

IN THE HIGH COURT OF SINDH AT KARACHI

REVISION APPLICATION NO.28/2015

Applicant : Asghar Imam,
through Mr. Muhammad Arshad, advocate.

Respondents : Muhammad Irfan and others,
Respondent No.1 appeared in person.

Date of hearing : 17.05.2018.

Date of order : 17.05.2018.

JUDGMENT

Salahuddin Panhwar, J: Applicant impugned order dated 28.01.2015 passed by learned IIIrd A.D.J, Karachi West, on application u/s 5 of Limitation Act filed in Civil Appeal No.79/2014 whereby the application as well Appeal were dismissed.

2. Applicant had filed Civil Suit No.279/2013 for declaration, cancellation of sale deed dated 07.10.2006, possession, mesne profit and permanent injunction against respondents that include his wife too wherein pleaded that he had purchased the suit property viz. Plot No.3421-A, measuring 120 square yards, situated in Sheet No.6, Ghaziabad, Sector 11-1/2, Orangi Town, Karachi, from its previous occupant Azeemuddin for a sum of Rs.60,000/- which was an un-regularized Katchiabadi and made construction thereon, later on the property was regularized by KMC and applicant got that property leased from KMC vide indenture of lease dated 12.01.1998 but in the name of his wife Mst. Khairun Nissa (respondent No.3) due

to love and affection with her as a *benami owner* whereas applicant was real owner of the property in question. It was pleaded that applicant had differences with his wife /respondent No.3 who was living in her relatives' house and during that period she was induced by her relatives Shakeel and Wakeel who caused to manage execution of registered sale deed dated 07.10.2006 by respondent No.3 in favour of respondents No.1 and 2 hence applicant moved application to various authorities; that respondents No.1 and 2 filed Suit No.1030/2008 against applicant and his wife (respondent No.3) which was dismissed in default on 30.03.2010. It was pleaded that respondents No.1 and 2 by putting respondent No.3 under coercion obtained / got executed the sale deed by respondent No.3 who was not even the owner.

3. Respondents No.1 and 2 in their written statement as well application under order VII Rule 11 CPC stated before the trial Court that respondent No.3 being lawful owner by virtue of lease deed dated 12.01.1998 had sold the property in question to them vide registered conveyance deed dated 07.10.2006 and the respondents received original title documents and possession; that they filed civil suit No.1030/2008 as applicant and his wife, in collusion with *ghunda* elements were forcibly trying to snatch the property from these respondents however when the applicant and his wife were exhausted of their illegal activities, respondents did not pursue their civil suit which was dismissed in default.

4. The learned trial Court by order dated 24.03.2014 passed on respondents' application u/o VII Rule 11 CPC, rejected the

plaint of plaintiff/applicant being barred by articles 91 and 120 of the Limitation Act followed by decree dated 25.03.2014.

5. Civil Appeal No.79/2014 alongwith an application u/s 5 of the Limitation Act for condonation of delay in filing the appeal was preferred by appellant/applicant before the appellate Court that dismissed the application u/s 5 of Limitation Act as well as Civil Appeal vide order dated 28.01.2015 impugned herein.

6. Learned counsel for applicant contended that as the property was regularized by KMC, applicant got it (property) leased from KMC vide indenture of lease dated 12.01.1998 but in the name of his wife Mst. Khairun Nissa (respondent No.3) due to love and affection with her, as a *benami owner* whereas applicant was real owner of the property in question; that conveyance deed dated 07.10.2006 shows that his signatures were forged thereon as witness; that appellate court committed material errors while noting the dates of decree of trial Court and also wrongly assessed limitation as well wrongly considered the provisions of articles 91 and 120 of the Limitation Act; that the appellate court wrongly noted date of decree of trial Court as 03.03.2014 instead of 25.03.2014; that trial Court prepared decree dated 25.03.2014 and on 27.03.2014 application for certified copy was moved, on 05.04.2014 cost was estimated by copyist and same day it was paid, on 07.04.2014 certified copy of judgment and decree were delivered to applicant hence 11 days for preparation of certified copies needs to be added to 30 days prescribed for filing appeal; further that appeal could not be filed in time as applicant had to undergo a surgical operation of his

eye on 17.04.2014; it was further wrongly held that court fee was not paid while factually Rs.15,000/- was paid on the plaint in trial Court whereas at appellate stage application u/s 140 Cr.P.C. was also moved requesting for payment of court fee on appeal.

7. Respondent No.1 appearing in person submitted that property was purchased from its lawful owner who executed registered sale deed in favour of respondents without any duress or coercion and handed over original title documents and put them in possession hence applicant had no cause of action; that the suit filed by applicant was time barred as property was purchased in the year 2006 and applicant approached the Court in the year 2013 with malafide intentions and to blackmail the respondents.

8. During the course of arguments applicant present in Court stated that out of the total sale consideration received by his wife pursuant to conveyance deed dated 07.10.2006 he had received some amount.

9. Heard the respective sides and perused the available record *carefully*.

10. The *moot* question, involved in the instant matter, is that of *limitation*. At the outset, I would say that there can be no denial to the legally established principle of law that law of *Limitation* is not a mere technical law but was / is always meant to bring things under a mechanism. An aggrieved is always supposed to move and complain over any infringement towards his *legal* right because an act of *sleeping* over one's right may allow the principle of acquiescence as

well laches in play. Reference may be made to the case of Muhammad Islam v. Inspector General of police, Islamabad (2011 SCMR 8)

wherein it is held as:-

..The question of limitation cannot be considered a 'technicality' simpliciter as it has got its own significance and would have substantial bearing on merits of the case. The law of limitation must be followed strictly. In this regard we are fortified by the dictum laid down in.....

This has been the *prima facie* object because of which the law of *Limitation* was introduced thereby providing a considerable period for an *aggrieved* to approach the lawful forum for restoration of his *infringed* right or to get a declaration for a *right* or *document*, if under threat. However, if one fails in approaching the *legal* forum in time then he, before seeking a help from the *legal* forum, would *first* require to explain the cause which resulted in preventing him for coming to legal forum in court. A failure would be sufficient to make him lay on the bed he *himself* laid. Reference may also be made to the case of Messrs NIDA-E-MILLAT, Lahore v Commissioner of Income Tax Zone-1 Lahore (2008 SCMR 284) it is held as:-

“Besides as far as the limitation is concerned, it does create a right in favour of the other side and if the appeal or proceedings are time barred it becomes the duty of the person who has approached the Court to least to submit an application or make an explanation but in the instant case admittedly no such effort was made knowing well by the petitioner that the appeal was barred by time. Therefore, under these circumstances, we are of the opinion that the High Court has rightly declined relief to the petitioner.”

11. Now, I would revert to merits of the case. For this, it would be appropriate to refer the operative part of order of the appellate Court which is:-

“In the light of above articles, the suit of the plaintiff was absolutely time barred, when he filed before trial court therefore the learned trial court rightly rejected the plaint under vide order dated: 24.3.2014. So also this civil appeal is also time barred due to reason that judgment and decree past on 24-03-2014/03-03-2014 but this appeal filed on 02-07-2014 after about four months. The reason given in appeal to delay the civil appeal on the ground that he was operated by Eye Hospital on 17-04-2014. The period was expired on about 03-04-2014 and thereafter he was operated therefore, this ground is false. There is another ground to be dismissed the civil appeal he failed to pay court fee from 02-07-2014 till today. Even the learned advocate for appellant avoided to argue on office objections for about more than Six Months. This conduct also reveal that appellant is only interested to keep the matter on court board to pressurized the respondent with malafide intention. He had not disclosed any ground in his appeal for condonation of delay in filling appeal. in such circumstance, I do not find any reasonable ground to entertain said application as appeal is hopelessly time barred, therefore I hereby dismissed application filed u/s 5 of the limitation act as well as this Civil appeal No.79/2014.”

From above, it appears that learned appellate Court not only found the order of trial Court rejecting plaintiff of applicant/ plaintiff as time barred but also on count of filing the appeal beyond the prescribed period. I would attend both parts.

12. It is not disputed position that present applicant filed the suit on 27.03.2013 thereby challenging a sale deed dated 07.10.2006 which *otherwise* is to be challenged within a period of three years. From the pleading of the applicant, it appears that he claimed himself to be *real* owner while his wife (respondent no.3) to be *benami owner* but in same breath claimed that such deed was got executed from his wife (*respondent no.3*) by way of coercion. Such blowing hot and cold in a single breath was / is never permissible. Even otherwise, *later* part of pleading came to an end when respondent no.3 herself never filed such a *suit* and admittedly possession is with respondent nos.1 and 2. I may add here that plea of *benami* title was also of no help for

the applicant / plaintiff for bringing the suit after such considerable delay because it was the case of the applicant / plaintiff himself that title was got in name of his wife (respondent no.3) due to love and affection. A transfer of title out of love and affection would not leave the *transferor* to have an option of challenging the same as *benami* because same got its own *criterion* which *however* does not include a transfer out of love and affection. Thus, *prima facie* learned trial court as well appellate court rightly found the case of the applicant time barred. I would add that once a *lis* is *prima facie* appears to be barred by law then the Court is under obligation to reject it. Reliance is placed on the case of Hakim Muhammad Buta & another Vs Habib Ahmed & Ors (PLD 1985 SC 153), it has been observed as:-

Limitation Act.-

“ ----Ss. 3, 4 to 25.--- Matter of limitation is not left to pleadings of parties.---It imposes a duty in this regard upon court itself---As such if from statement in plaint suit appears to be barred by limitation, court is obliged to reject plaint under R. 11 Order VII CPC.---Similarly, limitation plea cannot be waived and even if waived it can be taken up by party waiving it and by Courts themselves—In exceptional cases, a defendant would, however, be debarred from rising plea of limitation.---This would be a general principle of estoppel arising from defendant’s conduct and would be particularly so if plea belatedly taken involves an inquiry on facts”.

While attending to second part, I would say that even if the calculation so portrayed by the learned counsel for the applicant that *Eleven* (11) days needs to be added in 30 i.e 41 days from date of decree i.e 25.3.2014 yet the applicant was required to have filed the appeal upto first week of the May, 2014 but the appeal was filed on **02-07-2014**. If the applicant had an *eye* surgery on **17-04-2014** then he could have filed the appeal upto *1st* week of May, 2014 (if

calculation of applicant is taken as correct). The eye surgery on such date alone would never be sufficient to condone the delay upto '**02.7.2014**'. The explanation should never be *vague* rather there must be reasonable cause for **each day** which in the instant case, the present applicant never brought on record except that of eye-surgery on a particular date. The applicant brought nothing on record that such eye-surgery had confined him to bed or that he was prevented for such period i.e upto **02.7.2014** from moving. In absence thereof, the learned appellate Court was quite justified in finding the appeal to be barred by law of limitation. It was held in the case of Lal Khan v. Muhammad Yousif (PLD 2011 SC 657) as:-

'Aggrieved person has to pursue his legal remedies with diligence and if a petition or a suit etc. is filed beyond limitation each day's delay has to be explained. Where vague explanation was given without even specifying the date of knowledge, nor any explanation tenable in law was provided to justify condonation , delay condoned was violative of law and, was not sustainable'

Prima facie, the applicant / plaintiff has failed to point out any material illegality in concurrent findings of the two courts below rather the same appears to be reasoned one. In absence of an excess of jurisdiction or *patent* illegality the concurrent findings needs not be disturbed. In consequence of the discussion, I find no substance in instant revision petition which accordingly was dismissed by short order dated 17.05.2018. These are the reasons of such short order.