

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No.S-163 of 2024

Applicant : Ghulam Shabir son of Darhoon Khan Phulpoto,
in person.
Respondents : P.O Sindh and 9 others.
Through Mr. Ahmed Ali Shahani, AAG.
Date of Hearing: 12.05.2025.
Date of Judgment: 04.08.2025.

JUDGMENT

Abdul Hamid Bhurgri, J, The applicant through this Civil Revision has challenged the impugned Judgment dated 19.03.2024 and decree dated 22.03.2024 passed by learned III-Additional District Judge, Khairpur in Civil Appeal No.180/2023 dismissing the appeal of applicant and the impugned Judgment dated 02.11.2023 and Decree dated 03.11.2023 passed by learned I-Senior Civil Judge, Khairpur dismissing suit of the applicant.

2. The applicant/plaintiff filed suit for Recovery of Rs.100 Crores against the defendants/respondents and according to him vide respective tenders dated 02.02.1995 and 16.8.1995 he completed work of construction of three culverts in the scheme from Thari to Jiskani 8 furlong 3, 6 and 8 mile 5 to 6 Thari to Jiskani Road, bridge over Hingorja Minor on the road Badar Din Siddiqui near Shah-ji-Machine to Setharja and road scheme Mitho Chang of Mile No: 5 within the stipulated period, which verified and approved by the concerned authorities and such letters for payment were issued. It is further averred that the plaintiff had deposited requisite deposits thrice amounting to Rs.1,50,000/-. The plaintiff carried out the work amounting to Rs.3,75,00,000/- but he received an amount of Rs: 150,017/- and the remaining amount including extra work carried out under the directions of the defendants including the repair charges of Rs: 45,00,00,000/- is still unpaid/outstanding against the defendants. The plaintiff approached pole to pillar for his outstanding amount, but to no avail. He had also filed Constitution Petition No: 1271/2013 before Hon'ble High Court of Sindh Bench at Sukkur for recovery of his outstanding dues, which was also disposed of vide order dated 29.10.2014. The plaintiff approached the official defendants and concerned authorities for release of his dues though such letters were issued for making payment of outstanding amount of Rs.100 Crores, but no amount was paid to him, hence cause of action arose and suit was filed with following prayers:-

- (a) This Hon'ble Court may be pleased to pass decree in favour of plaintiff for Rs.100 Crores in favour of plaintiff with strict, stern and stringent directions to the defendants to pay the above legitimate dues to the plaintiff immediately without further inordinate delay.
- (b) To award costs of the suit and any other relief deemed fit and proper in circumstances of the case.

3. The record reflects that after service of the summons, the defendant No.6 filled his written statement denying the assertions of the plaintiff and submitted that the suit is not maintainable under the law, plaintiff did not deposit the amount of Rs.1,50,000/-, he has malafidely shown excess amount of the contract work carried out by him, actually he had got full payment of the completed contract work and no dues are outstanding against the defendants. He further submitted that the claim of the plaintiff for recovery of dues is bogus and baseless without any documentary proof and no any order has been issued for payment of the amount to the plaintiff by the defendants.

4. The record further reveals that the plaint was rejected U/O VII Rule 11 CPC vide order dated 13.06.2022, which was assailed in Civil Appeal No.157/2022, order impugned was set aside by the learned Additional District Judge-IV Khairpur, vide judgment dated 18.02.2023 and decree dated 21.02.2023 and the matter was remanded with observations to frame issues and to record evidence.

5. Learned Trial Court framed following issues:-

1. *Whether suit of the plaintiff is not maintainable under the law?*
2. *Whether plaintiff is entitled for recovery of 100 crores from the defendants in lieu of contractual work alleged to have been done by the plaintiff?*
3. *Whether no any dues of plaintiff is outstanding against the defendants and plaintiff has received full payment of the contract work?*
4. *Whether plaintiff is entitled for relief as claimed?*
5. *What should the decree be?*

6. The applicant/plaintiff in order to prove his case, examined himself as PW-1 at Exh.P/1 and has produced affidavit in evidence at Exh.P/2. In support of his case the plaintiff also examined his witnesses PW-2 namely Ameer Bux at Exh.P/3 who has produced affidavit in

evidence at Exh.P/4, and PW-3 Nazal Jagirani at Exh. P/B who has also produced affidavit in evidence at Exh. P/6. On the other hand, the defendant No. 6 (Executive Engineer Roads Khairpur namely Muzafar All Seelro) examined himself as D.W-1 at Exh. D/1 and has produced affidavit in evidence at Exh. D/2.

7. After hearing the parties, learned trial Court dismissed the suit vide Judgment dated 02.11.2023 and Decree dated 03.11.2023, the applicant filed Civil Appeal No.180/2023, which was also dismissed vide Judgment dated 19.03.2024 and decree dated 22.03.2024.

8. The applicant in his written arguments submitted that the impugned Judgments and decrees of both the courts are contrary to the law and both the courts failed to consider the legal and factual dimensions of the case. He further argued that both the courts have overlooked his claim. He further submits that the impugned Judgments and decrees suffer from material legal infirmity and prayed that the revision application may be allowed.

9. Learned Assistant Advocate General submitted that both the Court below have passed judgments in accordance with law, there is no misreading and non-reading of the evidence. He further submits that scope of section 115 CPC is limited and both the Courts below have exercised jurisdiction which was vested by law, there is no illegality or material irregularity in the judgments of both the Courts below. He further emphasized that suit was hopelessly time barred and it ought to have been dismissed without going into the merits of the case. In the end he prayed for dismissal of the revision with costs.

10. Heard the arguments of learned Assistant Advocate General and perused the written arguments submitted by the applicant and gone through the judgments passed by both the courts below.

11. It is manifest from the averments in the plaint that the cause of action, if any, arose in the year 1995 when the contract was allegedly completed, and the claimed amount became due. The appellant's assertion that he made repeated representations without any formal acknowledgment of liability by the government functionaries cannot, in law, extend or revive the limitation period. The Constitutional Petition No.D-1271/2013 filed by the plaintiff/applicant for recovery of amount, which was dismissed with liberty to avail alternate remedy, did not suspend or save limitation beyond the prescribed period provided under the law. The suit for

recovery of amount is to be filed within three years from the date of cause of action, the relevant Article 56 of the Limitation Act, 1908 reads as under:-

Description of Suit	Period of Limitation	Time from which period begins to run
56.- For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	[Three years].	When the work is done.

The institution of the suit in 2021 nearly 26 years after completion of the contract was clearly barred by limitation on the face of the record. In such circumstances, it was incumbent upon the trial court to have framed limitation as a preliminary issue and decided it at the threshold. Both the courts below erred in proceeding to adjudicate the matter on merits despite the suit being ex facie time-barred. It is a settled principle of law that where a suit is instituted after the expiry of the period prescribed under the Limitation Act, 1908, the same is liable to be dismissed as barred by time. Section 3 of the Limitation Act casts a mandatory obligation upon the Court to dismiss any such proceeding if it is found to be instituted beyond the limitation period, irrespective of whether or not the defendant has taken a plea to that effect. The bar of limitation goes to the very root of maintainability and cannot be waived or ignored by the Court. Section 3 of the Limitation Act, is reproduced as under:-

“3. Dismissal of suits, etc., instituted etc., after period of limitation.- Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence”.

12. Under Section 3 of the Limitation Act, the Court is bound to examine, suo motu, whether a suit or proceeding is filed within the prescribed limitation period. The Court must satisfy itself on the point of limitation and is under a legal duty to dismiss the suit if it finds that the claim is time-barred. This duty is jurisdictional in nature and cannot be defeated by the silence or inaction of the parties. The Courts have consistently held that the provisions of limitation are not merely procedural but substantive in nature. The object behind Section 3 is to ensure that stale claims, which may no longer be capable of fair adjudication due to lapse of time, are not entertained. Therefore, once it appears from the record that the suit is clearly barred by limitation, the Court is bound to

dismiss it even if the defendants have not raised the issue in their written statement at the time of hearing.

13. Even if, for the sake of argument, the appellant is extended the benefit of Section 14 of the Limitation Act, 1908 on the premise that he was bona fide prosecuting his constitutional petition, which was dismissed in 2014, it was incumbent upon him to institute the civil suit for recovery of the alleged amount within a reasonable time, thereafter, certainly within the limitation period provided under Limitation Act. However, the appellant remained completely inactive for a further seven years and only instituted the suit in 2021. This unexplained and inordinate delay defeats any possible claim of exclusion of time under Section 14. The benefit of Section 14 is not absolute or open-ended; it only allows exclusion of the time during which a party was bona fide prosecuting a matter in a forum without jurisdiction. Once that remedy failed in 2014, the clock of limitation resumed, and the appellant was required to act diligently, which he failed to do. Therefore, even on a liberal interpretation, the suit was hopelessly time-barred.

14. Even on merits the applicant has miserably failed to prove his case and both the courts below have rightly dismissed the suit. The applicant failed to produce any documentary proof, no contract or work order in support of his claim has been produced. In contractual recovery suits burden lies upon the plaintiff to prove the contract, performance and entitlement to payment that burden remained wholly undischarged.

15. The concurrent findings of both the courts below are based on due appreciation of record and do not reflect any legal, factual, or jurisdiction warranting interference under section 115 CPC. Consequently, the Civil Revision is **dismissed** with no order as to costs.

Judge