

Form No: HCJD/C-121
ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.78446-2023

Ijaz Ahmad Khan
Versus

Muhammad Bootay Khan deceased through his legal heirs etc.

Sr. No. Of Order/ Proceeding	Date of Order	Order with signatures of Judge, and that of parties of counsel, where necessary.
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05.12.2023 Sh. Naveed Shahryar, Advocate for the petitioner.

Brief facts necessary for the adjudication of this *lis* are that the petitioner/applicant filed an application under Section 12(2) CPC to challenge the order & decree dated 11.02.2017 with the averments that the petitioner/ applicant had no knowledge about the pendency of appeal as no notice/summon was served to the applicant and neither the applicant appeared before the learned appellate court nor appointed any counsel. Hence, order & decree dated 11.02.2017 is result of fraud, mis-representation having no effect upon the rights of the petitioner and further prayed that judgment & decree dated 17.09.2013 passed by learned trial court may also be set aside. The said application was contested by the then respondents No.1-A, 1-B, 1-E, 1-F to H by filing written reply while learned counsel for respondents No.5 to 9 had no objection to the acceptance of the application however respondents No.2, 4,

6 to 8 & 10 to 15 were proceeded against ex-parte. After hearing the arguments advanced by the contesting parties, the learned District Judge Faisalabad vide order dated 17.10.2023 **dismissed** the application. Feeling aggrieved, the petitioner/applicant has filed the instant civil revision and challenged the validity of the impugned order passed by the learned District Judge Faisalabad.

2. I have heard the arguments of learned counsel for petitioner and gone through the record.

3. Perusal of record reveals that petitioner has alleged in the petition under section 12(2) of CPC that he neither received any notice in the suit nor he filed written statement and respondent No.1 in the petition filed forged written statement & reply to application with forged signature of petitioner and his counsel neither cross examined the witnesses of respondent No.1 nor produced evidence of petitioner just to give favour to respondent No.1/plaintiff, however, record negates his allegations as the present petitioner was arrayed as defendant No.11 in the suit, wherein, he submitted Wakalatnama and also submitted his written statement and written reply duly signed by him through his counsel and ultimately the suit was decreed on merits vide judgment and decree dated 17.09.2013 which was not challenged by the present petitioner

before any higher forum. In so far as the appeal is concerned, the petitioner alleged that he was not served notice therefore he has no knowledge about the pendency of appeal, however, record contradicts his stance as in appeal petitioner's name is mentioned as respondent No.3 and his address is the same in appeal as he has mentioned in petition u/s 12(2) CPC and also in the instant civil revision i.e. Chak No.207-RB, Abadi Gujjar Khan Wala, Tehsil & District Faisalabad. The petitioner/applicant was issued notice by adopting due process and even after publication of advertisement in newspaper on 26.11.2013 but he did not appear before the learned appellate court and ultimately proceeded against ex-parte and thereafter on the basis of statements of the contesting parties, the appeal was accepted by modifying the judgment and decree of the learned trial court dated 17.09.2013 vide order & decree dated 11.02.2017. All the parties to the suit and appeal are closely related to each other and close relatives of petitioner. Hence, it cannot be believed that petitioner was not aware of the proceedings in suit and appeal.

It is also proper to mention here that against the judgment and decree dated 11.02.2017 passed by the

learned appellate court, the then defendant No.28 namely Farman Ullah Riaz S/O Rana Riaz Ahmad filed W.P.No.30245-2017 titled Muhammad Farman Ullah Riaz Vs Muhammad Bootay Khan etc wherein the present petitioner was impleaded as respondent No.3. Notice was issued by this Court in above mentioned writ petition which was personally served through process server to the present petitioner on 13.07.2017 but present petitioner never appeared before this Court in the above mentioned writ petition and the same was dismissed through judgment dated 11.10.2018 by this Court. The then petitioner namely Farman Ullah Riaz preferred C.A. No.90 of 2021 before the Hon'ble Supreme Court of Pakistan which was also dismissed as withdrawn.

What has been discussed in above paras, petition under section 12(2) CPC is also dismissed being barred by limitation because even in the W.P.No.30245-2017, notice was again served on 13.07.2017 to the present petitioner and present petitioner filed application under section 12(2) CPC before the learned District Judge on 16.07.2022 while period of limitation to file an application under section 12(2) CPC is three years from the date of knowledge of previous litigation. In this regard reliance is placed on the judgment reported as Bashir Ahmed through Legal Representative and others Vs Muhammad Hussain and

others (PLD 2019 Supreme Court 504), which holds as under:-

"A careful reading of the above provision clearly reveals that the period of limitation to file an application under section 12(2) of the C.P.C. would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrues to the aggrieved applicant, which in case of an application under Section 12(2) of the C.P.C. would be the date when the impugned decision based on fraud and concealment was passed In case the aggrieved person has, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of decision under Article 181 of the Act, to the date of knowledge of the said decision under section 18 (supra).

Reliance is also placed on the cases reported as Faizum alias Toor Vs Nander Khan and others (2006 SCMR 1931) & Fida Hussain Vs Ghulam Sarwar (2002 SCMR 1554).

4. Law of limitation is considered to be preventive in nature which serves as a major deterrent against the factors and elements which can affect peace, tranquility and due order of State and society and bar of limitation in litigation also brings forth valuable rights in favour of other party. The law of limitation requires that a person must approach a court of law and take legal remedies with due care,

diligence and within the time provided by the law, which is not the case in hand, hence, the application under section 12(2) of C.P.C. was/is hopelessly time barred.

5. As regards the contention of the learned counsel for the applicant/petitioner that limitation is a mere technicality, the same is not tenable. While dealing with the afore-noted question, the Supreme Court of Pakistan has held that the question of limitation cannot be termed to be a mere technicality and cannot be ignored while deciding cases. For reference reliance can be placed on Mst. Musarat Parveen v. Muhammad Yousaf and others (2023 SCMR 1665), Messrs Pak Suzuki Motors Company Limited through Manager v. Faisal Jameel Butt and another (PLD 2023 S.C. 482), Muhammad Anwar (decd) through L.Rs. and others v. Essa and others (PLD 2022 S.C. 716), Abdul Sattar v. Federation of Pakistan and others (2013 SCMR 911) and Muhammad Islam v. Inspector General of Police, Islamabad and others (2011 SCMR 8).

6. The petitioner has alleged fraud and representation against the respondents without any solid proof. Mere allegation not supported by any material would not invariably warrant inquiry or investigation. All these abovementioned facts negate the claim/ground as written in application for setting aside the impugned judgment. Therefore, plea being raised by the petitioner/ applicant at this stage has no force. Learned counsel for the petitioner/

applicant failed to satisfy the judicial conscious of the court as presumption of truth is attached to the record of the court under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and Article 150 of the Constitution of Islamic Republic of Pakistan, 1973. Authenticity of the judicial record cannot be doubted without any solid proof and only on the oral arguments of the learned counsel. Learned counsel for petitioner/ applicant has not been able to point out any plausible ground due to which he is seeking setting aside of the impugned order, hence, he is not entitled to any relief. It is a well settled principle that once the dispute is settled, the same cannot be allowed to be set at naught through the malafide act of the aggrieved party.

7. In view of the foregoing discussion, this Court is of the considered view that learned District Judge has rightly dismissed the application of the petitioner. The impugned order has been passed after properly discussing in detail the un-rebuttable facts of the case and keeping in view the settled law. No infirmity, legal or factual, has been pointed out in the impugned order, requiring interference, therefore, this petition is **dismissed in limine.**

**(MASUD ABID NAQVI)
JUDGE**

Approved for reporting.

JUDGE