

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. **S-146** of **2011**

Applicants : Haji Bahadur Khan Khoso, through
Mr. Tariq G. Hanif Mangi, Advocate

Respondents : Ghulam Abbas & Syed Panjal Shah, through
No.1 & 4 Mr. Haji Abdullah Memon, Advocate

Respondents : Mst. Kaneez Fatima & Mst. Khursheed
No.2 & 3 (Nemo)

Respondents : Mukhtiarkar (Revenue) New Sukkur & others,
No. 5 to 7 Mr. Ahmed Ali Shahani, A.A.G.

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Date of Hearing : 19.09.2022
Date of Order : 19.09.2022
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ORDER

ZAFAR AHMED RAJPUT, J:- This Civil Revision Application filed under section 115, C.P.C. is directed against the judgment dated 31.01.2011 and decree drawn on 02.02.2011 whereby the learned 3rd Additional District Judge, Sukkur while dismissing Civil Appeal No.19 of 2010, upheld the judgment dated 24.12.2009 and decree drawn on 04.01.2010, thereby the learned 1st Senior Civil Judge Sukkur, dismissed F.C. Suit No.188 of 1999, filed by the applicant/plaintiff against the respondents/defendants.

2. The Appellate Court passed the impugned judgment on 31.01.2011 while the present Civil Revision Application was filed on 22.09.2011; therefore, the same was time barred by four months and eighteen days after excluding the time consumed for obtaining certified true copy of the judgment. The applicant acknowledging that the Civil Revision Application was time barred, filed an application being **C.M.A. No.676 of 2011**, under section 5 of the Limitation Act, 1908 (“**Act of 1908**”) for condonation of delay on the grounds that the certified true copy of the appellate decree was delivered on 19.09.2011 and that due to tribal dispute of Khosa, Panhwar and other tribes in the vicinity, the people of Khosa community remained hidden.

3. Heard, record perused.

4. The learned counsel for the applicant has failed to satisfy the Court as to how Section 5 of the Act, 1908 is applicable to civil revision application filed under section 115, C.P.C., which itself prescribes a period of limitation i.e. 90 days and how the benefit of section 5 of the Act of 1908 can be availed, when it has not been made applicable as per section 29 (2) of the Act of 1908, on a revision filed under section 115 C.P.C. For the convenience sake, section 29(2) (ibid) is reproduced, as under:

29. Savings.---[1] -----.

(2) *Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law---*

(a) *the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and*

(b) *the remaining provisions of the Act shall not apply.*

(3) -----.

(4) -----.

5. It has been observed and held by a five-member Bench of the Honourable Apex Court of Pakistan in the case of Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 SC 400) that Civil Procedure Code, 1908 though being a general law for all legal and practical purpose, for having prescribed period of limitation for filing a revision application would be considered a special law for the purposes of Act of 1908. Had legislature intended to treat C.P.C. as a general law for purposes of the Act of 1908, then same in First

Schedule would have been prescribed a period of limitation for filing a revision application. Provision of sections 4, 9, to 18 & 22 of the Act of 1908 would, thus, apply even to revision application filed under Section 115, C.P.C., however, section 5 of the Act of 1908, for not finding mentioned in section 29 (*ibid*), therefore, shall, not be applicable to revision application under section 115, C.P.C. In the case of Allah Dino and another vs. Muhammad Shah and others (2001 SCMR 286) the Honourable Apex Court has held that:

“There is no cavil with the argument that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115 C.P.C. then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29 (2) of the Limitation Act, as held in the case (i) The Canara Bank Ltd. v. The Warden Insurance Co. Ltd. (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v. Mst. Mumtaz (PLD 1982 SC 572), (iii) Ali Muhammad and another v. Fuai Hussain and others (1983 SCMR 1239) (iv) Controller of Customs (Appraisement) v. Messrs. Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Ashraf v. The State and 3 others (1999 MLD 330).

6. Even the grounds agitated by the learned counsel for the applicant for condoning the delay are not convincing. A civil revision does not lie against the decree but the decision/ judgment. In the instant case, the applicant had obtained certified true copy of the judgment on 14.02.2011 within fourteen days of passing of appellate judgment, but even then, he failed to file civil revision within time. The applicant has also failed to bring on record any material to establish that he or any of his family members was victim of alleged tribal enmity. When the delay in filing of an appeal/revision is seemingly sign to mere negligence and

carelessness of the appellant/applicant who failed to pursue his case with due diligence, he is not entitled to any indulgence by the Court.

7. It is now well-settled principle of jurisprudence that delay defeats equity and that equity aids the vigilance and not the indolent. In the case of Muhammad Hussain v Settlement and Rehabilitation Commissioner (1975 SCMR 304) the explanation founded on misconception was not accepted and it was observed that in civil matters a valuable right accrues to the other side by laps of time and it is necessary that each day's delay should be necessarily explained. Similar principle was laid down in the case of Muhammad Saeed v Shaukat Ali (1982 SCMR 285) calling upon to appellant to explain each day's delay. In the case of Lanvin Traders, Karachi v. Presiding Officer, Banking Court No. 2, Karachi & others (2013 SCMR 1419), it has been held by the Apex Court that it would be seen that invoking of remedy by some aggrieved party beyond the prescribed period of limitation creates valuable legal rights in favour of the opposite party, therefore, in such cases delay of each day is to be explained by the defaulting party to the satisfaction of the Court. In the case of Mst. Rukhsana Ahmed v Tariq Attaullah (1980 SCMR 36), even one day's delay was not condoned, holding that even if the time requisite for obtaining the certified copy of the ejectment order is computed from date of application for grant of copy to date of its delivery, the first appeal filed by petitioner was barred by one day.

8. For the foregoing facts and discussion, C.M.A. No.676 of 2011 is dismissed being not maintainable in law and this Civil Revision Application is dismissed as time barred along with pending applications, but with no order as to costs.

JUDGE