JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

RSA No. 43 of 2014

Mst. Khursheed Begum (deceased) through Legal Heir

versus

Abdul Wahid Nasim and 3 others

JUDGMENT

Date of hearing	19.06.2023
Appellant by	M/s Sheikh Naveed Shehryar and Sheikh Usman Karim-ud-Din, Advocate.
Petitioner (in Civil Revision No. 663 of 2014) by	Ms. Safina Safdar Bhatti, Advocate
Respondent No. 1 (in R.S.A. No. 43 of 2014 and Civil Revision No. 663 of 2014) by	Malik Ghulam-us-Syeddain, Advocate.
Respondent No.2 in (Civil Revision No. 663 of 2014) by	Rana Sher Zaman Akram, Assistant Advocate General.
Respondent No. 2 (in R.S.A. No. 43 of 2014) by	Proceeded *ex parte* vide order dated 17.06.2014.

SULTAN TANVIR AHMAD, J:- The captioned regular second appeal and civil-revision No. 663 of 2014, having common subject matter, shall be decided through this judgment.

2. Mst. Khursheed Begum widow of Jamat Ali instituted suit titled *'Khursheed Begum vs. Muhammad Afzal &*

another' (No. 52/2011) dated 31.10.1998 claiming that she is actual owner of house measuring 3 marla, No. 4/230 (previously 4/237), Muhallah Qilla Shah, Gujrat as further described in the suit (the '***suit property***'); that she purchased the *suit property* for Rs. 9,000/- in the name of her real son Muhammad Afzal as *benamidar* through sale deed No. 2430 dated 23.05.1979, who has stolen the title documents and managed to sell the *suit property* to Abdul Wahid Nasim son of Abdul Wahab through sale deed No. 3414 dated 19.10.1998. Mst. Khursheed Begum prayed to annul the said deeds being ineffective to her rights in the *suit property*. As consequential relief she requested restraining the defendants of suit from interfering in her possession over the *suit property*. Muhammad Afzal filed written statement substantially conceding the averments in the plaint. Abdul Wahid Nasim filed contesting written statement and also filed suit titled *'Abdul Wahid Nasim vs. Muhammad Afzal and another'* (No. 53/2011) dated 18.07.2000 seeking possession of the *suit property* on the strength of deed No. 3414 dated 19.10.1998. This suit was also contested and written statements were filed. The divergence in the pleading resulted into framing of following seventeen (17) issues: -

1. *Whether the plaintiff purchased the disputed property in the year 1979 for a consideration of Rs:9000/- and took over possession after the sale transaction and built the disputed house at her own expenses? OPP*
2. *Whether the plaintiff is owner in possession of the disputed house? OPP*
3. *Whether the disputed property was transferred in favour of defendant NO.1 being son of the plaintiff as a Benamidar vide document NO.2430 dated 23.05.1979? OPP*
4. *Whether the registered deed NO.2430 dated 23.05.79 in favour of defendant*

NO.1 and the registered deed NO.3414 dated 19.10.1998 by defendant NO.1 in favour of defendant NO.2 are void and ineffective upon the rights of the plaintiff? OPP

5. *Whether the plaintiff is entitled to the decree for declaration, permanent injunction and consequential relief as prayed for? OPP*
6. *Whether the plaintiff has no locus standi and cause of action to file the suit? OPD-2*
7. *Whether the suit of the plaintiff is based upon mala fide? OPD-2*
8. *Whether the suit of the plaintiff is collusive? OPD-2*
9. *Whether the disputed house was sold by defendant No.1 to defendant NO.2 vide registered sale deed NO.3414 dated 19.10.98 and possession was delivered to the defendant NO.2 before the completion and attestation of the said sale deed? OPD-2*
10. *Whether the defendant NO.2 gave one room of the disputed house to the plaintiff and defendant NO.1 for temporary residence at their request? OPD-2*
11. *Whether the defendant NO.2 is entitled to the decree for possession and consequential relief as prayed for? OPD-2*
12. *Whether the consolidated civil suit NO.240/48 of 18.07.2000/28.01.2001 is not maintainable in its present form? OPP/OPD-1*
13. *Whether the defendant NO.2 has no cause of action and locus standi to file civil suit NO.240/48 of 18.07 2000/28.01.2001? OPP/OPD-1*
14. *Whether the consolidated civil suit NO.240/48 of 18.07.2000/28.01.2001 has been filed as a counter blast? OPP-OPD-1*
15. *Whether the defendant is estopped by his words and conduct to file the consolidated suit? OPP-OPD-1*
16. *Whether the consolidated suit is based upon mala fide and the plaintiff is*

entitled to recover special costs? OPP

17. *Relief.*

3. From the side of Mst. Khursheed Begum three witnesses appeared as PW-1 to PW-3 and Exh.P-1 to Exh.P-8 were brought on the record as documentary evidence. Muhammad Afzal appeared as DW-1. One Hadi Hussain appeared as DW-2 and Abdul Wahid Nasim appeared as DW-3.

4. Substantial steps towards the progress and completion of trial were taken in the above two suits before the learned trial Court when Muhammad Afzal, after about 12 years of the above suits, filed third suit titled *'Muhammad Afzal vs. Province of Punjab and another'* (No. 416/2010) dated 07.01.2010, somehow, seeking declaration in his favour *vis-à-vis* the *suit property* and claiming cancellation of deed No. 3414 dated 19.10.1998. Facing this new situation and the third suit, Abdul Wahid Nasim filed written statement, resulting into framing of following issues in this suit: -

1. *Whether plaintiff is entitled to a decree for declaration of his title over the suit property along with consequential relief for cancellation of sale deed NO.3414 dated 19.10.1998 as prayed for? OPP*
2. *Whether suit of the plaintiff is badly time barred? OPD*
3. *Whether plaintiff is estopped from his words and conduct to file the present suit? OPD*
4. *Whether plaintiff has not approached the court with clean hands? OPD*
5. *Whether suit of the plaintiff is frivolous and vexatious, hence liable to be dismissed with special cost under Section 35-A CPC? OPD*
6. *Relief.*

5. In the third suit Muhammad Afzal himself appeared as PW-2 and produced one Malik Muhammad Daud

as PW-1. Exh.P-1 was brought on the record as documentary evidence. On the other hand, Abdul Wahid Nasim appeared as DW-1 and Exh.D-1 to Exh.D-7 were brought on the record as documentary evidence.

6. On 29.07.2011, in the suit instituted by Mst. Khursheed Begum (No. 52/2011 dated 31.10.1998) and the suit of Abdul Wahid Nasim (No. 53/2011 dated 18.07.2000), the learned trial Court gave consolidated judgment and decree, and after giving issue-wise findings, reached to the following conclusion: -

> *"Resume of the above discussion is that the plaintiff has failed to prove her claim of ownership over the disputed house, therefore, her suit for declaration is dismissed while suit of defendant NO. 2 for possession stands proved therefore, decreed in his favour against the plaintiff and the defendant NO. 1. The plaintiff and defendant NO. 1 are directed to vacate the house within one month of this order. Parties are left to bear their own costs. Copy of this consolidated judgment be placed on the record of suit file titled "Abdul Wahad Vs. Muhammad Afzal & Khurshid Begum"(suit for possession of house). File be consigned to record room after its due completion."*

The suit of Mst. Khursheed Begum (No. 52/2011) was dismissed and suit of Abdul Wahid Nasim (No. 53/2011) was decreed in his favour. On the same day through separate judgment and decree suit of Muhammad Afzal (No. 416/2010) was dismissed.

7. Mother and son (Mst. Khursheed Begum and Muhammad Afzal) instituted appeals. Appeal No. 02/2011 was filed by Mst. Khursheed Begum against judgment and decree dated 29.07.2011 passed in first two suits. Appeal No. 03/2011 was filed by Muhammad Afzal against the judgment and

decree dated 29.07.2011 in the third suit titled *'Muhammad Afzal vs. Province of Punjab and another'* (No. 416/2010).

8. The learned first Appellate Court found no mistake in the judgments of the learned trial Court and vide separate judgments and decrees (both dated 11.02.2014) dismissed the appeals. Aggrieved from the same, Mst. Khursheed Begum has filed the captioned regular second appeal and Muhammad Afzal has filed civil revision No. 663 of 2014.

9. Sheikh Usman Karim-ud-Din learned ASC, on behalf of Mst. Khursheed Begum, has submitted that original title deed was stolen by Muhammad Afzal and handed over the same to Abdul Wahid Nasim; that Muhammad Afzal was drug addict, who was lured to do the said act. He relied on utility bills in the name of Mst. Khursheed Begum that are on record as Exh.P-3 to Exh.P-5. Sheikh Usman Karim-ud-Din-learned ASC, has explained that Muhammad Afzal was minor, having no source of income at the given time and out of love the mother / Mst. Khursheed Begum purchased the *suit property* in his name. He has further submitted that Abdul Wahid Nasim has failed to prove the consideration, allegedly paid to purchase the *suit property*.

10. Ms. Safina Safdar Bhatti, learned Advocate on behalf of Muhammad Afzal, has contended that upon denial of execution, Abdul Wahid Nasim being beneficiary of deed No. 3414 dated 19.10.1998 was required to prove the execution of the deed but he miserably failed to do the same; that articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 have been adhered; that the transaction lacks consideration; that no one from registrar's office was produced. She has further submitted that Muhammad Afzal was addicted to alcohol and Mst. Khursheed Begum was subjected to fraud. In course of

arguments she has relied upon cases titled *"Jan Baz and 10 others vs. Shah Nawaz and 2 others"* (**2017 YLR Note 215**), *"Abdul Qadeer vs. Ashiq Ali and 2 others"* (**2006 YLR 2900**), *"Jhanda and 3 others vs. Maulvi Mukhtar Ahmad and another"* (**2007 YLR 2493**) and *"Muhammad Qasim vs. Wazir through L.Rs"* (**2007 MLD 1086**).

11. Conversely, Malik Ghulam-us-Syeddain, learned Advocate for respondent No. 1, has submitted that rival party adopted stance that Muhammad Afzal was minor at the time of registration of deed No. 2430 dated 23.05.1979 (Exh.P-2), however, their falsehood is evident from school certificate and Family Form-B where his age is recoded differently and these documents clearly suggest that in year 1979 he was more than 18 years old; that the entire evidence led by other side is full of contradictions; that Mst. Khursheed Begum never purchased the *suit property* from her own sources; that the necessary elements to obtain decree of declaration on the basis of *benami* are missing. To the extent of suit of Muhammad Afzal (No. 416/2010), it is submitted that this suit is badly time barred. In course of arguments Malik Ghulam-us-Syeddain-learned Advocate has relied upon cases titled as *"Dr. Muhammad Javaid Shafi vs. Syed Rashid Arshad and others"* (**PLD 2015 Supreme Court 212**), *"Nasrullah Khan and another vs. Mst. Khairunnisa and others"* (**2020 SCMR 2101**), *"Pir Bux and others vs. Ghulam Rasool and others"* (**NLR 1997 Civil 468**), *"Muhammad Nawaz Minhas and others vs Mst. Surriya Sabir Minhas and others"* (**2009 SCMR 124**) and *"Hameeda Begum vs. Farzand Ali"* (**2002 YLR 1311**).

12. Rana Sher Zaman Akram, learned Assistant Advocate General, has submitted that frivolous allegations have been levelled against Government officials but no proof to substantiate such allegations could be given by Mst.

Khursheed Begum and Muhammad Afzal during the trial. It is added that presumption of correctness is attached to sale deeds in question which were registered by the concerned officials in course of their duties, who otherwise have no interest in the transactions.

13. I have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

14. In order to prove 'motive', which is one of the most important elements to establish *benami* transaction, no special reason is set-up in the plaint or brought on record as evidence, to hold or purchase the property in the name of Muhammad Afzal, besides claiming that Muhammad Afzal was drug addict. Skeleton arguments have been submitted by Sheikh Usman Karim-ud-Din-learned ASC, in which reason of *benami* is stated as love and affection of Mst. Khursheed Begum for her son, Muhammad Afzal. Learned counsel argued that the *suit property* was purchased in the name of Muhammad Afzal temporarily, whereas, reading of evidence given by Mst. Khursheed Begum leads to strong inference that the *suit property* was purchased in the name of Muhammad Afzal with positive application of mind for his welfare and to be held by him for good. Mst. Khursheed Begum failed to prove that the *suit property* was in the name of Muhammad Afzal provisionally or for some particular reason. In this regard the following guidance in case titled *"Ghulam Murtaza vs. Mst. Asia Bibi and others"* (**PLD 2010 Supreme Court 569**), is relevant:-

> *"...A transaction cannot be dubbed as benami simply because one person happened to make payment for or on behalf of the other. We come across innumerable transactions where a father purchases property with his own sources for his minor*

son or daughter keeping in mind that the property shall vest in the minor. Such transaction subsequently cannot be challenged by father as benami simply because the amount was paid by him. There are people who, with positive application of mind, purchase properties in the name of others with intention that the title shall vest in that other.

8. As said earlier, there are certain transactions in peculiar circumstances of those peculiar cases where, for reason of certain emergencies or contingencies, the properties are purchased in the name of some other person without the intention that the title shall so vest permanently. If such motive is available and also is reasonable and plausible, a transaction can be held as benami, otherwise not. A property purchased with ones own sources in the name of some close relative like wife, son or daughter cannot be dubbed as benami when purchased with full intention of conferring title to the purchaser shown. If this principle is denied and that of benami attracted simply because the sources of consideration could not be proved in favour of the named vendee, it would shatter the most honest and bona fide transactions thereby bringing no end to litigation…"

(Underlining is added)

15. Somehow to prove that at the material time Muhammad Afzal was not earning anything different stances, which are contradictory to documentary evidence, have been adopted. Mst. Khursheed Begum tried to establish that Muhammad Afzal was minor at the time of the transaction / sale deed No. 2430. Mst. Khursheed Begum, when appeared as PW-1, in her examination-in-chief stated that Muhammad Afzal at the time of registration of deed No. 2430 dated 23.05.1979 was about 14 to 15 years old. In her cross-examination she remained reluctant to tell the year of birth of

her own son. It is appropriate to reproduce following extracts from her examination:-.

Examination-in-chief	Cross-examination
"۔۔۔رجسٹری کروانے کے وقت مدعاعلیہ نمبر1 کی عمر 14،15 سال تھی۔ اُس وقت مدعا علیہ نمبر1 کا کوئی ذریعہ آمدن نہ تھا۔۔۔"	"۔۔۔یاد نہ ہے کہ مدعاعلیہ نمبر1 کب پیدا ہوا تھا۔ علم نہ ہے کہ مدعاعلیہ نمبر1 1960 میں پیدا ہوا تھا ۔غلط ہے کہ مدعاعلیہ نمبر1 کے حق میں جو رجسٹری ہوئی تھی اس میں وہ خود پیش ہوا تھا۔۔۔"

It is not possible that a mother cannot recall even tentatively the year when her son was born. Even the illiterate or simplistic people used to relate years of births of their dears with some events to recall the same. The above reproduced statement of Mst. Khursheed Begum is further belied by school certificate (Exh.P-6) and Family-Form B (Exh.P-7) where date of birth of Muhammad Afzal is recorded as 25.11.1960. No explanation could be given as to this inconsistency.

16. Mst. Khursheed Begum and Muhammad Afzal were well aware that producing title document in evidence is an important factor. They, therefore, adopted stance that Muhammad Afzal was drug addict. Mother deposed that Muhammad Afzal was trapped. Muhammad Afzal deposed that to steal the title document he was paid Rs. 2,000/- and then Rs. 3,000/-. He stated that after theft he was paid Rs. 7,000/- further. However, no criminal prosecution was lodged against Abdul Wahid Nasim. Mst. Khursheed Begum failed to depose or plead the date of theft; the place where she kept the documents or from where the deed was stolen. I asked questions to Sheikh Usman Karim-ud-Din, learned Advocate as to above aspects but he also avoided to answer the said questions and tried to take the case in other and irrelevant directions.

17. Mst. Khursheed Begum admitted in her cross-examination that her husband was working abroad from where he used to send money. She admitted that she never remained in any employment or worked for earnings. To demonstrate source of purchase, she claimed that the *suit property* was partly purchased from the sources of her husband and partly from sale of her jewelry but failed to state as to the amount she fetched through such sale or date of sale of jewelry or amount that she contributed towards the purchase of the *suit property*. It is also apparent from record that main source of payment of sale consideration was the amounts sent by the father of Muhammad Afzal when he was working abroad. Mst. Khursheed Begum admitted in her cross-examination, which took place in the year 2002 / 2003, that father died 17 / 18 years ago. This means that father lived for considerable time after deed No. 2430 dated 23.05.1979 but he never claimed Muhammad Afzal as *benamidar*.

18. The learned trial Court reached to the conclusion that the case set-up by Mst. Khursheed Begum is nothing more than a pack of lies. The learned first Appellate Court found that the mother and son, in league with each other, are misleading the Courts. I have gone through record very minutely and my conclusion is not different. The evidence of Mst. Khursheed Begum is based on inconsistent statements. Mother and son both kept developing their case. Dents in the statements of the witnesses of mother were unsuccessfully attempted to be repaired by cross-examination conducted by son's lawyer. The case set-up by them is highly unbelievable. The elements to establish *benami* transaction could not be proved with required level of cogency.

19. Being aware of above all, Muhammad Afzal went on to file suit titled *'Muhammad Afzal vs. Province of Punjab*

and another'(No. 416/2010), after 12 years of her mother's suit, to deprive Abdul Wahid Nasim from the possession of the *suit property*. Muhammad Afzal jumped from one stance to another. His statement as witness in one suit manifestly contradicts his statement in another as to same set of facts and transactions. In the latter suit he deviated from his support to his mother as to plea of *benami*. The stances in the pleadings and evidence of first two suits are in many-fold varying from the stance(s) in suit filed by Muhammad Afzal. It appears that in order to maintain possession over the *suit property* they were not reluctant even to mislead the Courts and they remained successful in this design for 25 years. The miseries of execution are yet to start. The witnesses of Mst. Khursheed Begum and Muhammad Afzal are found highly untruthful. They, by jumping from one stance to another and by giving implausible as well as self-contradictory statements, lost credibility and on the basis of such evidence any finding in their favour would have been unsafe. Reference can be made to cases titled *"Muhammad Ghaffar (deceased) through LRs and others vs. Arif Muhammad"* (**PLJ 2023 SC 255**), *"Mst. Zaitoon Begum vs. Nazar Hussain and another"* (**2014 SCMR 1469**) and *"Ghafoor Khan (deceased) through LRs. vs. Israr Ahmed"* (**2011 SCMR 1545**). It will be beneficial to reproduce para 14 of *"Mst. Zaitoon Begum"* case (***supra***), which reads as follows:-

> *"…14. True that the law since long, developed by the Superior Courts, provides maximum protection to illiterate ladies, to ensure that no one could practice fraud upon them and to deprive them of valuable property rights.* ***However, under the garb of that protection or privilege, such ladies could not be given free licence to tell lie, by misusing such privilege or protection, allowed to them under the law. It is well embedded principle of law that "one who***

> ***makes statements, mutually inconsistent statements in the same matter, at two occasions, with regard to the same issue, is not entitled to be listened to". because the credibility of the person, giving testimony on oath, is shaken to a great extent, once she is found indulging in jumping from one stance and catching on another stance, such eventuality would give rise to strong presumption that under the garb of protection given to illiterate lady, she is herself indulging in misrepresentation and attempting to mislead the Court to reach at a patently wrong conclusion.*** *In any case, Courts are required to deal with each individual case according to facts and circumstances and evidence adduced therein and in no manner, to widen the scope of the protection/privilege, given to illiterate ladies in the matter of such transaction…"*
>
> *(Emphasis supplied)*

The decisions of the learned two Courts below, in the first two suits (*Khursheed Begum vs. Muhammad Afzal & another and Abdul Wahid Nasim vs. Muhammad Afzal and another*), are not found against any law or usage having force of law or defective in any manner, which is essential to successfully maintain a regular second appeal, under section 100 of the Code of Civil Procedure, 1908.

20. The suit titled *'Muhammad Afzal vs. Province of Punjab and another'* (No. 416/2010) was instituted by Muhammad Afzal on 07.01.2010 to seek declaration against agreements and deed pertaining to the year 1998. In paragraph No. 6 of the suit, it is asserted that the cause accrued in his favour on 19.10.1998 and then lastly <u>few days before filing the suit</u>. He failed to mention in the pleadings or establish in evidence as to how this last cause accrued in his favour, as stated in the said paragraph. The limitation for such suits is provided in Article 120 of the first schedule of Limitation Act,

1908 (the '***Limitation Act***'), which reads as follows:-

120	*Suit for which no period of limitation is provided elsewhere in this schedule.*	*Six years*	*When the right to sue accrues.*

The time under above article of the *Limitation Act* runs from the date when the 'right to sue' accrues. The words 'right to sue' means that when a person has 'right to seek relief' under the relevant law. In cases titled *"Saadat Khan and others vs. Shahid-Ur-Rehman and others"* (**PLD 2023 Supreme Court 362**) and *"Mst. Rabia Gula and others vs. Muhammad Janan and others"* (**2022 SCMR 1009**) the provision of Article 120 of the *Limitation Act* and section 42 of the Specific Relief Act, 1877 are analyzed / dealt in detail and it has been concluded that right to sue accrues to a person against the other for declaration of right *vis-à-vis* a property when latter actually denies rights or when he is interested to deny in the sense of threat of denial. The denial when actual it obligates the claimant to bring action, within the period of limitation given in the *Limitation Act*. When alleged wrongdoer or the one denying the right has done something explicitly to deny the rights by doing overt act that amounts to actual denial for which if the claimant has gained definite knowledge, then plea of threat of denial, cannot revive limitation. In cases of mere threat of denial, each threatened denial gives rise to fresh cause. It is settled that when right to sue arises largely depends upon the circumstances of each case. Here I would like to reproduce para 8.13 of *"Mst. Rabia Gula and others"* case (***supra***):-

> *"…8.13 Now, what "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the*

revenue record. It is important to note that a person may ignore an "apprehended or threatened denial" of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. For this reason, every "apprehended or threatened denial" of right gives a fresh cause of action and right to sue to the person aggrieved of such apprehension or threat. ***However, this option to delay the filing of the suit is not available to him in case of "actual denial" of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation****..."*

(Emphasis supplied)

21. It is often observed that despite actual denials, giving rise to right to sue, the belated cases are filed on the basis of alleged threat of denial. Generally, at the ends of plaints in addition to the actual denial a sentence is added that '*the cause again accrued just few days ago'*. This is being done without pleading actual date of threatened denial or any *prima facie* proof thereof. In some of these cases, mostly the actual denials are through positive act(s) which are self-evident, patent and manifest. The present case is classical example of such cases. The agreement and deed, in question, pertain to the year 1998, which were assailed in the year 1998 by Mst. Khursheed Begum in suit titled *'Khursheed Begum vs.*

Muhammad Afzal and another' (No. 52/2011), in which Muhammad Afzal filed written statement in 1999 pleading that the relevant documents were signed by him and claiming that this was done under intoxication. The written statement and evidence of Abdul Wahid Nasim expressly denied the claimed rights. Muhammad Afzal appeared as DW-1 in the said suit (No. 52 / 2011) and repeatedly admitted having knowledge of acts and documents forming basis of his suit titled *'Muhammad Afzal vs. Province of Punjab and another'* (No. 416/2010). Yet he filed this suit for declaration, which amounts to double version, attracting estoppel and the suit is fallacious on the face of it. He undeniably had knowledge from beginning of the complained acts and actual denial of his rights by Abdul Wahid Nasim. Ms. Safina Safdar Bhatti, learned Advocate, could not disagree this position either when she was arguing this case for Muhammad Afzal.

22. Section 3 of the *Limitation Act* commands that subject to sections 4 to 25 every suit after the period of limitation prescribed in first schedule has to be dismissed irrespective of the fact if the limitation is set-up as a defence or not. Section 3 *ibid* imposes duty on the Courts themselves to look into the matter and when from the statement in the plaint it is undoubtful that the suit is time barred then to proceed to reject it. The Judge cannot on equitable grounds enlarge the time provided by the law. Where the question of law of limitation is not a mixed question of law and fact as well as the suit on the face of the record is hit by limitation and when it became apparent or undoubtful to the Court, it becomes incumbent on the Court, whether the limitation is pleaded or not by litigant, to discharge the duty to reject the case. In case titled *"Hakim Muhammad Buta and another vs. Habib Ahmad and others"* (**PLD 1985 Supreme Court 153**), a bench of

Honourable five members of Supreme Court of Pakistan settled the issues as follows:-.

> *4. The words of section 3 of the Limitation Act are mandatory in nature in that every suit instituted after the period of limitation shall, subject to the provision of sections 4 to 25 of that Act, be dismissed although limitation has not been set up as a defence. If from the statement in the plaint the suit appears to be barred by limitation, the plaint shall have to be rejected also under Order VII, rule 11, C. P. C.* ***The law, therefore, does not leave the matter of limitation to the pleadings of the parties. It imposes a duty in this regard upon the Court itself. There is a chain of authority, and a detailed discussion of the same is not necessary, to lay down that limitation being a matter of statute and the provisions being mandatory, it cannot be waived and even if waived can be taken up by the party waiving it and by the Courts them-selves.*** *In Sitharama v. Krishnaswami (I), where the defendants had pleaded the bar of limitation but the trial Court had held that they having admitted their liability for the amount in resisting the plaintiff's application in a previous suit, were estopped on general principles of law and equity from pleading that the suit was barred by limitation. It was ruled that the defendants were not estopped and it was observed that "the bar of limitation cannot be waived, and suits and other proceedings must be dismissed if brought after the prescribed period of limitation" and that "the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by it".*
>
> *(Emphasis supplied)*

Not just the conduct of Muhammad Afzal is unconscionable, who maintained two different stances in two suits, disentitling him from equitable relief but at the same time his case is badly barred by limitation. Revision-petition of

Muhammad Afzal must, therefore, fail.

23. For all that has been discussed above, the regular second appeal and the civil-revision being meritless are ***dismissed***. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

Announced in open Court on 07.07.2023.

Judge

Nadeem