

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-Ud-Din Khan
Mr. Justice Muhammad Ali Mazhar

Civil Petitions No. 181-Q to 184-Q of 2021

*(Against the judgment dated 06.05.2021
passed by the High Court of Balochistan,
Quetta in Review Petition No. 04 of 2021 in
Civil Revision No. 330 of 2020)*

Abdul Qadir

(in C.P.181-Q/2021)

Abdul Hakeem

(in C.P.182-Q/2021)

Essa Muhammad

(in C.P.183-Q/2021)

Abdul Aziz

(in C.P.184-Q/2021)

...Petitioners

Versus

Jahangir Khan and others

(in all cases)

...Respondents

For the Petitioners:

Mr. Liaqat Ali Tareen, ASC.

For Respondent No. 1:

Mr. Shamsuddin Achakzai, ASC.

Date of Hearing:

25.10.2021

ORDER

AMIN-UD-DIN KHAN, J. Through these petitions filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the judgment dated 06.05.2021 passed in Review Petition No. 4 of 2021 in Civil Revision No. 330 of 2020 whereby Review Petition filed by the petitioners was dismissed, as well as judgment dated 24.3.2021 whereby civil revision petition No. 330 of 2020 filed by the petitioners was dismissed.

2. Office has calculated the limitation while taking into consideration the one impugned order i.e. 6.5.2021 when the review petition filed by the petitioners was dismissed. The instant petition was filed on 25.6.2021.

3. Learned counsel for the petitioners attempted to argue the matter on merits of the case i.e. to hit the findings recorded by the learned High Court in its order dated 24.3.2021 whereby civil revision was dismissed. He was sensitized that the petitioners opted to file a review petition against the order of dismissal of their revision petition dated 24.03.2021 and the learned High Court has considered the matter keeping in view the review jurisdiction and found that review petition is not competent. Learned counsel was further asked to show us that which of the points raised before the High Court under review jurisdiction come within the ambit of parameter under Order XLVII Rule 1 of the CPC for invoking the review jurisdiction. Learned counsel failed to show us any point pleaded in his review petition before the High Court whereby any reason for invoking the jurisdiction of the Court for exercise of review jurisdiction is permissible. We have noticed that all the points raised in review petition before the High Court seem to be an attempt to seek rehearing of whole of the matter. We have further observed that there are concurrent findings of fact recorded by the three courts below; suit of the plaintiff-respondent was decreed on 6.11.2018 and the decree of the learned trial court challenged by the petitioners through an appeal before the learned first appellate court was affirmed by dismissal of appeal then the Civil Revision filed by the petitioners too was dismissed vide judgment dated 24.03.2021.

Now we consider whether after dismissal of review petition a party is allowed to assail validity of both the orders i.e. order of dismissal of review as well as dismissal of revision petition when against the order of dismissal of revision petition the limitation for filing a petition for leave to appeal expired long before filing of the instant petition on 25.6.2021.

4. We have gone through the record. Petitioner applied for issuance of certified copy of order of dismissal of civil revision dated 24.3.2021 through application at Serial No.2798 on 5.6.2021, same day the copy was prepared and same day i.e. on 5.6.2021 certified copy was issued. The instant CPLA were filed on 25.6.2021. The time for filing a petition for leave to appeal under order XIII rule 1 of the Supreme Court Rules, 1980 is sixty days thus the instant petition is barred by 30 days without

any explanation and application for condonation of delay. Likewise, in C.P.No.182 of 2021 petitioner applied for certified copy of order of dismissal of civil revision dated 24.3.2021 through application at Sr.No.3035 on 8.6.2021, the copy was prepared on 21.6.2021 and same was issued on 22.6.2021, therefore, C.P.No.182 of 2021 is barred by 16 days. In C.P.No.183 of 2021 petitioner applied for certified copy of order of dismissal of civil revision dated 24.3.2021 through application at Sr.No.3036 on 8.6.2021, the copy was prepared on 21.6.2021 and same was issued on 22.6.2021, therefore, C.P.No.183 of 2021 is also barred by 16 days and in C.P.No.184 of 2021 petitioner applied for certified copy of order of dismissal of civil revision dated 24.3.2021 through application at Sr.No.3038 on 8.6.2021, the copy was prepared on 21.6.2021, therefore, C.P.No.184 of 2021 is barred by 16 days. When review petition has simply been dismissed without altering judgment of the revisional court no question of merger of judgment of revisional court into the review judgment.

5. We have gone through a judgment of the Indian Supreme Court whereby point in issue in the instant matter before us has been dilated upon. The Supreme Court of India in the case of "DSR Steel (P) Ltd. Vs. State of Rajasthan and Others. (2012 (2) CCC 88) aptly summarised various situations that may arise with reference to review jurisdictions. The Court observed: -

13. Different situations may arise in relation to review petitions filed before a Court or Tribunal. One of the situations could be where the review application is allowed, the decree or order passed by the Court or Tribunal is vacated and the appeal/proceedings in which the same is made are re-heard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the Court hearing the review petition. The second situation that one can conceive of is where a Court or Tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review reversed or modified. Such an order shall then be a composite order whereby the Court not only vacates the earlier decree or order but simultaneous with such

vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable under law.

14. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

The learned counsel for the petitioner could not satisfy as to why the order dated 24.03.2021 passed in revision was not challenged before this Court directly and instead after dismissal of review petition the orders passed in civil revision as well as the review application were challenged. Since the revision petition was dismissed by the learned High Court of Baluchistan against which no petition for leave to appeal was filed within period of limitation before this Court as such the same attained the finality. Moreover, there was also no legal justification left with the petitioner to seek review of the above mentioned order when no ground for review of a judgment was available with the petitioner against the order passed in the main revision. Reliance can be placed upon "MUHAMMAD RAMZAN Vs. LAHORE DEVELOPMENT AUTHORITY, LAHORE. (2002 SCMR 1336)" and "ABDUL HAKEEM and others Vs. KHALID WAZIR (2003 SCMR 1501)". Now in our view the petitioners cannot file a petition for leave to appeal in this Court when their review petition has been dismissed without any modification to the original judgement passed in the Revision Petition except to the extent of legality of exercise of review jurisdiction. We hold that

the learned High Court has rightly exercised jurisdiction by dismissing the review petition. In this view of the matter, learned counsel failed to make out a case for grant of leave. Leave is refused and all these petitions stand dismissed.

Judge

Judge

Judge

Islamabad, the
25th of October, 2021
(Mazhar Javed Bhatti)

APPROVED FOR REPORTING