

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE QAZI FAEZ ISA, CJ
JUSTICE MUHAMMAD ALI MAZHAR
JUSTICE MUSARRAT HILALI

CIVIL PETITION NO.423-L of 2018

Against the Order dated 28.11.2017 passed by
Lahore High Court on Diary No. 45031/2017 in
C.R.3054/2012

Haji Musharraf Mahmood Khan (deceased) through
his legal heirs

....Petitioner

Versus

Sardarzada Zafar Abbas (deceased) through his
L.Rs., etc

....Respondents

For the Petitioner:

Ch. Abdul Khaliq Thind, ASC
Syed Rifaqat Hussain Shah, AOR
Along with Mr. Khurram Musharaf,
Petitioner No.1(b)

For the Respondents:

Nemo.

Date of Hearing:

26.01.2024

JUDGMENT

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the order dated 28.11.2017 passed by the Lahore High Court on the Office Objection raised by means of Diary No. 45031/2017 in Civil Revision No.3054/2012. The High Court maintained the Office Objection and refused to restore the Civil Revision which was dismissed for non-prosecution on 09.02.2016.

2. The concise facts of the case are that the petitioner and respondent No.1 executed a partnership deed on 29.08.1997 for a petrol pump business. After some passage of time, a dispute arose between the parties and in order to resolve the dispute, respondent No.2 was appointed as arbitrator. Subsequently, on 21.05.2001, respondent No.2 announced the award. The petitioner filed an application before the Civil Court, Chiniot, for declaring the award as the rule of the Court but the learned Trial Court remitted the award back to the arbitrator to decide the matter afresh, which order was challenged in

an appeal. The Additional District Judge, Chiniot, was allowed the appeal, but in an earlier Civil Revision, the matter was remanded. After remand, the Additional District Judge upheld the order of the Trial Court dated 28.09.2005. Thereafter, the petitioner preferred Civil Revision No.3054/2012 in the Lahore High Court. On 09.02.2016, the civil revision was fixed in the High Court, where the counsel for the petitioner did not press the revision due to lack of instructions and on his statement, the revision was disposed of by the High Court with the observation that if in case of any live issue, the petitioner may file application within 60 days for the revival of the civil revision. The petitioner came to Lahore and visited his counsel's office, where his clerk disclosed that the civil revision has been disposed of due to lack of instructions. After collecting information, the petitioner immediately filed application for the revival of the civil revision, but the office raised objection which was placed in Court, and *vide* impugned order dated 28.11.2017, the High Court sustained the office objection and dismissed the application.

3. The learned counsel for the petitioner argued that the High Court, while permitting the petitioner to apply for the revival of the revision petition, could not decline to entertain an application filed for this purpose later on, merely on the basis of technicalities, without appreciating that sufficient cause was explained therein in respect of the delay occurred in filing such application, coupled with the fact that the revision petition was carrying a live issue justifying its decision on merits. The learned counsel for the petitioner further argued that the High Court committed a serious error while sustaining the office objection to entertain the application, when there was no provision in the relevant law that justifies such an objection. He further argued that the petitioner neither had any knowledge that his advocate pleaded no instructions nor did the said advocate ever ask for any instructions from the petitioner to plead no instructions. It was further averred that the petitioner was an old and ailing person, who could not establish contact with his learned counsel; hence, the application could not be filed promptly. He further argued that it was a fit case for revival of proceedings rather than non-suited the petitioner on hyper technicalities.

4. Heard the arguments. The notice of this civil petition was issued to the respondents, but despite service, nobody appeared. Hence, they are proceeded *ex-parte*. The bone of the contention is that the Civil Revision was dismissed by the High Court due to lack of instructions on 09.02.2016 with the rider that the petitioner may move an application within 60 days for resurrection of the case. When the application for revival of the proceedings was filed, the office had raised objection *vide* Diary No.45031/2017, and on 28.11.2017, the application was dismissed. The reasons for declining the application for restoration of Civil Revision were: (1) the revision petition was dismissed due to lack of instructions with the rider that the petitioner may apply for revival within 60 days, but the application was filed after about 18 months; (2) it was the duty of the petitioner to be vigilant in pursuing his case and; (3) the petitioner was obliged under the law to explain each and every day of the delay but he has miserably failed to do so.

5. The language used under Section 115 of the Code of Civil Procedure, 1908 ("C.P.C.") unequivocally visualizes that the revisional court has to analyze the allegations of jurisdictional error, such as when an exercise of jurisdiction is not vested in the court below, or a jurisdiction that is vested in it by law was not exercised, and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity, or committed some error of procedure in the course of the trial which is material and has affected the ultimate decision. The Court can even exercise its *suo motu* jurisdiction to ensure effective superintendence and visitorial powers to make sure, by all means, the strict adherence to the safe administration of justice, and may correct any error unhindered by technicalities.

6. The objective of the law of limitation is not to confer a right, but it ordains an impediment after a certain period to enforce an existing rights or claims which have become stale by the efflux of time. The Court, under Section 3 of the Limitation Act, 1908 (the "Limitation Act") is obligated, independently and as its primary duty, to advert to the question of limitation and make a decision, regardless of whether this question is raised by the other party or not. In the case at hand, it cannot lose sight of the fact that the Revision Petition was dismissed for non-prosecution on the statement of the counsel that he had no instructions. While the application moved by the petitioner for

resurrection averred that his advocate neither contacted him for any instructions nor did the petitioner ever issue any instructions not to press the revision petition. Instead, the petitioner continued awaiting the decision of his revision petition on merits. In the C.P.C., there is no specific section or order which applies to the restoration of revision application dismissed in default. In unison, no specific Article is mentioned in the Limitation Act, whereby any specific period of limitation is provided for applying for restoration of a revision application dismissed for non-prosecution. To address this situation, the legislature has provided a residuary Article 181 in the Limitation Act, which is meant for all applications for which no period of limitation is provided elsewhere in the schedule or by Section 48 of the C.P.C., and within the province and under the purview of this Article, all such applications can be preferred within a period of 3 years when the right to apply accrues.

7. If the counsel had pleaded no instructions without seeking instructions of the petitioner and committed a professional misconduct within the relationship of legal practitioner and client, and the petitioner was aggrieved, then obviously, he could have lodged a complaint to the concerned Bar Council against his counsel for professional misconduct. However, nothing was argued before us to prove that any such complaint was ever filed. Another crucial feature is that while dismissing the revision petition in default, the High Court allowed 60 days' time for applying for restoration or resurrection of the case. No doubt, the Court may dismiss the case for non-prosecution and if any party wants to restore the case, it may apply for restoration of his case at the original stage by way of filing application with satisfactory reasons for non-appearance on the date fixed for hearing, and if the application is time barred, he may also move application for condonation of delay under Section 5 of the Limitation Act, along with the main application for restoration which is considered by the Court regardless of whether any cogent, reasonable, or satisfactory ground is made out for the restoration or not. In case reasonable and satisfactory grounds are made out, including the limitation, the Court may restore the case with or without cost, but while dismissing the case for non-prosecution, the Court cannot fix any specific time or period for applying for restoration as was done by the High Court in this case, whereby a barrier of 60 days was fixed for filing of the

restoration application. Such directions were contrary to the provisions of Limitation Act, wherein the limitation period for applying for restoration of a revision petition or application is regulated and controlled by the Article 181 of the Limitation Act.

8. Where the words of a statute are explicit and unambiguous, recourse cannot be made to any other interpretation other than the literal rule. The language used in a statute is a decisive feature of the legislative intention and aspiration. The Courts are obligated to decide what the law is and not what it should be and should not assume the role of a lawmaker. It is a well-known principle of interpretation of statutes that a statute should be interpreted in a manner which suppresses mischief and advances the remedy. This supports the observations made by this Court in the case of Manager, Jammu and Kashmir State Property v. Khuda Yar (**PLD 1975 SC 678**) that mere technicalities, unless offering any insurmountable hurdle, should not be allowed to defeat the ends of justice and the logic of words should yield to the logic of realities.

9. In the case of Muhammad Sadiq Vs Mst. Bashiran and 9 others (**PLD 2000 SC 820**), this Court held that there is no doubt that civil revision under section 115, C.P.C. entertained by the High Court has to be disposed of in view of provisions of section 117, C.P.C. A thorough survey of C.P.C. will indicate that there is no provision for recalling/setting aside the order dismissing a revision for non-prosecution. It may be noted that there are many other proceedings under C.P.C. in respect of which no procedure has been laid down if the same is dismissed for non-prosecution but a litigant suffering from such difficulty cannot be left without any remedy because law favours adjudication of matters on merits unless there exists some insuperable practical obstacle as held by this Court in the case of Wali and others v. Manak and others (**PLD 1965 SC 651**). It was further held that there is no specific provision in the C.P.C. to restore a revision dismissed for non-prosecution, therefore, an aggrieved party can claim relief under section 151, C.P.C. [Ref: House Building Finance Corporation v. Mrs. Sarwar Jehan (**PLD 1992 Karachi 329**)]. Whereas, this Court in the case of Mandi Hassan alias Mehdi Hussain and another Vs. Muhammad Arif (**PLD 2015 SC 137**), held that no provision for recalling/setting aside the order dismissing a revision for non-prosecution has been provided. To overcome such a

situation, the inherent jurisdiction of the Court could be invoked which had been conferred upon the trial, appellate and revisional courts in terms of Section 151, C.P.C., subject to the condition that no other specific provision to deal with the issue was available under the C.P.C. No limitation having been prescribed for filing an application to invoke the jurisdiction of the Court under Section 151, C.P.C., in the Limitation Act, or under Section 48, C.P.C., and so the residuary provision of Article 181, Limitation Act, would be attracted, which provides for a period of 3 years for the purpose. It was further held that the true import of the expression "when the right to apply accrues" in Article 181 obviously means the right accrued to apply for a restoration by invoking inherent jurisdiction. The starting point of time shall be the date when the revision is dismissed for non-prosecution (subject to certain exceptions available under the Limitation Act). While the judgment rendered by this Court in the case of Mst. Jameela Bibi (Deceased) through LRs Vs. Mst. Fatima Bibi (Deceased) through LRs (**2023 SCMR 485**), it was held that the application for restoration of the civil revision of the petitioner was dismissed on the basis of Article 168 of the Limitation Act, which provides for a period of 30 days for maintaining such an application in case of an appeal. Perusal of the First Schedule of the Act reveals that Article 163 deals with application for restoration of the suits dismissed for non-prosecution and provides for a period of 30 days from the date of dismissal for filing such an application, while Article 168 provides for readmission of an appeal dismissed for want of prosecution and provides a period of limitation of thirty days from the date of dismissal for filing an application for restoration. There is, however, no specific article, which deals with the application for restoration of civil revision dismissed in default, therefore, reliance has to be placed on Article 181 of the First Schedule to the Act, which provides that for an application for which no period of limitation is provided elsewhere in the Schedule the period of limitation is 3 years from the date when the right to apply accrues. [Ref: Ghulam Qadir and others v. Sh. Abdul Wadood and others (**PLD 2016 SC 712**)].

10. While granting 60 days' time for applying for the restoration or resurrection of the revision petition which was dismissed by the High Court in default or for non-prosecution, the High Court disregarded Article 181 of the Limitation Act wherein the restoration could have been filed within 3 years when the right to apply accrued. Therefore,

the fixation of time or limitation of 60 days by the Court is tantamount to curtailing or restricting the statutory period of 3 years to only 60 days which was unwarranted and in excess of jurisdiction.

11. In the wake of the above discussion, this Civil Petition is converted into an appeal and allowed. The impugned order dated 28.11.2017 passed by the Lahore High Court is set aside and the civil revision is restored. The learned High Court is directed to decide the civil revision on merits after issuing notice to the parties.

Chief Justice

Judge

Judge

Announced in open Court

On 04.03.2024 at Islamabad

Judge_____

Khalid
Approved for reporting