

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan

C.P.L.A.No.6052 of 2021

(On appeal against the judgment dated 16.09.2021 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Civil Revision No.386 of 2021)

Anjuman Ghulaman ... Petitioner
Mustafa

VERSUS

Darul Islamia Society & ... Respondents
others

For the Petitioner : Mr. Junaid Iftikhar Mirza, ASC
Syed Rifaqat Hussain, AOR

For the Respondents : Malik Muhammad Kabeer, ASC

Date of Hearing : 26.01.2024

ORDER

Shahid Waheed, J. Were the proceedings taken out by the respondent for executing the decree, in the given circumstances, within time? This question has been presented to us by the petitioner (judgment-debtor) to seek our leave to appeal against the concurrent findings of the three courts below, by which the above question has been answered in the affirmative. Elaborating on the grouse of the petitioner, it has been contended on his behalf that the Trial Court issued the decree in favour of the respondent (decree-holder) on 17th of April, 2007, the appeal against it was dismissed on 07th of October, 2009, being time-barred, and finally, the revision was also dismissed on 21st of January, 2020. It was also brought to our notice that the decree of the Trial Court was neither stayed by the first appellate Court nor by the Revision Court and,

even so, the execution petition was filed on 03rd of June, 2020, which was patently out of time because the maximum period to bring it, according to Article 181 of the Limitation Act, 1908, was three years. Strength for this argument was sought from the case of Bakhtiar Ahmed v. Mst. Shamim Akhtar and others (2013 SCMR 5). Expostulating with the above stance, it was argued by the respondent that based on the principle settled in the case of Maulvi Abdul Qayyum v. Syed Ali Asghar Shah (1992 SCMR 241), the period of limitation in the circumstances of the case for bringing execution petition would run from the date of decree drawn by the Revision Court and, from that date, it was within time.

2. The above-noted two precedents provide us with a complete and satisfactory answer to the moot question. As such, it appears that while formulating the question, the principle set out therein was not adequately grasped. We are, therefore, inclined to give short shrift to the argument propounded on behalf of the petitioner. We explain for doing so.

3. In the present case, the decree of the Court of first instance was first challenged in appeal and then in revision before the High Court. After exhausting all statutory remedies under the Code of Civil Procedure, 1908, none of the parties considered it appropriate to avail of constitutional remedy before this Court. In such a situation, the case of Abdul Qayyum urges us to remember that till such time, an appeal or revision from a decree is not filed, or such proceedings are pending but no stay order has been issued, such decree remains capable of execution but when the Court of last instance passes the decree only that decree can be executed, irrespective of the fact, that the decree of the lower Court is affirmed, reversed or modified. In light of this principle, the application, brought by the decree-holder/respondent for the execution of the decree cannot be held to be barred by time. It is clarified that if the

decree/order passed in revision had been challenged by filing a petition for leave to appeal before this Court, the position would have been different, and the period of limitation would have been governed by the principle laid down in the case of Bakhtiar Ahmad, which expounds that unless the Supreme Court stays the proceedings of the decree or converts the petition into an appeal, the period of limitation cannot be deemed to have been clogged. Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application. However, if the leave is granted, the petition is converted into an appeal and allowed, in which case, the order of the Supreme Court will merge into the order of the lower forums and, thus, the period of limitation will start from the order of the Supreme Court. Since, in the case under consideration, the remedy before this Court was not availed of, the latter precedent does not apply to it.

4. So viewed, we think that the question presented to us is already well settled and, as such, does not qualify to be made a basis for a grant of leave to appeal. Leave is, therefore, declined, and accordingly, the petition is dismissed.

Judge

Judge

Judge

Announced in open Court on 2024 at Islamabad.

Judge

Islamabad, the
26.01.2024
“Approved for reporting”
Sarfraz Ahmad/-