

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Civil Revision Petition No.168 of 2022
(Habibullah v. Jalal Khan & others)

(CC No.100107501466)

JUDGMENT

Date of hearing: 08th November, 2023 Announced on _____

Petitioner by: M/s. Babbar Abbas and Tahir Ali Baloch,
Advocates.

Respondent No.1 by: Ms. Aster Mehak, Advocate.

Respondent No.6 by: Malik Sarwar Khan Awan, Advocate.

IQBAL AHMED KASI, J.- Through the instant petition, the petitioner/plaintiff has challenged the validity of the order and decree dated 15.07.2021 (“**the impugned order and decree**”) passed by the Judicial Magistrate/Civil Judge, Winder (“**the trial Court**”), and order and decree dated 17.03.2022 (“**the impugned order and decree**”) passed by the District Judge Lasbella (“**the appellate Court**”), whereby, suit and amended appeal filed by the petitioner/plaintiff were dismissed.

2. Brief facts of the case are that the petitioner/plaintiff has purchased plot No.C-2, Sector-C, Winder Industrial Estate Development Authority, measuring about 10,179 square meters with constructed buildings, which was auctioned by the Hon’ble High Court of Sindh, Karachi, in suit titled “Industries Development Bank of Pakistan Versus Winder Textile Mills Limited” in consideration of Rs.800,000/- (Rupees Eight Lac) vide order dated 10.03.2008. The dues mentioned before the

Hon'ble High Court of Sindh, Karachi against the respondent/defendant No.6, Lasbella Industrial Estate Development Authority ("LIEDA") was Rs.66,00,000/- (Rupees Sixty-Six Lac), but the real dues are Rs.18,00,000/- (Rupees Eighteen Lac). The officers of LIEDA offered the auction purchaser to pay only 60% to respondent No.6 and respondent No.6 will produce the auction purchaser a NOC, but respondent No.6 has not produced NOC till today. The auction purchaser has sold out the above-mentioned property to respondent No.2, namely, Abdul Majeed dated 20th May 2017 in consideration of Rs.1,60,00,000/- (Rupees One Crore Sixty Lac) and then respondent No.2 has further sold out the same title/immovable property upon respondent No.1 on 20th February, 2017 in the sum of Rs.18,00,000/- (Rupees One Crore Eighty Lac). The petitioner/plaintiff has purchased plot No.C-2, Sector-C, Winder Industrial Estate Development Authority measuring about 40,179, square meters with a constructed building through a contract of sale dated 22.11.2019 in consideration of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lac) from respondent No.1 and advance paid Rs.20,00,000/- (Rupees Twenty Lac). After said advance, the petitioner/plaintiff has paid total Rs.66,00,000/- (Rupees Sixty Six Lac) and the respondent No.1 had already delivered possession of the title property to petitioner/plaintiff, but respondent/defendant No.1, 6 and some others unknown persons are interfering and respondent/defendant No.6 showing more dues upon the title immovable property. The petitioner/plaintiff is ready to fulfil the terms and conditions of the contract dated 22.11.2019 and the respondent/defendant No.1 is bound

to fulfil the terms of the contract of sale dated 22.11.2019, which is executed between them. The respondent/defendant No.1 and petitioner/plaintiff entered into a contract of sale, both parties are bound and would not violate the terms and conditions of the contract executed between them. The respondent/defendant No.1 revoked the contract of sale dated 22.11.2019 between the petitioner/plaintiff on 29th April 2021, through the advertisement “*Intekhab Hub*”, but the petitioner/plaintiff has a rejoinder to the advertisement in the same newspaper on 2nd May, 2021 in daily, “*Intekhab Hub*”, which is enforceable and petitioner/plaintiff has physical possession, but respondent/defendant No.1 has to clear the dues of above-mentioned property, then the petitioner/plaintiff is bound to pay the outstanding amount. The petitioner/plaintiff is still ready and willing to specifically perform the contract executed between respondent No.1 on his part, but respondent No.1 without any cogent reasons not willing to do so, thus, he was compelled to file a civil suit.

3. The suit was registered and to procure the attendance of respondents/defendants, the learned trial Court issued notices. Meanwhile, the suit of petitioner/plaintiff was dismissed vide impugned order and decree dated 15.07.2021 in non-interest and non-appearance.

4. Being aggrieved and dissatisfied from the impugned order, filed an appeal before the appellate Court, the same was registered and notices were issued to respondents/defendants. The respondents/defendants contested the appeal. After hearing arguments

from both sides, the learned appellate Court dismissed the appeal vide impugned order and decree dated 17.03.2022, hence this petition.

5. Learned counsel for petitioner *inter alia* contended that the impugned orders and decrees passed by the Courts below are contrary to facts law and the principle of natural justice; that the learned trial Court should have passed an order under Order 9 CPC, but the learned trial Court without understanding the law dismissed the suit under Order 17 Rule 3 CPC and this legal aspect was also not appreciated by the learned appellate Court, thus, both the Courts below committed illegality and irregularity; that the petitioner/plaintiff was knocked out on the technical grounds and it is held by the apex Court that the matter could not be decided on technicalities, rather the same be decided on its own merits.

6. On the other hand, learned counsel for respondents/defendants opposed the contention of learned counsel for petitioner/plaintiff on the ground that the appeal of petitioner/plaintiff was hopelessly barred by time; that the petitioner/plaintiff failed to explain the delay in filing of the appeal and he is legally bound to explain each and every day for such delay; that since, the appeal is time-barred, thus, the instant revision petition is also not maintainable.

7. I have heard learned counsel for parties and perused the available record with their able assistance. A perusal of record reveals that the petitioner/plaintiff had failed to appear before the trial Court willfully, despite being provided with more than enough opportunities. Appeal of petitioner/plaintiff hopelessly barred by time and he failed to explain the delay so caused in filing of appeal reasonably. The

contention of petitioner/plaintiff that the delay occurred, because the petitioner/plaintiff filed initially civil revision petition against the impugned order and decree dated 15.07.2021 before the revisional Court due to which he could not file appeal within time is not sustainable as petitioner/plaintiff had knowledge and was failed to appear before the trial Court. The record further reveals that civil revision petition was filed on 24.08.2021, which is also after expiry of appeal period i.e. 30 days from the passing of impugned order and decree. The Hon'ble Supreme Court of Pakistan in case of "Dr. Syed Sibtain Raza Naqvi v. Hydrocarbon Development and others" 2012 SCMR 377 held that the two expressions "due diligence" and "good faith" in section 14 of Limitation Act, 1908 ("**the Act of 1908**") do not occur in Section of the Act 1908, which enjoys only "sufficient cause". The power to condone the delay and grant an extension of time under section 5 of the Act 1908 is discretionary. In the case of "Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others" PLD 2015 SC 212, the Hon'ble Supreme Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth, a legal action at his own whim and desire. Because, if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. The litmus test is to get the

drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. In the case of “Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others” 2022 SCMR 933, it was held by August Court that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact, this law has been premeditated to dissuade the claims which have become stale by efflux of time.

8. The object of revision is to rectify the error committed by the Courts below in the exercise of jurisdiction. This Court cannot interfere in concurrent findings of the Courts below unless the judgments/orders of the Courts below are found patently illegal, and against the law. The fact that the different view of evidence could be taken by the Courts below was no ground for setting aside of concurrent findings. The scope of revision is narrow and restricted only to the extent of correcting illegality, irregularity of evidence of the Courts below. The Hon’ble Supreme Court of Pakistan in “Mst. Kulsoom Bibi’s” case 2005 SCMR 135 held:

“ ---- While exercising revisional jurisdiction, the High Court should satisfy itself upon three matters; firstly, whether the subordinate Court had the jurisdiction vested in it; secondly, whether the case is one in which the Court ought to exercise the jurisdiction and thirdly, that whether the lower Court acted illegality or with material irregularity resulting into miscarriage of justice. ---- ”

The learned counsel for the petitioner was unable to point out any error, perversity, or legal or jurisdictional defect in the impugned orders and decrees calling for interference by this Court. Accordingly, this petition is dismissed.

Announced in open Court

Dated Quetta the _____ December, 2023

JUDGE

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