

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present: Justice Jawad Akbar Sarwana

Civil Revision Application No.S-119 of 2019

Applicants : 1) Moulana Ehtram-ul- Haq Thanvi
s/o Moulana Ehtashamul Haq Thanvi
2) Irfan Ahmed Alvi s/o Tufail Ahmed Alvi
Through their attorney Muhammad Yousuf
Yousfani s/o Muhammad Siddiq Yousfani
Through Mr.Liaquat Ali Hamid, Advocate

Respondents by : Nemo.

: Mr.Wali Muhammad Jamari, Assistant A.G Sindh

Date of hearing : **18.05.2026**

Date of decision : **18.05.2026**

ORDER

JAWAD AKBAR SARWANA, J.: The point of law involved in this revision is whether given the principle of merger, in the facts and circumstances of the case, the period of limitation applicable to the second Execution Application (Execution Application No. Nil of 2019) filed on 04.03.2019, is to be calculated from the date of the original judgment and decree dated 30.03.2012 and 03.04.2012, respectively, or from the date of the Order, when the appellate forum (in Civil Appeal No. 28 of 2015) dismissed for non-prosecution such appeal filed by the defendants/respondents against the aforesaid judgment and decree on 28.02.2015.

2. The background of the matter is that the Senior Civil Judge, Tando Allahyar, passed in F.C. Suit No. 58 of 2003, a judgment dated 30.03.2012 and a decree dated 03.04.2012. Thereafter, on 10.05.2012, the applicants/plaintiffs filed the first execution application, i.e., Execution Application No. 04 of 2012. During the pendency of the first execution application, the aforesaid judgment and decree were also

under challenge before the appellate forum in Civil Appeal No.28/2015. However, the defendants/respondents appeal was dismissed for non-prosecution on 28.02.2015, and, subsequently, the first execution application filed by the plaintiffs/applicants was also dismissed for non-prosecution on 11.02.2016. The applicants then filed an application for restoration on 18.12.2016. After hearing the parties, the trial Court dismissed the restoration application vide order dated 28.02.2019. No challenge was raised to this dismissal order dated 28.02.2019 for non-prosecution. Instead, the applicants thereafter filed the second execution application, i.e., Execution Application No. Nil of 2019 on 04.03.2019, which the trial Court dismissed as being time-barred vide order dated 05.03.2019. The applicants/plaintiffs then preferred Civil Miscellaneous Appeal No. Nil of 2019, which too was dismissed vide order dated 27.03.2019. Hence, this civil revision before the High Court.

3. Learned counsel for the applicants has relied upon the judgment of the learned Single Bench of the Lahore High Court in **Ali Ahmad v. Additional District Judge, Sialkot and others** (2013 YLR 226). He contends that, applying the principle of merger as discussed in the said judgment, the second Execution Application is within time. Accordingly, the impugned orders dated 05.03.2019 and 27.03.2019 are liable to be set aside, and the applicants allowed to proceed with the second Execution Application against the defendants/respondents.

4. Heard counsel. The principle of merger holds that when a Superior Court passes judgment on appeal, irrespective of whether it is set aside, modified, or affirmed, the decree of the lower court merges with that of the appellate court. The principle of merger of the judgment and decree of the trial Court with those of the appellate Court has been well discussed in several judgments of the Supreme Court, too, and has been authoritatively laid down in both Pakistani and Indian case law. Most recently, the principle of merger was discussed in **District Officer Frontier Constabulary, Hayatabad, Peshawar v. Haji**

Amir Badshah and others (PLD 2025 SC 698), which views on the subject is consistent with the string of judgments of the apex Court starting from **Maulvi Abdul Qayyum v. Ali Asghar Shah** (1992 SCMR 241) up to **Muhammad Nazir v. Qaiser Ali Khan** (2003 SCMR 436), and onwards, in subsequent case law. In one of the Supreme Court cases, during this period of 1992 to 2025, namely in, **Sahabzadi Maharunisa and another v. Mst. Ghulam Sughran and another** (PLD 2016 SC 358), the apex Court, while discussing the rule of merger, examined four situations in which the doctrine may apply, one of which is in play in the case in hand:

“9. With respect to these four situations, our conclusion is as under:-

(i) In the cases where the remedy of appeal/revision is provided against a judgment etc. or a remedy of writ is availed, the appellate/revisional/constitutional forum records reasons on the consideration of the issues of law and/or fact the judgment etc. of the subordinate court/forum will merge into the decision of the appellate court etc. irrespective of the fact that such judgment reverses, varies or affirms the decision of the subordinate court/forum and its decision will be operative and capable of enforcement on the principle of merger, the application under Section 12(2) of the C.P.C. will be maintainable before the appellate/revisional/constitutional forum (High Court, District Court, Tribunal or Special Court as the case may be);

(ii) In the situation mentioned at serial No.(ii) above, there are certain exceptions to the rule of merger which (rule) shall not apply, where an appeal etc. has been dismissed:- (i) for non-prosecution; (ii) for lack of jurisdiction; (iii) for lack of competence/maintainability; (iv) as barred by law; (v) as barred by time; (vi) withdrawal of the matter by the party; (vii) for lack of locus standi; (viii) decided on the basis of a compromise, if the very basis of the compromise by the party to the lis or even a stranger showing prejudice to his rights is not under challenge on the ground of fraud; (ix) is rendered infructuous or disposed of as having borne fruit; (x) abatement; (xi) where the writ is dismissed on the ground of availability of alternate remedy; (xii) where the writ is dismissed on the point of laches. It may be mentioned that such exceptions shall also be attracted to the decision(s) of the Supreme Court, where applicable. However where the case falls within the noted exceptions the forum for an application

under Section 12(2) of the C.P.C. is the one against whose decision the matter has come and been disposed of in the above manner by the higher forum;

(iii) In the cases of reversal or modification of the judgment of the High Court(s), Tribunal(s) or Special Courts before this Court, or those affirmed in appeal (where the matter does not fall within the exceptions) the judgment of the Supreme Court shall be deemed to be final for moving an appropriate application on the plea of lack of jurisdiction, misrepresentation and fraud;

(iv) In the cases where leave is declined by this Court, the judgment etc. of the lower fora will remain intact and final and will not merge into the leave refusing order, for the purposes of an application under Section 12(2) of the C.P.C. which can only be filed before the last forum i.e. the learned High Court(s) if the matter has been decided in the appellate/revisional/writ jurisdiction by the said court, or if the matter has come to this Court directly for leave from a Tribunal/Special Court (see Article 212 of the Constitution). However where the petition for leave to appeal has been dismissed with detailed reasons and a thorough decision of the questions of law and fact has been made, the judgment of the High Court(s)/Tribunal will though not merge into the order of the Supreme Court yet in order to avoid a ludicrous situation that once a question of law and fact has been elaborately and explicitly dealt with by this Court in the leave refusing order and the court below may not be in a position to adjudicate upon those points without commenting on the order/reasons of the Supreme Court and to reopen the matter, an application in the nature of Section 12(2) of the C.P.C. can be filed before this Court, leaving it to the absolute discretion of this Court to either decide such application itself or send the matter to the lower fora for the decision; ”

5. In the facts and circumstances of the present case, when the appeal filed by the defendants/respondents was dismissed on 28.02.2015, it was dismissed on the grounds of non-prosecution. In view of the dictum laid down by the Apex Court in the **District Frontier Constabulary, Hayatabad, Peshwar**, and situation (ii) described in the **Sahabzadi Maharunisa** cases (supra), the exception to the rule of merger has been triggered; that is, the principle of merger does not apply where an appeal or other proceeding has been dismissed for non-prosecution.

6. As the present matter involves an appeal dismissed for non-prosecution on 28.02.2015, as per the applicable law, reproduced herein above, the date relevant for the purpose of calculating the limitation for the second execution application is the date of the original judgment and decree, i.e., 30.03.2012 and 03.04.2012, respectively. Since the second execution application was filed on 04.03.2019, more than six years after the date of the judgment and decree anchored in the year 2012, the dismissal order of the appeal in 2015 on the ground of non-prosecution cannot and does not come to the rescue of the applicants/plaintiffs based on the principle of the rule of merger. Consequently, the second execution application is/was barred by time. The trial Court/Executing Court, as well as the appellate Court, rightly dismissed the second execution application on the grounds of limitation. The impugned Orders call for neither any interference nor any intervention by this bench. The applicants cannot claim a benefit from the principle of merger in the circumstances.

7. Given the above, I find no reason to interfere with the impugned orders. The instant civil revision application is found to be devoid of force and stands **dismissed** in the above terms.

JUDGE

AHSAN K. ABRO