

Zulfiqar Ali

S.No. of order/proceeding	Date of order/Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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Through this single order, the captioned civil revision as well as civil revision No. 25021 of 2023 shall be decided.

2. On 02.09.2003 the revision-petitioner filed suit titled “*Zulfiqar Ali Versus Mirza Altaf Hussain and another*” (the ‘*suit*’) for specific performance of agreement dated 23.07.2003 (the ‘*agreement*’) allegedly executed in his favour by respondent No. 1, permanent injunction and cancellation of sale deed dated 13.06.2009 (the ‘*sale deed*’) in favour of respondent No. 3 with respect to property as detailed in the *suit* (the ‘*suit property*’). The *suit* was contested by the parties and the learned trial Court framed the relevant issues, which was followed by the process of producing evidence by the parties. On 22.09.2020 learned trial Court decreed the *suit* in favour of the revision-petitioner directing the District Collector, Chiniot to cancel the *sale deed* in favour of

respondent No. 3 with certain other observations. Being dissatisfied from this decision, the revision-petitioner and respondent No. 3 filed civil appeals No. PB-CHT-CA 43 and PB-CHT-CA 46 of 2020. The learned Appellate Court while setting aside judgment and decree dated 22.09.2020 of the learned trial Court reached to the conclusion that respondent No. 3 is prior purchaser of the *suit property*, therefore, the *sale deed* cannot be cancelled, however, the revision-petitioner was granted relief in terms of section 65 of the Contract Act-1872 vide judgment and decree dated 29.10.2021. Being aggrieved from the same, present civil revisions have been filed.

3. It is observed that the civil revisions were instituted on 09.02.2022 when they were allocated diary Nos. 18258 of 2022 and 18240 of 2022. The concerned branch of the office raised several objections including the objection of incomplete file and failure of the revision-petitioner to append the required court fee with civil revision No. 25021 of 2023. The revision-petitioner was given time of three days to remove the objections. The revision-petitioner received the files from the office on 18.02.2022 and then re-filed the civil revisions on 12.04.2023. The gap between the judgment and decree of

the learned Appellate Court and re-filing the civil revisions is five hundred and thirty (530) days.

4. The learned counsel for the revision-petitioner remained adamant in course of his arguments that the civil revisions are filed within ninety days. He stated that after excluding the time period consumed in preparing certified copy on 88th day the civil revisions were instituted, therefore, the question of limitation does not arise. The controversy, if the limitation stops running when application or appeal is filed within time and then returned for removing objections to re-file the same within given time frame and then the litigant fails to file the same within the given time period, was resolved by the Honourable Supreme Court of Pakistan in case titled “Asad Ali and 9 Others Versus The Bank of Punjab and Others” (PLD 2020 Supreme Court 736), wherein, it has been held that in the cases in which certain objections are raised by the office which rendered the institution of case in itself invalid or incompetent should be held to be time barred unless the objections or deficiencies indicated by the office are met within the time specified by the office. Paragraphs No. 15 and 16 of the aforesaid judgment reads as under:-

“15. The said principle of law has repeatedly been laid down, followed, approved, affirmed and reiterated in a large number of

judgments of this Court as well as the High Courts. Starting from the judgment of the Lahore High Court Lahore reported as Ghulam Hussain v. Bahadar (PLD 1954 Lahore 361) till judgment of this Court reported as Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224), there is consistency in the principle that if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the petition would become barred by time. There are two subsequent judgments of this Court reported as Mst. Sabiran Bi v. Ahmad Khan (2000 SCMR 847) and Farman Ali v. Muhammad Ishaq (PLD 2013 SC 392) which are incorrectly understood to have decided that so long as the initial institution is within the limitation period, removal of objections raised by the office after expiry of the limitation period does not render the petition to be barred by time. The said judgments have been rendered in a different set of facts and circumstances, do not lay down the entire law on the subject and are distinguishable on points of law as well as facts.

16. Be that as it may, since the LDA case (ibid) was decided by three learned Judges, it has to be followed instead of the two subsequent judgments rendered by two learned Judges. In addition to the above, following judgments also hold that if objections raised by the office are not removed within the time specified by the office and in the meanwhile limitation for filing the appeal expires, the appeal would be rendered time-barred:

Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224); Naheed Ahmad v. Asif Riaz (PLD 1996 Lahore 702); Ghulam Hussain v. Bahadar (PLD 1954 Lahore 361); Ellahi Bakhsh and 8 others v. Ahmad Bakhsh and 2 others (1999 YLR 777); Ghulam Dastgir Khan Lak v. Hayat (2000 CLC 781); Muhammad Idrees v. Abdul Rehman (2001 YLR 2294); Mazhar Iqbal v. Muhammad (2001 YLR 819); Protein and Fats International (Pvt.) Ltd. v. Capital Assets Leasing Corporation Limited (2005 CLD 857); and Controller Land Acquisition v. Fazal-ur-Rehman (2009 SCMR 767).

The above judgment was then relied by this Court in cases titled “Saleem Khan Versus Mst. Zeenat and Others” (2023 CLC 1217) and “Province of Punjab

and Others Versus Muhammad Arif and Company” (PLD 2022 Lahore 596).

6. At the bottom of objection-sheets, received by the revision-petitioner on 18.02.2022, it is clearly stipulated that the objections are to be removed within three (3) days, however, the revision-petitioner despite receiving the files remained unable to return the same after removing the objections within the given time period.

7. When the learned counsel for the revision-petitioner was confronted with the above position, he stated that another learned advocate dealing with the case, in the process of shifting his office, misplaced the files and as a result of the same he could not re-file the same within the specified time. The civil revisions are accompanied with applications (C. M. No. 02 of 2023 in titled civil revision and C. M. No. 02 of 2023 in civil revision No. 25021 of 2023) for condonation of delay. Paragraph No. 3 of the said application(s) reads as follows:-

“3. That after receiving the case file the undersigned Counsel shift his office and due to this reason the case file was misplace and the case could not be re-filed within specific time.”

The applications are signed by the present learned counsel (Syed Hashim Raza Shamsi). The applications are also accompanied by his affidavits. It is stated in the reproduced paragraph that the undersigned counsel (Syed Hashim Raza Shamsi) was shifting his office, whereas, today the learned advocate has argued totally contrary to the above ground and attempted to attribute the delay to some fellow learned advocate. In the entire application(s) no date of shifting the office or when the files were traced is given. The stance adopted by the learned counsel for the revision-petitioner has no leg to stand on. In “Lahore Development Authority v. Muhammad Rashid” (1997 SCMR 1224) the similar ground regarding change of office was taken, which was repelled for the reason that it is too implausible and unbelievable that the file could not be located for about a year as well as the affidavit attached was silent as to material aspects. In the present case, the delay in re-filing the civil revisions is about fourteen months. Mr. Muhammad Salman Asif Warraich, learned law officer, also has correctly referred to the case titled “Province of Punjab through District Officer Revenue, Rawalpindi and others versus Muhammad Sarwar” (2014 SCMR 1358) and stated that party aggrieved from an order or judgment of a subordinate Court is required to invoke the revisional

jurisdiction within the time period given in second proviso of section 115 of the Code of Civil Procedure-1908, which unambiguously stipulates that “provided that such application shall be made within ninety days of the decision of the subordinate Court” and after failing to invoke this jurisdiction within the aforesaid time period the litigant cannot be permitted to rely upon the supervisory powers and discretion of this Court.

8. In order to satisfy and to avoid any possibility of miscarriage of justice, I have gone through the entire available documents as well as the judgments of the learned two Courts below. The learned Appellate Court has refused to grant specific performance or to cancel the *sale deed* in favour of respondent No. 3 for the reason that the agreement dated 15.03.2001 (Exh. D6) in his favour is prior to the one in favour of Zulfiqar Ali / the revision-petitioner. The *sale deed* (Mark-DC) in favour of respondent No. 3 was admittedly registered with Sub-Registrar-Bhowana on 13.06.2009. The record does not reflect any denial on the part of Mirza Altaf / the seller *vis-à-vis* agreement (Exh. D6) and the *sale deed*. I have also asked the learned counsel for the revision-petitioner to show it from the record if Mirza Altaf / the seller has

ever denied Exh. D6, however, he failed to give any convincing answer.

9. For what has been discussed above, the miscellaneous applications to condone the delay are dismissed and as a consequence of the same, titled civil revision along-with civil revision No. 25021 of 2023 are also *dismissed in limine*. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

Judge

J.A. Hashmi/-