

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 217 of 2013

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zulfiqar Ali Sangi

Muhammad Usman ----- Petitioner

Versus

Amanullah and others ----- Respondents

Date of Hearing : 03.09.2019 & 01.10.2019

Date of Announcement : 10.10.2019

Mr. Arbab Ali Hakro, advocate for petitioner
None present for respondents No. 1 to 14
Mr. Allah Bachayo Soomro, Addl.A.G.

ZULFIQAR ALI SANGI, J.- This petition was filed against an order dated 27.4.2012 in Execution Application No. 03 of 2011 passed by Senior Civil Judge, Badin whereby Execution Application was dismissed and an order dated 5.12.2012 in R.A. No. 25 of 2012 wherein Revision Application was dismissed by the learned District Judge, Badin.

2. The facts of the case are that a second class Suit No. 06 of 2000 was filed under Section 9 of Specific Relief Act in the court of Senior Civil Judge, Badin in respect of residential plot admeasuring 6500 sq.fts and shops admeasuring 440 sq.fts total 6940 sq.fts situated in Badin against the respondent Nos. 1 to 5.

3. The Senior Civil Judge, Badin decreed the suit by judgment and decree dated 22.2.2011, Same was assailed in R.A. No. 05 of 2001 and was decided by 1st Additional District Judge, Badin who allowed the Civil Revision Application vide judgment dated 28.2.2004 whereby the judgment and decree passed by the Senior Civil Judge, Badin was set-aside. The petitioner challenged the judgment and decree of revisional court before this court by filing CP No. D- 120 of 2004 and this court allowed the petition vide judgment dated 21.4.2005 and set-aside the judgment and decree of the learned revisional court and restored the judgment and decree of Senior Civil Judge, Badin.

4. Against the judgment dated 21.4.2005 the respondent Nos. 1 to 5 approached the Honourable Supreme Court of Pakistan by filing a Civil Petition No. 473-K of 2005, but the same was dismissed and leave application was rejected vide judgment dated 21.7.2006.

5. The petitioner thereafter filed an Execution Application before Senior Civil Judge, Badin bearing Execution Application No. 03 of 2011 on 11.4.2011, which was contested by the respondents. Later on after hearing the parties the learned Senior Civil Judge, Badin dismissed the Execution Application vide order dated 27.4.2012.

6. The petitioner assailed the order dated 27.4.2012 passed by Senior Civil Judge, Badin before District Judge, Badin in Revision Application No. 25 of 2012 and the District Judge Badin maintained the order of Senior Civil Judge, Badin and revision was dismissed vide order dated 5.12.2012. The petitioners have assailed said orders of Execution No. 03 of 2011 and order of Civil Revision dated 5.12.2012 in the instant petition and prays as under:-

- a. That order dated 27.4.2012 passed in Ex. Application No. 03 of 2011 by respondent No.15 dismissing the Execution Application and Order dated 5.12.2012 passed in R.A. No. 25 of 2012 by respondent No.16 be declared illegal, without jurisdiction and acted in exercise of jurisdiction illegally with material irregularity and may be set-aside and may be declared of no legal effect in the eye of law.
- b. To direct the respondent No.15 to proceed with the Execution Application No. 03 of 2011 and eject the respondent No. 6 to 14 and put the petitioner in physical, vacant possession of the suit property.
- c. The cost of the petition may be borne by the respondents.
- d. Any other relief deemed just and proper may be granted to the petitioner.

7. Heard learned counsel for petitioner, learned AAG, perused the record available in the file as the service upon private respondents have been held good vide order dated 30.10.2018.

8. Learned counsel for petitioner contended that for filing execution application a period of 06 years is required and in the present case limitation would start from the act of respondent Nos. 1 to 5 who handed over possession of property to the respondent Nos. 6 to 14 after the judgment of Honourable Supreme Court of Pakistan. He referred Section 48 of CPC in support of his contention. He further submitted that executing court so also revisional court wrongly held that Article 181 of the Limitation Act is applied in the present case. Lastly contended that Article 182 of Limitation Act has

been omitted therefore, Article 181 is not applied to his case; that Section 48 of CPC is applicable and not Article 181 of the Limitation Act. He further contended that learned Senior Civil judge so also District Judge Badin have not applied their judicial mind while deciding execution application; that his execution application before the learned Senior Civil judge was within time. Lastly he prayed that the orders passed by the courts below be set-aside and matter may be remanded to Senior Civil Judge Badin to decide the same on merits rather than on technicalities. In support of his contentions he relied upon the case of **Islam Din and 11 others v. Muhammad Shafi and another** (2000 YLR 2684) and **Raza Muhammad Khan and others v. Jalal-ud-din Khan and others** (1988 CLC 30).

10. Learned A.A.G. contended that the Execution Application before the Senior Civil Judge, Badin was time barred and the limitation runs in the present case from the date of judgment passed by Honourable Supreme Court of Pakistan on 21.7.2006 whereas execution application was filed on 11.4.2011 after the period of above 05 years and the same was first execution application. He further contended that there is no any illegality in the order of Senior Civil Judge, Badin so also District Judge Badin, hence the Constitutional Petition is liable to be dismissed.

11. From perusal of material available on record and from the pleadings we have found that the petitioner in the ground No.2 of petition has mentioned as under:-

“ That Article 181 column No.3 shows that the time will run from the period when the right to apply accrues. The respondent No.1 to 5 transferred the suit property and handed over the possession to respondent No.6 to 14, after decision of Honourable Supreme Court of Pakistan, therefore, according to Article 181 of the Limitation Act is in time”.

Whereas the petitioner in his Execution Application filed before the Senior Civil Judge, Badin mentioned that during the pendency of litigation pending before Honourable Supreme Court the judgment debtors malafidely shifted possession to the below named persons. Such is reproduced as under:-

Name of persons against whom the execution application of decree has been sought	<ol style="list-style-type: none"> 1. Amanullah s/o Abdul Shakoore Korai 2. Muhammad Rahim since dead through his legal heirs Mujahid s/o Muhammad Rahim 3. Usman @ Ghulam Abbas s/o not known Khaskheli 4. Ahmed s/o not known Khaskheli. 5. Zaheer Hussain s/o Nazir Hussain Haidri.
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The Judgment debtors but during pendency of litigation before Honourable Supreme Court the Jds malafidely shifted the possession subsequently to the below named person

1. Ali Anwar s/o Muhammad Moosa Bajir
2. Abdul Karim s/o Muhammad Moosa Bajir

3. Deedar s/o Mohammad Mallah
 4. Nisar s/o Muhammad Bachal Talpur
 5. Muhammad Hanif s/o Muhammad Ishaque Mallah
 6. Shoukat s/o Noor Muhammad Mallah
 7. Liaquat s/o Noor Muhammad Mallah
 8. Mst. Zarina w/o Ramzan Kachhi.
 9. Shabir Ahmed s/o Noor Muhammad Mallah
- All at present are in illegal possession of suit plot.

We are clear in mind that as per contradictory stances of the petitioner relating to possession of property has made his case untrustworthy. Be that as it may, per Section 48 of the C.P.C. no fresh application is to be presented after the expiration of six years. For ready reference Section 48 CPC is reproduced as under:-

48. Execution barred in certain cases:- (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 2[six years] from.

- (a) the date of the decree sought to be executed, or
 - (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.
2. Nothing in this section shall be deemed-
- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application, or
 - (b) to limit or otherwise affect the operation of article [183 of the First Schedule to the Limitation Act, 1908.]

Article 181 of the Limitation Act provides the period of three years and is re-produced as under:-

181. Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	49[Three years]	When the right to apply accrues
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The above controversy regarding applicability of provisions of law for filing the execution application has been resolved by the Honourable

Supreme Court of Pakistan in the case of ***Mehboob Khan v. Hassan Durrani*** (**PLD 1990 S.C. 778**) where in the Honourable Supreme Court held as under:-

“ The position that emerges from the above discussion is that, as already stated, the first application for execution of a decree would be governed by the residuary Article 181 and the rest of the applications made, thereafter, will be governed by the six years time limit prescribed by Section 48. Although the original purpose underlying section 48, read along with Articles 181 and 182 of the Limitation Act, before the amendment of the law was to provide maximum limit of time for execution of a decree. But in the changed position as a result of Law Reforms Ordinance, the only effect of section 48 would be to provide limitation for subsequent execution applications after the first one. The result would be that if no application at all is made within the period prescribed by Article 181, the execution application made, thereafter, would be barred under the said Article and as such there would be no occasion to avail of the benefits of the extended time provide by section 48, CPC. In other words once an application for execution is made within time so prescribed, any number of applications for execution can be presented within the six years period from the date of decree. This construction, in my opinion is the only construction that can be placed on the consequent legal position arising out of the amendments made by the omission of Article 182 and substitution of six years period in section 48 CPC. Otherwise the provisions for repeated applications every three years or taking steps in aid of execution provided for in Article 182 having disappeared section 48 would be become redundant and ineffective.”

12. In the case of ***National Bank of Pakistan V. Mian Aziz-ud-din and 7 others*** (**1996 SCMR 759**), Honourable Supreme Court has held that:-

“It was consequently held that the first application for execution of a decree would be governed by residuary Article 181 of the Limitation Act and rest of the applications made, thereafter would be governed by the six years period of limitation prescribed by section 48 CPC. As would appear from the above observations, the expression “fresh application” occurring in section 48 CPC was also interpreted as not including the first execution application but any subsequent application, after the first application, that was presented before the court. It, therefore, clearly follows that if no application for execution of a decree was made within the period of three years prescribed by Article 181, any application made thereafter would be barred under the said Article and no benefit under Section 48 CPC can be availed by the applicant in such a case. It is only after the first application is made within the period prescribed by Article 181 of the Limitation Act, that subsequent applications can be filed within the period provided by Section 48 CPC. Consequently, the view taken by the High Court and the Special Court that the execution application filed by the petitioners beyond the period of three years was time barred, is not open to exception”.

13. In case of ***House Building Finance Corporation of Pakistan v. Rana Muhammad Iqbal through L.Rs*** (**2007 SCMR 1929**) the Honourable Supreme Court of Pakistan dismissed the petition and leave to appeal was

refused by following the dictum laid down in the case of **Mehboob Khan v. Hassan Khan Durrani** (PLD 1990 S.C. 778).

14. After considering arguments of learned counsel for the petitioner and learned A.A.G so also going through the judgments of Honourable Supreme Court of Pakistan (supra) we are of the view that learned Senior Civil Judge Badin and District Judge Badin have not committed any illegality or irregularity while passing the orders and have rightly held that execution application filed by the petitioner was time-barred. Accordingly, while dismissing the instant petition along with pending applications, the orders dated 27.4.2012 and 5.12.2012 passed by Senior Civil Judge, in Execution Application No. 03 of 2011 and District Judge Badin in R.A No. 25 of 2012 are maintained.

JUDGE

JUDGE

karar_hussain/PS*