HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-423 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioners : 1) Muhammad Ashraf s/o Belo Khan Shahani

2) Ali Asghar s/o Belo Khan (deceased)
Through LRs: -
a) Mst.Azizan
b) Mst.Rasheeda
c) Amjad Ali
d) Mst.Nahida
e) Akhtar Ali
f) Belo Khan

Through Mr.Asim Jamal Soomro, Advocate

Respondent : Muhammad Saleh s/o Haji Moula Bux
Through Mr. Muhammad Asad Shahani, Advocate

Date of hearing : **05.11.2025**

Date of decision : **11.11.2025**

Date of reasons : **16.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J:. Muhammad Ashraf s/o Belo Khan Shahani (petitioner no.1/defendant no.1/judgment-debtor no.1) and Legal Heirs of Ali Asghar (petitioner no.2/defendant no.2/judgment-debtor no.2) are aggrieved by the orders passed by the two forums below. They contend that the execution proceedings initiated for the second time by Muhammad Saleh s/o Haji Moula Bux (respondent/plaintiff/decree-holder) are time-barred; hence, in the facts and circumstances, the execution application no.1/2024 is liable to be dismissed. Counsel for the respondent/decree-holder has vehemently opposed the contentions raised by the petitioners/judgment-debtors and contends that the orders passed by the lower forums are in accordance with law.

2. Heard Counsel and perused the document. Succinctly, the background of the matter is that the respondent/decree-holder filed F.C. Suit No.02/2009 (old F.C. Suit no.02/2007) for possession and

mesne profits against the petitioners/judgment-debtors in respect of the land bearing S.No.266 (4-26 acres) situated in Deh Moundar, Taluka Dadu. The respondent/decree-holder contended that he had earlier given half of the land on a lease basis (Makaata) to the petitioners/judgment-debtors, which was extendable, but when the lease period expired, the respondent/decree-holder demanded possession of the subject land, which the petitioner/judgment-debtors refused. The petitioner/judgment-debtors also did not pay the crop share (zamindari share) to the respondent/decree-holder. The trial Court, after evidence and hearing, decreed the said suit in favor of the respondent/decree-holder vide judgment and decree dated 22.06.2009. The petitioners/judgment-debtors preferred an appeal bearing Appeal no.20/2009, but the same was dismissed by the Additional District Judge-1, Dadu, vide appellate judgment dated 27.05.2010 and decree dated 22.06.2010.

3. Thereafter, the plaintiff/decree-holder commenced execution proceedings vide Execution Application No.01/2011; however, pursuant to a statement filed by the plaintiff/decree-holder, the Executing Court, vide order dated 29.03.2012, dismissed the said execution as withdrawn with permission to file a fresh one, after the decision is announced by the Hon'ble High Court, Hyderabad, in the Revision No.258/2010 filed by the petitioners/judgment-debtors pending in the High Court at the material time. The final order read as follows:

> "In view of the statement filed by the applicant/D.H., the execution application is hereby dismissed with permission to file a fresh after decision of the Hon'ble High Court.
>
> Sd/- 29.03.2012
> 1st Civil Judge, Dadu"

4. On 11.05.2023, the High Court of Sindh, Circuit Court, Hyderabad, finally dismissed the said Revision No.258/2010 as follows:

> "…The perusal of Judgment of the learned Appellate Court shows that it has discussed the findings of the learned Trial Court, framed Points of Determination and after evaluating the evidence decided the matter against the applicants [petitioners/defendants]. Since no material illegality or irregularity can be highlighted in the two Judgments, warranting any interference in this Revision, therefore, this Civil Revision Application is dismissed along with all Applications."

5. Following the above decision of the High Court, Circuit Court, Hyderabad, the respondent/decree-holder filed a fresh execution application no.01/2024. Thereafter, after hearing the parties, the Executing Court, vide Order dated 17.04.2024, allowed the fresh execution and issued a writ of possession against the petitioners/judgment-debtors.

6. Being aggrieved by the said Order, the petitioners/judgment-debtors challenged the order by way of Civil Revision Application No. 17/2024; however, after hearing the parties, the revisional Court, vide Order dated 21.01.2025, dismissed the said civil revision; hence this petition.

7. It is a trite principle of law that the limitation continues to run from the date of decree unless it is suspended or its execution is/was kept in abeyance. In the present case, while the operation of the decree was not suspended in the revision, nor was its execution kept in abeyance by the revision Court, the Executing Court's Order dated 29.03.2012 during the first execution proceedings, in its final order (of withdrawal), extended a kind of legal grace to the respondent/decree-holder, giving him the option concerning the timing of filing a fresh execution application before the Executing Court. The Order dated 29.03.2012 provided the respondent/decree-holder time until the High Court of Sindh, Circuit Court, Hyderabad, decided Civil Revision No. 258/2010 filed by the petitioners/judgment-debtors. When the Executing Court dismissed the said execution, it granted permission to file a fresh execution after the revision pending in the High Court was

decided. The Court's Order dated 29.03.2012, in the first execution, rightly or wrongly, extended the period of limitation by way of the Court's order, by articulating an Order, in such a manner that the period of limitation for filing fresh execution stood extended. Any interpretation to the contrary would be to the detriment of the respondent/decree-holder, who had obtained the said Order from the Court and relied on it (the condition), viz. until the revision was decided (the condition was fulfilled), to file a fresh execution.

8. I am also fortified by the above opinion, given the majority view of the Supreme Court in ***Khushi Muhammad through L.R.S and others v. Mst. Fazal Bibi and Others***, PLD 2016 SC 872, wherein the Supreme Court observed in paragraph 39 that, "the noted maxim which connotes 'an act of the court shall prejudice no man' is founded upon justice and good sense; and affords a safe and certain guide for the administration of law and justice." The apex Court further held that, "in our candid opinion, the principle actus curiae *neminem gravabit* had no application where a litigant approached a wrong forum and such appeal is entertained by the staff of the court or by the court or even admitted to regular hearing. Thus, no condonation of delay can be availed by the appellant on the basis of this principle." In ***Abdul Razzak and Others v. the Registrar of Companies and Others***, PLD 2026 SC 340, another full bench of the Supreme Court observed that the Court's actions cannot harm innocent parties if their rights arise from, or are affected by, the delay of the party moving the Court.

9. The upshot of the above judgment of the Supreme Court is that the petitioners/judgment-debtors' argument concerning the delay in the non-filing of the execution on the part of the respondent/decree-holder, who delayed such filing based on the reliance of the Executing Court's Order dated 29.03.2012, attracts the doctrine of *Actus Curiae Neminem Gravabit*. Here, in the facts and circumstances of the case, the Executing Court, vide its Order dated 29.03.2012, enlarged the period of limitation for filing a fresh execution application by making

such fresh filing contingent upon proceedings following the decision of the High Court in the civil revision filed by the petitioners/judgment-debtors in the High Court of Sindh, Circuit Bench, Hyderabad. The respondent/plaintiff's reliance on the Court's order could not prejudice the respondent/decree-holder, and the respondent/plaintiff cannot now be made to suffer because of the Executing Court's own error and/or understanding of the law, as the rights of the respondent/plaintiff arise from the Court's actions. Therefore, in the circumstances, as the period of limitation for filing the execution, given the Order dated 29.03.2012, was to be calculated from the date of dismissal of the revision filed by the petitioners/judgment-debtors, that is, vide the High Court's Order dated 11.05.2023, and not from the date of the dismissal of the first execution, as such the execution no.01/2024 (the second execution application) filed in 2024, was within time, and the order allowing the second execution application cannot be said to be "without lawful authority" and/or "of no legal effect" within the contours of Article 199(1)(a)(ii) of the 1973 Constitution. As such, the orders passed by the two forums below, challenged in this petition, do not call for any interference and are sustained/upheld.

10. In view of the above, I dismissed the petition vide Short Order dated 11.11.2025, and the above are the reasons for the same.

JUDGE

AHSAN K. ABRO