

Stereo. HCJDA 38.
Judgment Sheet
**IN THE LAHORE HIGH COURT,
LAHORE.**

JUDICIAL DEPARTMENT.

....

Civil Revision No.2938 of 2022.

Sabir Ali.

Versus

Munawar, & others.

J U D G M E N T.

Date of hearing:	<u>24.04.2024.</u>
Petitioner by:	Raja Abdul Rehman, Advocate.
Respondents # 1 to 6 by:	Mr. Muhammad Ghafoor Malik, Advocate.
Respondent #.7 by:	Ms. Samia Khalid, Additional Advocate General.

AHMAD NADEEM ARSHAD, J. Through this Civil Revision, filed u/s 115 of *Code of Civil Procedure, 1908*, the petitioner has called in question the validity and legality of impugned orders/judgments of learned Courts below, whereby, his objection petition was dismissed concurrently.

2. Facts in brevity are that this Court passed a judgment and decree dated 10.12.1988 in favour of predecessor of the respondents, namely, Jumun (*Jamoo*), etc. Said decree was amended on vide judgment and decree 22.01.1991. For the

satisfaction of the said decree, the predecessor of the respondents/decreed holders moved an execution petition on 02.10.1991; that said execution petition was consigned to record room vide order dated 28.11.1991 on the basis of report submitted by the revenue field staff in compliance of '*Warrant Dakhal*'; that as decreed-holders were not satisfied, they filed another execution petition on 08.02.1992; that said execution petition was consigned to record vide order dated 07.03.2000 on the ground that decreed holders failed to deposit process fee; that decreed holders filed another execution petition on 05.07.2011; that during the pendency of said execution petition the petitioner Sabir Ali moved an objection petition with the contention that after the lapse of 20 years of the decree, the respondents/decreed holders are estopped by law to file execution petition, therefore, their execution petition is not maintainable being barred by time; that said objection petition was dismissed by the learned executing Court vide order dated 17.04.2012. Being aggrieved, the petitioner preferred an appeal which also met the same fate and dismissed by the learned appellate Court vide judgment dated 26.11.2021. Being dissatisfied, the petitioner approached this Court through instant Civil Revision.

3. I have heard learned counsel for the parties at full length and perused the record with their able assistance.

4. A suit for possession of land measuring 1257 Kanals 10 Marlas was instituted which was decreed on

03.05.1956 and appeal against it was dismissed on 25.03.1957

The defendants of said suit challenged said judgments and decrees through filing RSA No.145 of 1957 titled “Jamun, etc. Vs Mst.Hakan, etc.” before this Court which was allowed vide judgment and decree dated 10.12.1988 and subsequently said decree was amended vide judgment and decree dated 22.01.1991. For satisfaction of said judgment and decree dated 22.01.1991 an execution petition was filed on 02.10.1991 within a period of three years. Said execution petition was consigned to record room vide order dated 28.11.1991 by the learned executing Court on the information that the decree had been satisfied in its letter and spirit and the possession of the decreed property was handed over to the decree holders through ‘*Warrant Dakhal*’ dated 26.11.1991. Said order was passed in the absence of decree holders. Being dis-satisfied they filed another execution petition on 08.02.1992 with the contention that their execution petition was consigned to record being satisfied in their absence whereas the decree has not been satisfied in its letter and spirit as neither possession was delivered nor mutation was sanctioned and prayed for satisfaction of the judgment and decree dated 22.01.1991 according to its spirit. Said execution petition was consigned to record vide order dated 07.08.2000 on account of non-deposit of cost of ‘*Warrant Dakhal*’. Decree holders filed a Criminal Original No.22-C of 2010 in RSA No.145 of 1957 with a prayer

that contempt proceedings be initiated against the respondents of said petition, as they failed to implement the judgment and decree dated 22.01.1991. Said contempt petition was disposed of vide order dated 17.06.2011 with a direction to the learned Executing Court to decide the pending execution petition within a period of two months from the order. The decree holders filed another execution petition on 15.07.2011 in the light of said order of this Court. The petitioner challenged said execution petition by moving an objection petition that the said execution petition is not maintainable being barred by time as it has been filed after lapse of more than 20 years of the decree. Said objection petition was dismissed after getting its reply and said order remained intact before the Appellate Court. Hence, this petition.

5. By virtue of Article 181 of the Limitation Act, 1908 an application for the execution of a decree or order of a Civil Court has to be made within three years of the date of decree or order sought to be executed. Section 48 of C.P.C. prescribes a period of six years as the outer limits after the expiry of which the Court cannot entertain a fresh application for execution.

6. The first application was filed on 02.10.1991 within a period of three years and second application was filed on 08.02.1992 before the expiry of outer limit and the third application was filed on 15.07.2011. Now the question is

whether the third application filed on 05.07.2011 be considered as fresh application filed after the expiry of limitation or to be treated as continuation of the execution petitions which had been consigned to the record room being satisfied and on account of default for deposit of process fee.

7. The stance of the decree holders is that neither any mutation was sanctioned in their favour nor possession was given to them as per judgment and decree dated 22.01.1991. Therefore, their execution petitions were remained unsatisfied and no final order for the disposal of the execution petitions was passed. The third execution petition is revival of earlier petitions and not fresh execution petition.

8. The all important question, therefore, is as to what is the “final order” and again whether the orders passed by the executing Court in this case on 28.11.1991 and on 07.03.2000 are ‘final orders’. Where the Court intended to dispose of the matter completely and no longer keeps it pending on its file and does not merely suspend the execution or consign the record to the record room for the time being, the order must be deemed to a final order which will give a fresh start for the purposes of limitation, and that the proceedings not being pending, there would in such a case be no question of revival. But, where such an order is made in a case in which the decree holder could not take further proceedings owing to circumstances beyond his control, the order will be regarded as merely suspensory in its

nature and a fresh application will be regarded as one for the revival and continuation of the original proceedings. Thus, where the execution is stayed or is prevented by injunction, or becomes impossible to be proceeded with, owing to a claim being advanced to the property which is the subject of the execution or owing to some other obstacle placed by the judgment debtor in the way of execution, and the application “*dismissed*” or “*struck off*” or “*consigned to the record room*” or “*returned*” the order will not be regarded as having finally disposed of the petition, and a subsequent application will be regarded as one for the revival and continuation of the original proceedings. For reference “Rana Kent Malaviya and another Vs Satya Narain Malaviya” (A.I.R. 1938 Allahabad 552) and “Krishnamachari Vs. Chengalraya Naidu” (A.I.R. 1940 Madras 281).

9. It should be noted that the words ‘fresh application’ have been used in Section 48(1) C.P.C., therefore, what is contemplated under this section by the words ‘fresh application’, is a substantive merely ancillary or incidental to a previous application, that is to say if the decree holder seeks to set the court into motion to take further proceedings in respect of an application already pending or where the application has been recorded or where the execution proceedings have been suspended by reasons of appeal or other proceedings, it would not be regarded as fresh application. For reference “Venlappa

and others Vs Lakshmi Kant Rao” (A.I.R 1956 Hyderabad 07).

10. In case titled “MUHAMMAD UMER KHAN versus MUQARRAB KHAN and another” (PLD 1976 Peshawar 43) it was held as under: -

“At this stage I should like to refer to the order of the Executing Court dated 5.10.67 which has already been quoted in extensor. This is quite clear that the proceedings were not consigned to the record-room at the instance of the decree-holder. One fails to understand how could a final order be at all passed by the Executing Court when the Supreme Court of Pakistan had ordered that the delivery of the possession was to be stayed until the hearing of the petition. It would follow that the proceedings were consigned to the record-room without making any final order and such being the case could be revived at any time, the court was satisfied that the impediment which stood in the way of the execution no longer existed.”

11. The execution application was deemed to be pending so long as no final order disposing it of judicially has been passed thereon. In subsequent application in such a case for execution will be deemed to be one merely for the continuation of the original proceedings. Where final judicial order termination the execution petition had been passed on the application, such execution proceedings could not be revived and the subsequent application for execution would be regarded as fresh application and not one for revival and continuation of the original proceedings.

12. The Hon’ble Supreme Court of Pakistan while dealing with the similar proposition observed in case titled

“UNITED BANK LIMITED vs. FATEH HAYAT KHANTAWANA and others” (2015 SCMR 1335) as under: -

9. “Significantly, the terms of the order dated 7-2-1989 are amenable also to the rival interpretation given to it by the appellant. It is urged that the said order of the learned Executing Court treats the second execution application to be a substitute or a continuation of the first execution application. This is because the second application contains better particulars for the already prayed mode of execution of the decree. Accordingly, the learned Executing Court has consigned the first application to record and proceeded with its substitute. The argument has some force. The question of time bar is not considered by the order dated 7-2-1989. It arose for determination after the respondents/judgment debtors were issued notices on the second execution application. Whilst examining that objection, the learned Courts below were obliged to consider whether the first execution application could at all be terminated without an order dismissing or disposing of the same. This aspect of the matter was ignored on the presumption that the consignment of an application to the record amounts to its dismissal. The fact is that in the absence of a clear order disposing of the first execution application there is no justification, for treating the proceedings therein to have been concluded. The fate of an execution proceeding in similar situation is explained by the learned full Bench judgment of the High Court of Sindh in Amir Begum v. Mir Fateh Shah (PLD 1968 Karachi 10) wherein Wahiduddin J. (as the then was) opined as follows:-

“....It is well settled rule of law that an execution application must be deemed to be pending so long as no final order disposing it of judicially has been passed thereon. A subsequent application in such a case for execution will be deemed to be one merely for the continuation of the original proceedings. In this connection the Privy Council in Qamar-ud-Din Ahmed v. Jawahirlal (32 I A 102) observed as under: --

“Their Lordships are of opinion that the execution proceedings commenced by the petition of the 24th August, 1888 were never finally disposed of and that the application now under consideration was in substance, as well as in form, an application to revive and carry through a pending execution suspended by no act or default of the decree-holder, and not an application to initiate a new one.”

This principle has also been applied in cases where the application is dismissed or struck off or consigned to the record room or returned. Such

order is not to be regarded as finally disposing of the petition and a subsequent application will be regarded as one of revival and continuation of the original proceedings.....” (Underlining supplied).

10. The judgment in Mehboon Khan’s case *ibid* is relevant in laying down that where the ‘first execution’ application has been filed within a period of three years from the date of decree under execution, then any fresh application for execution of the said decree may be filed within a period of six years from the date of the said decree. According to the said judgment a fresh application is conceived to be filed “after disposal of the first execution application.” Therefore, an application that is filed during the pendency of a timely first execution application cannot be considered a ‘fresh application.’ This is because it elaborates or amends the pending first execution application. For the reason the subsequent application is liable to be treated as a continuation of or ancillary to the pending execution application. In such a case, quite obviously the objection of limitation cannot have any relevance.”

13. The learned executing court was given the impression that the decree had been satisfied in its letter and spirit and the possession of the decreed property was given to the decree holders through ‘Warrant Dakhal’ dated 26.11.1991 and in this regard *Rapt Roznamcha Waqiyati No.104* dated 26.11.1991 was submitted. In the light of said submission the learned executing court consigned the file of execution petition to record room vide order dated 28.11.1991. Perusal of order it appears that said order was passed in the back of decree holders and without providing them opportunity of hearing. The decree holders promptly approached the learned executing court through execution petition on 08.02.1992 for completion of their execution petition in the light of amended judgment and decree dated 22.01.1991. They specifically pleaded that

neither suit property was transferred in their names nor possession was handed over to them. In the '*Warrant Dakhal*' dated 26.11.1991, the Collector directed the concerned Patwari to enter the mutation which also support the version of the decree holders that suit property was not entered in their names in the revenue record. The decree holders are not claiming anything except their own rights determined by this Court. Mere on the reports, in the '*Warrant Dakhal*' and *Rapt Roznamcha Waqiat*, that possession was given to the decree holders cannot be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour till then the decree holders admitted said fact. The decree holders have not come to the court for some new or fresh relief rather they approached the executing court to get the relief given by this Court. Therefore, their third execution petition is just revival of their earlier execution petitions which were filed within time and consigned to record without satisfaction of the decree passed in their favour. The decree holders pursuing their case since long and their decree is still unsatisfied.

14. I have minutely gone through the record available on the file as well as the impugned orders/ judgments passed by learned Courts below, I have seen no illegality, irregularity and mis-reading or non-reading of record and jurisdictional defect on the part of learned Courts below. Learned counsel for

the petitioner has been unable to point out any illegality, irregularity or jurisdictional defect in the impugned orders/judgments.

15. For what has been discussed above, the instant civil revision is, hereby, **dismissed** being without any merits.

No order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE

Approved for Reporting.

JUDGE

A. Razaq.