

Form No: HCJD/C-121.

**ORDER SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 2721 of 2019**

***Muhammad Imran Bashir Malik***  
***Vs***  
***Amera Khan and others.***

| <b>S. No. of order/ proceedings</b> | <b>Date of order/ Proceedings</b> | <b>Order with signature of Judge and that of parties or counsel where necessary.</b> |
|-------------------------------------|-----------------------------------|--|
|-------------------------------------|-----------------------------------|--|

|                    |  |
|--------------------|--|
| <b>20.09.2019.</b> | <b>Mr. Khurram Mahmood Qureshi, Advocate for the Petitioner.<br/>Respondent No.1, in person.</b> |
|--------------------|--|

Respondent No.1, filed a Suit for Recovery of Rs. 57,65,309/- alongwith profit against the petitioner in the Civil Court, Islamabad on 04.04.2018. The said suit was decided in favour of respondent No.1 vide judgment and decree dated 29.05.2019. Respondent No.1, preferred an execution application for enforcement of the said judgment and decree in which the matter was adjourned for 29.07.2019. It seems that respondent No.1 approached respondent No.2, who, vide order dated 04.07.2019, directed respondent No.3 for disposal of the execution application by the end of this month. The petitioner is aggrieved of order dated 04.07.2019, passed by respondent No.2.

2. Learned counsel for the petitioner, *inter alia*, contended that the impugned order has been passed in absence of the petitioner and

is in violation of principles of natural justice. It was further contended that respondent No.2 had no jurisdiction in the matter inasmuch as according to report filed by him, the jurisdiction has been exercised under Section 115 CPC whereas that valuation of the suit made in the plaint is more than Rs.25,00,000/-.

3. Respondent No.1, in person, *inter alia*, contended that jurisdiction has been exercised by respondent No.2 under Section 115 CPC. It was submitted that since the proceedings were being delayed, hence she approached respondent No.2, who passed the order for expeditious disposal of the execution application.

4. Parties have been heard and the documents placed on the record examined with their able assistance.

5. After filing of the instant petition this Court sought report from respondents No.2&3. In this behalf, the report submitted by respondent No.3 is simple and is to the effect that she received direction from respondent No.2, whereas she had adjourned the case because the appeal period had not expired after passing of the judgment and decree. However, respondent No.2, in the report submitted that respondent No.1 appeared before her who is an overseas Pakistani

having Canadian Nationality and on the basis of her request direction was issued for expeditious decision of the execution petition under Section 115 CPC. Since a specific plea has been raised by respondent No.2 that jurisdiction was exercised under Section 115 CPC, hence for the sake of brevity, the relevant section is reproduced below:-

*"115. Revision.--(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-*

*(a) to have exercised a jurisdiction not vested in it by law, or*

*(b) to have failed to exercise a jurisdiction so vested, or*

*(c) to have acted in the exercise of the jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:*

*Provided that, where a person makes an application under this subsection, he shall, in support of such application, furnish copies of the pleadings, documents, and order of the subordinate court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court:*

*Provided further that such application shall be made within ninety days of the decision of the subordinate court which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.*

*(2) The District Court may exercise the powers conferred on the High Court by subsection (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.*

*(3) If an application under subsection (1) in respect of a case, within the competence of the District Court has been made either to the High court or the District Court, no further such*

*application shall be made to either of them.*

*(4) No proceedings in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court."*

6. The bare perusal of the provision shows that the jurisdiction is to be exercised under Section 115 CPC is of supervisory nature; the High Court and the District Court have this jurisdiction. In this behalf, the jurisdiction of District Court under Section 115 CPC is to the extent of Rs. 25,00,000/- as is borne out from Sub-Section 2 of Section 115 CPC. The wording of the Section is such that the jurisdiction can be exercised on an application made by any person or even suo moto subject to pecuniary jurisdiction of respective Court in case decided where no appeal is provided. The Hon'ble Supreme Court of Pakistan laid down the parameters of suo moto exercise of jurisdiction in case reported as **"Hafeez Ahmad and others vs. Civil Judge, Lahore"** (PLD 2012 SC 400). The august Apex Court observed as follows:-

*"17. Now question arises whether suo motu jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefore. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefore. Such petition, could be treated as an information even if it suffers from procedural lapses or loopholes.*

*Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefore, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismisses it on technical grounds.”*

7. This Court in the recent judgment reported as **"Major Muhammad Nouman vs. Usman Habib" (PLD 2019 Islamabad 255)**, on the question of suo moto exercise of jurisdiction under Section 115 CPC observed as follows:-

*“However, it is well settled that where an order or judgment before a Court is a consequence of misreading of evidence or is contrary to the law laid down by the Superior Courts, this Court will not hesitate in interfering with such an order in exercise of its suo motu revisional jurisdiction. As mentioned above, the order dated 11.05.2017 is contrary to the law laid down by the Superior Courts. The mere fact that a revision petition against the said order was not filed within the limitation period prescribed by law before the competent forum would not pose as an obstacle before this Court to set it aside in exercise of its suo moto revisional jurisdiction, if said conditions are satisfied. In holding so, I am fortified by the law laid down in the in the cases of Muhammad Swaleh v. Messrs United Grain and Fodder Agencies (PLD 1964 SC 97), Federal Board of Intermediate and Secondary Education v. Azam Ali Khan (2017 YLR 906), Mst. Bhagay v. Mst. Fatima Bibi (PLD 2004 Lahore 12), Town*

*Municipal Administration v. Rifat Hussain (2003 CLC 1370), Oil and Gas Development Corporation v. Clough Engineering Limited (2003 YLR 353), Mst. Iqbal Bibi v. Allah Yar (2004 YLR 1279) and Kiran Arif Mian v. Kinza Khalid (PLD 2008 Islamabad 11). Recently, in the case of Hafeez Ahmad v. Civil Judge, Lahore (PLD 2012 SC 44), it has been held as follows:--*

*"17. Now question arises whether suo motu jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefor. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismisses it on technical grounds."*

8. The above two mentioned judgments clearly stipulate that suo moto revision jurisdiction can only be exercised where matter is before the Court and some illegality

or jurisdictional error comes to the notice of the Court.

9. In the instant case, no application had been filed or otherwise any illegality or jurisdictional error was brought before the notice of respondent No.2. Even otherwise, respondent No.2 had no jurisdiction in the matter under Section 115 ibid inasmuch as the valuation of the suit is beyond the pecuniary appellate jurisdiction, which is Rs. 25,00,000/- in Islamabad Capital Territory. The District Court or for that matter even the High Court has no inherent powers or suo moto powers that it can issue directions or passing orders without any lis being pending or the matter not before it. As noted above, respondent No.2 has also stated that he was on the inspection of the Courts, however, the report of respondent No.3 is contrary to this aspect and it does not show that a formal inspection was being carried out by the District & Sessions Judge, West-Islamabad. Without going into the controversy and even otherwise, where inspection is being carried out, no judicial orders can be passed. Undoubtedly, District Courts do have Supervisory and Administrative control but that is only to the limited extent. In volume IV of Rules and Orders of the Lahore High Court, Lahore (which are being followed by this Court

at the moment) Chapter 1 deals with Superintendence and Control; under Part-A Rule 4, it is provided that appellate Courts while disposing of appeals judicially, bring to the notice of subordinate Courts errors or irregularities in procedure which may be observed in the course of hearing appeals. Unnecessary adjournments; undue delay in disposing of cases; omission to hear cases on the dates fixed; too harsh a use of the summary procedure allowed by law in cases in which defaults in attendance, or in producing evidence or the like, occur; failure to examine thoroughly the parties and to arrive at an intelligent appreciation of the points in dispute, and similar matters should always be brought to the notice of officers concerned in a note or memorandum separate from the judgment. The referred rule specifically provides that errors or omissions are to be pointed out while hearing appeals judicially. Part-C caters inspection of subordinate Courts. Under Rule 2 of Part-C *ibid* it is provided that when examining the records of subordinate Courts inspecting Officers should particularly note the number of adjournments granted in any case, and the reasons for them; if it is found that adjournments are granted unnecessary, the Presiding Officer of the Court concerned may be warned at once and if the



practice continues, a report should be made to the High Court. Moreover, the inspection notes are to be forwarded to the High Court. Though in the facts and circumstances, it is not clear that respondent No.2 was on inspection of the Court concerned but even if it is the case no direction could have been made as was made vide the impugned order dated 04.07.2019.

10. It has been submitted by respondent No.3 in a report that adjournment was granted in the execution proceedings and the case was fixed in July 2019 due to the fact that limitation for filing of the appeal against the judgment and decree had not expired. The referred reason for adjourning the case is not valid inasmuch as once the judgment and decree is passed and the execution application is filed for execution of the decree the learned Court is to proceed in accordance with law and does not have to wait for judgment debtor to file an appeal. It is only when execution proceedings are stayed or any other injunctive order is passed by appellate Court, the Court executing the decree is to obey the said order.

11. In view of the above facts and position of law as discussed, the instant petition is **allowed** and the impugned order dated

04.07.2019 passed by respondent No.1 is **set aside.**

**(AAMER FAROOQ)**  
**JUDGE**

\*Shakeel Afzal\*

Uploaded By : Engr. Umer Rasheed Dar