

IN THE HIGH COURT OF SINDH, KARACHI.

Present:
Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-6560 of 2021

1. For orders on CMA No.28315/2021 (urgent)
2. For orders on office objections
3. For orders on CMA No.28050/2021 (stay)
4. For hearing of main case.

Date of hearing 09.11.2021

Petitioner Mirza Mehmood Baig through Mr. Raham Ali Rind, Advocate.

ORDER

AHMED ALI M. SHAIKH, CJ.- Through instant Petition, Petitioner has assailed the order dated 01.11.2021 passed by the learned II Additional Sessions Judge, Karachi West, in Civil Revision Application No.90 of 2021, affirming the order dated 03.04.2021 rendered by the Senior Civil Judge IV, Karachi West, in Civil Suits No.276 of 1999 and 199 of 2001 (Execution No.07 of 2006), dismissing an application made under Section 12(2) read with Section 151 CPC by the Petitioner seeking that the consolidated Judgment and Decree of 19.01.2006 passed by the trial Court be set aside.

2. From the pleadings it appears that on 14.10.2017, petitioner filed an application under Section 12(2) read with Section 151 CPC, which was dismissed by the trial Court vide order dated 03.4.2021, observing that:-

“The applicant above named has filed instant application under section 12(2) read with Section 151 CPC for setting aside the consolidated Judgment and Decree dated 19.1.2006 and contends that the same had been obtained by way of fraud and misrepresentation. It is a well settled principle of law that remedy under Section 12(2) CPC can only be sought by an application to the Court which passed the final Judgment, Decree or order meaning thereby the application is required to be made to the Court which finally adjudicated the matter. The judgment and decree passed by this court in above mentioned suits was assailed by Mst. Sharifan, the plaintiff in Civil Suit No. 276/1999 by preferring Civil Appeal No. 54/2005 which was adjudicated by the Hon’ble Appellate court i.e. IInd A.D.J. Karachi West and decided the same vide judgment dated 16.12.2005 and decree dated 19.01.2006, whereby the

judgment and decree passed by this court were set-aside and thereby the civil suit No. 276/1999 was decreed while Civil Suit No. 109/2001 was dismissed thus this court is not competent forum to entertain application under section 12(2) CPC. Reliance is placed on the case laws reported as 2011 SCMR 1854, 2001 SCMR 1062 and 2000 SCMR 900.

In view of above, I am of the opinion that the application under section 12(2) read with section 151 CPC filed by the applicant/intervener is not entertain able by this court, therefore, the same is dismissed being not maintainable. Other applications filed by the applicant/intervener under order I Rule 10 CPC and under order 39 Rule 1 & 2 CPC are also stand dismissed being infructuous.”

3. Against the aforesaid order, the Petitioner filed Civil Revision Application No.90 of 2021, which too was dismissed vide impugned order in following terms:-

“Perusal of the material available on record reveals that period consumed by the applicant from passing of presenting this revision comes to 207 days, whereas revision under section 115 CPC is required to be filed within 90 days from the date of order. On perusal of certified copy it is revealed that same was applied on 12.4.2021, same was delivered on 15.4.2021. On deduction of said 04 days nevertheless it was filed after 203 days much beyond the period of 90 days prescribed by the law, as such instant revision is not maintainable being fettered by time. As regards the application for condonation of delay in filing the petition is concerned, it is quite strange to note that such application of condonation and its accompanied affidavit is absolutely silent about any reasons or explanation. However, the case-laws relied upon by the learned counsel for the applicant is not applicable in the instant matter having variant facts to each other. In the said circumstances, condonation application merits no consideration at all, same is also reject.”

4. Mr. Raham Ali Rind, Advocate for the Petitioner submitted that the Courts below passed impugned orders in posthaste manner without applying judicial mind and ignoring the factual as well as legal aspects of the matter. He contended that the Petitioner being bonafide purchaser has been in possession of the subject property since 15.6.2010. He further submitted that the Respondents No.7 and 8 committed cheating and fraud in obtaining the Judgment and Decree and the Petitioner came to know about pendency of the execution application when some time back police party visited the subject property for execution of writ of possession.

5. We have heard the learned counsel for the Petitioner and perused the record. During course of arguments, learned counsel very frankly conceded that the Judgment and Decree passed by the trial Court was set-aside in Appeal bearing No.54 of 2005 by the Appellate Forum, which has attained finality. However, while the date of the order of the Appellate Court Decree was mentioned in the Application moved under Section 12(2) CPC, the same had been preferred before the trial Court. Notwithstanding the dismissal of that Application, the Petitioner did not re-chart his course. Furthermore, learned counsel could not controvert that the Revision Application filed in the matter was also hopelessly time barred and even the application seeking condonation of delay and its supporting affidavit do not spell out any explanation for such an inordinate delay. In view of the above, the orders impugned herein do not warrant any interference by this Court and while allowing the application seeking urgent hearing, the Petition alongwith remaining misc. application stands dismissed.

Chief Justice

Judge