

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-187 of 2023

Applicants : Province of Sindh and others,
through Mr. Ahmed Ali Shahani,
Assistant Advocate General

Respondent : M/s Amar Lal Traders, through
Mr. Ashok Kumar K Jamba, Advocate

Date of hearing : 07.05.2024

Date of Decision : 31.05.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("C.P.C"), the applicant has impugned judgment and decree dated 02.8.2023, passed by learned Additional District Judge-III, Sukkur ("**the appellate Court**") in Civil Appeal No.41 of 2023, whereby; the judgment and decree dated 25.02.2023, passed by learned Senior Civil Judge-II, Sukkur ("**the trial Court**") in F.C Suit No.111 of 2017, through which the suit of plaintiff/respondent was decreed has been maintained by dismissing the appeal.

2. The salient facts precipitating the aforementioned Civil Revision Application are that the respondent, herein referred to as the plaintiff, initiated a legal proceeding for the recovery of an outstanding amount of Rs.32,708,500/- against the defendants, herein referred to as the applicants. The plaintiff alleges that during the fiscal year of 2012-2013, consequent to severe monsoon rains and subsequent flooding in Sindh, applicants No. 4, 7, and 8 issued a purchase order for the provision of blankets and tents. These items were intended for the victims of the aforementioned natural disaster, who were residing in relief camps established in various cities. Upon the issuance of the Purchase Order by applicant No.6, the plaintiff, in compliance with the approved order, supplied relief articles,

specifically blankets and tents, valued at Rs.47,708,500/- to the applicants. Of the aforementioned amount, applicant No.7 remitted a payment of Rs.15,000,000/- via a cheque dated 24.12.2012 to the plaintiff. A cheque amounting to Rs.7,074,375/- dated 29.01.2013 was issued to the plaintiff, but it was not cashed. Consequently, an outstanding balance of Rs.32,708,500/- remained unpaid by the applicants. Despite the plaintiff's repeated attempts to recover the outstanding amount, the applicants failed to make the necessary payments, providing only empty promises. As a result, the plaintiff was compelled to institute the suit.

3. The applicants No.4, 7 and 9 have contested the suit and submitted their written statement, categorically denying the claims made by the plaintiff. Their denial is stark, acknowledging the occurrence of heavy rainfall and flooding during the fiscal year of 2012-2013, but questioning the authenticity and validity of the photocopied order attached by the respondent, dated back to 2012-2013. They further assert that the summary for releasing liabilities for the aforementioned year was rejected by the Chief Minister of Sindh. However, they concede to the respondent's claim regarding the issuance of a cheque, which was not encashed due to a lack of funds. They further question the logic behind issuing orders to purchase relief goods when funds were unavailable. They also raise concerns about how the respondent fulfilled a purchase order amounting to Rs.4,77,08,500/- without receiving any payment in advance and how he managed to provide relief goods worth more than 4.77 Crore despite only receiving 1.5 Crore. The fact that a cheque for an amount exceeding Rs.70 lacs was not cleared further casts doubt on the legitimacy of the purchase order.

4. After framing the issues and recording the pro and contra evidence of the parties, the learned trial Court passed a judgment and decree on 25.02.2023, decreeing the suit filed by the respondent. Dissatisfied with the judgment and decree of the trial Court, the

applicants appealed to the appellate Court. After hearing the parties, the appellate dismissed the applicant's appeal vide impugned judgment and decree dated 02.8.2023. Consequently, this led to the present Civil Revision.

5. At the outset, the learned Assistant Advocate General (A.A.G), representing the applicants, argued that the respondent-plaintiff's suit was time-barred and was erroneously decreed by both the lower courts. He cited Article 52 of the Limitation Act, 1908 (the "**L.A, 1908**") to substantiate his argument, asserting that the stipulated period for filing such a suit is three years. He further argued that the respondent-plaintiff, in Paragraph No.5 of his plaint, admitted that the second cheque, dated 29.01.2013, was not cleared. The respondent-plaintiff filed the suit on 14.10.2017, which is beyond the three years, rendering it time-barred. The learned A.AG also added that the documents were manipulated by applicant No.7. He pointed out that the respondent-plaintiff failed to produce receipts of purchase and supply of the articles in his evidence to validate the outstanding amount against the applicants. In conclusion, he asserted that both the lower courts committed a legal error in decreeing the suit of the respondent-plaintiff and, therefore, should be dismissed. To support his contentions, he relied upon case law reported in **2017 CLC Note 37, 2017 CLC Note 48, 2017 CLC 1533, and 2020 CLC 1945.**

6. Responding to the contention, the learned counsel representing the respondent-plaintiff defended the impugned judgments and decrees. He asserted that both the lower courts have recorded concurrent findings of facts grounded in a thorough evaluation of the evidence. He also argued that the outstanding amount is not in dispute. The applicant's witness, Ajay Kumar (Assistant Director), acknowledged in his testimony the supply of blankets and tents to the Government for people affected by rain and the outstanding amount owed to the respondent-plaintiff. The learned counsel contended that no case of misinterpretation or

omission of evidence has been established, nor has any legal flaw been identified that would necessitate the intervention of this Court in its revisional jurisdiction under Section 115 C.P.C. He cited the case law reported as **2016 YLR 1687** to support his arguments.

7. The arguments have been heard at length, and the available record has been meticulously evaluated with the valuable assistance of the learned counsel for the parties. The accuracy and thoroughness of the judgments and decrees of both the lower Courts have been scrutinized, providing a fair opportunity for the learned counsel for the applicants to convince me about any illegal actions or material irregularities committed by the Courts below in the exercise of their jurisdiction.

8. In the matter at hand, the learned A.A.G has underscored his arguments primarily on the point of limitation. He contends that the suit for recovery of money, filed by the respondent-plaintiff, exceeds the three years stipulated under Article 52 of the L.A 1908. He substantiates this by noting that the second cheque was issued on 29.01.2013, while the suit was filed on 14.10.2017, a duration exceeding the three-year limit. To address this objection, I would first like to reproduce the provision of Article 52 of the L.A 1908, as follows: -

Description of suit	Period of limitation	Time from which period begins to run
52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	[Three years]	The date of the delivery of the goods

9. The aforementioned Article unequivocally stipulates that for the price of goods sold and delivered, where no fixed period of credit is agreed upon, as is the case here, the three-year limitation period commences from the date of the delivery of the goods. Upon meticulous examination of the record, it is evident that the goods, as per the purchase order, were last supplied by the plaintiff-respondent to the D.C.O Jacobabad as per the Bill of Lading (Bilty). The Bilty

reveals the date 12.01.2013, and the last cheque issued to the respondent-plaintiff is dated 29.01.2013, which was not cleared. However, the present suit was filed on 14.10.2017, a period of about 04 (four) years and 09 (nine) months from the last Bill of Loading and about 04 (four) years and 08 (eight) months from the previous cheque. In light of these circumstances, it is incontrovertible that the suit of the plaintiff-respondent exceeded the three years as prescribed under Article 52 of the L.A, 1908.

10. Notwithstanding the stipulation of Article 52 of the Limitation Act, 1908, which would ordinarily render the plaintiff-respondent's suit time-barred, there exists a written acknowledgement as substantiated by the record in the form of a Summary (Exh.48/B) addressed to the Chief Minister of Sindh. This summary, produced by the applicants' witness, reveals that the Rehabilitation Department, who is a party in the suit as defendant No.3 and applicant No.3 herein, initially requested funds to discharge liabilities to contractors/vendors, including the plaintiff-respondent, for the settlement of their outstanding dues on 03.06.2014.

11. Upon meticulous examination of the timeline from the last loading bill (Bilty) dated 12.01.2013 to 03.06.2014, it is discernible that the period is approximately one year and four months, which falls within the three-year limitation period prescribed under Article 52 of the Limitation Act, 1908.

12. The aforementioned Summary further discloses that a second request was made on 06.12.2016 for the same purpose, which was subsequently rejected by the Chief Minister of Sindh on 22.03.2017. In such circumstances, Section 19 of the Limitation Act 1908 becomes applicable to the case of the plaintiff-respondent.

13. This provision stipulates that if an acknowledgement of liability in respect of any property or right is made in writing and signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability before the expiration

of the period prescribed for a suit or application, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

14. It is crucial to note that the acknowledgement may be deemed sufficient even if it does not delineate the precise nature of the property or right or if it asserts that the time for payment, delivery, performance, or enjoyment has not yet arrived, or if it is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or if it is coupled with a claim to a set-off, or if it is addressed to a person other than the person entitled to the property or right.

15. This provision plays a pivotal role as it allows for the extension of the limitation period, thereby averting the extinguishment of the claim due to the lapse of time. It is designed to ensure that a person who acknowledges their liability or obligation is not permitted to evade it merely due to the passage of time. In the present discourse, I derive strength from the precedent set in the case of West Pakistan Tanks Terminal (Pvt) Ltd vs Collector (Appraisement)(2007 SCMR 1318), wherein the Supreme Court of Pakistan has held as under: -

"Thus, he would be precluded from challenging the validity of the notices under section 32 of the Act of 1969 on the ground that it was beyond the period prescribed in the said section. It will be advantageous to reproduce the relevant portion from the judgment of the High Court dealing with the question of limitation, which is as under:

The second plea that has been taken in the present proceedings is that the applicant is entitled for refund of duties on such consignments against which the proceedings have become barred by time. This plea on the face of it is misconceived. Firstly, after the detection of evasion of the customs duties and charges, the applicant acknowledged its wrongful act and agreed to pay the evaded duties and charges by executing a bond on a stamp paper. Thus there was acknowledgement of liability, which in itself vitiates the plea of limitation. Secondly, had there been no acknowledgment of the obligation in writing, even then the applicant pursuant to investigations into the entire affair of evasion of duties made a payment of Rs.502,298,832. This recovered amount has to be applied first to the duties and charges, which are first in point of time. By applying so, the entire consignment imported in 1993, against which only the plea of limitation could have been taken, stands recovered. Under the law even where a claim is barred by time, but for

any reason its stand recovered or adjusted, then there exists no occasion for the debtor or obligor to seek refund of such recovered or adjusted amount on the plea of limitation. The law of limitation never extinguishes a right in a time-barred claim. The only remedy for seeking its recovery is barred. Once the time-barred claim stands recovered or adjusted even after the period of limitation has gone by, such recovery or adjustment cannot be said to be unlawful and the debtor or obligor cannot seek refund of such amount on the plea of limitation. In the present case not only the alleged time-barred claim stands settled out of the recovered sum of Rs.502,298,832 but on account of applicant's own .acknowledgment of liability in writing in the year, 1996, no portion of the demand remained barred by time.

13. From perusal of the above quoted portion from the judgment of the High Court it is observed that the High Court had proceeded in accordance with law in determining the question of limitation for issuance of show-cause notice under section 32 of the Act of 1969 in respect of the illegal removal and evasion of customs duty and other charges in the year 1993. The spirit behind the law of limitation appears to be that the lapse of time does not extinguish the right but it only bars the remedy whereas it is found on facts that after detection of the wrongful act of the petitioner, he had opted to pay the duties and charges as demanded or likely to be demanded is legally estopped from saying that such recoveries were barred by time and therefore he would be entitled to refund of such amounts.”
[Emphasis is supplied]

16. In the instant case, by virtue of the earlier summary dated 03.06.2014, which remained without any outcome as stated in the summary dated 06.12.2016 (Exh.48/B), which was rejected on 22.03.2017, the period of limitation kept getting a new acknowledgement. Consequently, when the suit was filed on 14.10.2017, it was within the three-year limitation prescribed by law.

17. Turning my attention back to the substantive merits of the case, it is evident that the applicants have unequivocally admitted to the outstanding amount as claimed by the plaintiff-respondent in the suit. Both the lower courts have judiciously evaluated the evidence on record, and their concurrent findings on the factual questions do not warrant any interference in the exercise of revisional jurisdiction. No trace of illegality or irregularity has been committed in the proceedings. The impugned judgments and decrees have been passed in accordance with the principles of natural justice and the

established tenets of law. Therefore, there exists no ground for interference in the impugned judgments and decree, and the case does not present any compelling circumstances that justify the exercise of revisional jurisdiction. The judgments and decree under challenge stand on a firm legal footing and do not call for any interference.

18. For the foregoing reasons, the present civil Revision, having been found devoid of substance, is **dismissed** with no order regarding costs.

JUDGE

Faisal Mumtaz/P.S