

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.111/2019
Muhammad Saghir
Versus
Muhammad Nisar and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.06.2019	Syed Mohammad Ali Bokhari, Advocate for the petitioner. Mr. Wajid Hussain Mughal, Advocate for respondent No.1.

Through the instant civil revision petition, the petitioner, Muhammad Saghir, impugns the order dated 11.10.2018, whereby his right to produce evidence was closed by the learned Civil Court by invoking the penal provision of Order XVII, Rule 3 of the Code of Civil Procedure, 1908 ("C.P.C").

2. Learned counsel for the petitioner submitted that the petitioner had not sought many adjournments before the passing of the impugned order; that the petitioner should be granted just one opportunity to produce evidence; and that the petitioner shall not seek any adjournment in the proceedings before the learned Civil Court. Learned counsel for the petitioner prayed for the revision petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.1 raised a preliminary objection to the maintainability of the instant revision petition on the ground that it was time barred by eighty days. He further submitted that the impugned order dated 11.10.2018 was assailed by the petitioner in a revision petition filed before the Court of the learned Additional District Judge, Islamabad; that vide order dated 15.03.2019, the said revision petition was returned to the

petitioner for presentation before the proper forum, i.e. the Islamabad High Court; and that the Court of the learned Additional District Judge, Islamabad did not have the pecuniary jurisdiction to adjudicate upon the petitioner's revision petition since the valuation of the suit for the purposes of Court fee and jurisdiction was stated to be Rs.10 Million. He further submitted that since a limitation period of 90 days for filing a revision petition had been provided in section 115 C.P.C., the provision of section 5 of the Limitation Act, 1908 ("the 1908 Act") was not applicable so as to condone the delay in filing the revision petition. Learned counsel for respondent No.1 prayed for the revision petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Before going into the merits of the case, I deem it appropriate to decide the preliminary objection taken by the learned counsel for respondent No.1 to the maintainability of the instant revision petition.

6. The impugned order whereby the petitioner's right to produce evidence was struck off was passed on 11.10.2018. The said order was assailed by the petitioner in a revision petition filed before the Court of the learned Additional District Judge, Islamabad. Since the valuation of the suit for the purposes of Court fee and jurisdiction was stated to be Rs.10 Million, the Court of the learned Additional District Judge, Islamabad, vide order dated 15.03.2019, returned the said revision petition to the petitioner for presentation before the appropriate forum, i.e. the Islamabad High Court. Thereafter, the petitioner filed the instant revision petition on 28.03.2019.

The petitioner is seeking for the period between 11.12.2018 (when the civil revision petition was filed before the learned Additional District Judge) and 15.03.2019 (when the civil revision petition was returned by the learned Additional District Judge) to be excluded while computing the limitation period for filing a revision petition against the learned Civil Court's order dated 11.10.2018. In this regard, the petitioner has filed an application for condonation of delay.

7. I would tend to agree with the learned counsel for respondent No.1 that since a limitation period of 90 days for filing of revision petition has been provided in the second *proviso* to section 115(1) C.P.C., the applicability of section 5 of the 1908 Act has been excluded by section 29(2)(b) of the 1908 Act. In the cases of Citibank N.A. Vs. Arif Dewan (2016 MLD 773), Hafeez Ahmad Vs. Civil Judge, Lahore (PLD 2012 SC 400), City District Government, Lahore Vs. Muhammad Saeed Amin (2006 SCMR 676), and Allah Dino Vs. Muhammad Shah (2001 SCMR 286), it has been held that the delay in filing a revision petition cannot be condoned under section 5 of the 1908 Act since the said section was not applicable to revision petitions filed under section 115 C.P.C. by virtue of section 29(2)(b) of the 1908 Act. The case law relied upon by the petitioner is prior in time to the above-mentioned judgments.

8. Now as regards the question as to whether the time consumed by the petitioner in prosecuting his revision petition before the learned District Court can be ignored or excluded from the ninety-day limitation period for filing a revision petition, the petitioner has not advanced any explanation as to why he had filed the revision petition on 11.12.2018 before the learned District

Court. The valuation in the suit was far in excess of Rs.25,00,000/- and therefore, more than the pecuniary jurisdiction of the learned District Court. Ignorance of the law cannot be a valid defence. Therefore, the petitioner cannot be said to have filed the revision petition or to have prosecuted the same before the learned District Judge for a period of about a month and a half, with “*due diligence*” or “*in good faith.*” In the case of Khushi Muhammad Vs. Mst. Fazal Bibi (PLD 2016 S.C. 892), it has *inter-alia* been held as follows:-

“38. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought in our view to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: it should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel cannot constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel is not an adequate ground per se to constitute sufficient cause because if this rule is accepted, the centuries tested rule that ignorance of law is no excuse would stand violated. Besides, the above factors which caused ambiguity and misled the appellant (or his counsel as the case may be) have to be stated with clarity and precision in the application for condonation of delay and proved on the record.”
(Emphasis added)

9. Since the petitioner’s application for condonation of delay contains no pleadings with specificity as to what accounted for the petitioner’s *bonafide*, honest and genuine mistake or ambiguity in the law or in fact causing it to file the revision petition before the wrong forum, (i.e. the learned District Court), it falls short of the

requirements for such an application set in the case of Khushi Muhammad Vs. Mst. Fazal Bibi (supra).

10. In view of the above, I have no reason to allow the petitioner's application for condonation of delay in filing the instant revision petition. After holding so, it would not be appropriate to give any findings on the merits of the main revision petition. The petitioner's application for the condonation of delay is dismissed and as a consequence of such dismissal, the instant revision petition too stands dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AŦRĀNGZEB)
JUDGE

Qamar Khan*