petition, then it should have been filed within three years. The prescribed time period for filing the first Execution Application is three years, as envisaged under Article 181 (*supra*). Ultimately the revision was accepted and the Order of the Appellate Court was set-aside.

Whereas the Judgment cited by the learned AAG has re-affirmed the law point, that the execution of the decree by the Civil Court is governed by Article 181 of the Limitation Act, in cases where Section 48 (*supra*) of CPC does not apply.

14. It is undisputed factual aspect of the case that in the present prolong and contentious litigation, **no stay was operating against the Applicant**, which can be termed as a preventive factor for initiating the Execution Proceeding. Secondly, under Rule 5 of Order 41 of CPC, the law clarifies, that unless there is a stay Order passed by the Appellate Court, the Executing Court shall continue its proceeding.

15. The case law cited by the Applicant's Counsel is clearly distinguishable, because in the above cited case, as already discussed in the foregoing paragraphs, the Hon'ble Supreme Court ruled that due to stay order, the Execution petition was not time barred. Whereas, in the present case situation was / is altogether different. Since there was no Stay Order, then the limitation of three years [under Article 181] would start after passing of the Compromise Decree dated 31.03.2003, and once it starts it cannot be stopped automatically, unless there is some new development taken place in the litigation, for instance, the higher forum grants the restraining Order.

16. The upshot of that above discussion is that since the Execution Application No.6 of 2014 admittedly preferred on 12.11.2014, that is, after eleven years from the date of the above Compromise Decree, therefore, it was hopelessly time barred. The impugned Judgment has correctly decided the Appeal by considering the factual and legal aspect of the case. No interference is required. Consequently, this revision is dismissed.

J U D G E