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<div class=Section1>

<p class=MsoNormal align=center style='text-align:center'>THE HIGH COURT OF SINDH AT KARACHI</p>

<p class=MsoNormal align=center style='text-align:center'>(REVISIONAL JURISDICTION)</p>

<p class=MsoNormal align=center style='text-align:center'>R.A.NO.131 OF 2006</p>

<p class=MsoNormal align=center style='text-align:center'> </p>

<p class=MsoNormal align=center style='text-align:center'> </p>

<p class=MsoNormal align=right style='text-align:right'>Before: Mr.Justice Ali Sain Dino Metlo</p>

<p class=MsoNormal> </p>

<p class=MsoNormal> </p>

<p class=MsoNormal>Muslim Educational Society (Registered)</p>

<p class=MsoNormal>through its President Azad Bin Haider,</p>

<p class=MsoNormal>Advocate, 12-Bahadur Shah Market,</p>

<p class=MsoNormal>1st floor M.A.Jinnah Road,</p>

<p class=MsoNormal>Karachi.....Applicant.</p>

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<p class=MsoNormal> </p>

<p class=MsoNormal align=center style='text-align:center'>VERSUS</p>

<p class=MsoNormal> </p>

<p class=MsoNormal>Madina Masjid,</p>

<p class=MsoNormal>Through Honorary Secretary,</p>

<p class=MsoNormal>Intezamia Committee,</p>

<p class=MsoNormal>Near Baldia Primary School,</p>

<p class=MsoNormal>Khudadad Colony,</p>

<p class=MsoNormal>Karachi.....Respondent.</p>

<p class=MsoNormal> </p>

<p class=MsoNormal align=center style='text-align:center'>

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<h2>Date of hearing 01.02.2008</h2>

<p class=MsoNormal>Mr.Abdul Latif Shakoor, advocate for the applicant.</p>

<p class=MsoNormal>Mr.Javed Mussarat, advocate for the respondent.</p>

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<h1> </h1>

<h1>JUDGMENT</h1>

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<p class=MsoNormal style='text-align:justify;line-height:200%'>Ali Sain Dino Metlo J.

Applicant's suit, bearing No.437 of 2002, for declaration, possession and mense profits was dismissed as time-barred by the III-Senior Civil Judge, Karachi East, on 07-04-2005. His appeal, bearing No.95 of 2005, was dismissed by the District Judge, Karachi East, on 15.08.2006. By this revision, he has challenged the two orders, mainly on the ground that there was no limit of time for filing a suit for possession.</p>

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<p class=MsoBodyText>2. Briefly, the facts are that in the year 1979, the applicant, claiming ownership, filed a Civil Suit, bearing No.325 of 1979

(new number 389 of 1985), against the respondent and others in respect of a hall measuring 14x42 ft., situated on plot No.KC-A/PB, Khudadad Colony, Karachi. On 18.10.2000, the suit was dismissed as withdrawn with permission to file a fresh suit. On 08.05.2002, the fresh suit bearing No.437 of 2002 was filed for possession and mense profits at the rate of Rs.50 per day from 01.12.1968 till the delivery of possession alleging that the respondent had illegally occupied the hall on 01.12.1968.</p>

<p class=MsoNormal> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>3. The learned Senior Civil Judge rejected/dismissed the suit on 07.04.2005 on the ground that it was hopelessly time-barred. The learned District Judge confirmed that the suit was time-barred and dismissed the applicant's appeal on 15.08.2006.</p>

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<p class=MsoNormal style='text-align:justify;line-height:200%'>4. It is the case of the applicant himself, narrated in the plaint, that the respondent had illegally occupied the hall on 01.12.1968. The suit was filed on 08.05.2002 i.e. after more than 33 years. According to the Articles 142 and 144 read with Section 28 (then in force) of the Limitation Act, 1908, a suit for possession could be filed within 12 years of the date of dispossession or discontinuance or of defendant's possession becoming adverse to the plaintiff. In view of the provisions of Rule 2 of Order XXIII of the Code of Civil Procedure, 1908, in a suit filed with permission granted under Rule 1(2) ibid, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. The withdrawal of the previous suit with permission to institute a fresh suit cannot, therefore, have the effect of extending the period of limitation. The permission will save the fresh suit only from the bar contained in sub-rule (3) ibid., according to which on an unconditional withdrawal a plaintiff is precluded from instituting fresh suit on the same cause of action. It will not save the fresh suit from the bar of limitation.</p>

<p class=MsoNormal> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>5. There is no force in the contention of the learned counsel for the applicant that in view of the decision of the Shariat Appellate Bench of the Hon'ble Supreme Court in the case of Maqbool Ahmed versus Hakoomat-e-Pakistan, reported in 1991 SCMR 2063, the suit could not be dismissed as time-barred. In the said case

section 28 of the Limitation Act, 1908, was held to be repugnant to the injunction of Islam in so far as it provided for extinguishment of the right in the property at the determination of period prescribed for instituting a suit for possession of the said property. However, the decision cannot be given retrospective effect particularly when the 'Order of the Court' specifically mentions that the 'decision shall take effect from 31st August, 1991.' It cannot, therefore, have the effect of reviving already extinguished rights. </p>

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<p class=MsoNormal style='text-align:justify;line-height:200% '>6. It is the applicant's own case that the respondent had illegally occupied the hall on 1.12.1968, but they did not approach the court immediately as they wanted to settle the matter amicably outside court. Thus, the delay in seeking legal remedy was deliberate. According to Articles 142 and 144 (then in force) read with section 28 (then in force) of the Limitation Act, 1908, suit for possession could be filed within 12 years of dispossession or discontinuance or of defendant's possession becoming adverse to the plaintiff. Thus, the suit filed by the applicant in 1979, being within 12 years of respondent's illegal occupation, was within time. However, after the withdrawal of the first suit, the second suit was filed in 2002 i.e. after 33 years of respondent's illegal occupation and was, therefore, hopelessly time-barred. On 31.8.1991 i.e. on the date of the enforcement of decision given in Maqbool Ahmed's case supra, which was after more than 22 years of respondent's illegal occupation, applicant's alleged right of ownership, having already extinguished under the provisions of section 28 ibid, was no more in existence. The decision cannot have the effect of reviewing a non-existent right. In the precedents reported in AIR 1940 Calcutta 115 (DB) and AIR 1957 Allahabad 740 (DB), it was held that in absence of any expression of intention by the legislature to the contrary, even statutory amendment, extending the period of limitation, cannot have the effect of reviving a right of suit which had already been barred by limitation, as an extinguished / extinct right cannot be revived by the subsequent amendment. </p>

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<p class=MsoNormal style='text-align:justify;line-height:200% '>7. For the above reasons, the revision, being meritless, is dismissed with costs. </p>

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JUDGE</p>

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