SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-IV
Justice Shahid Waheed
Justice Irfan Saadat Khan

C.P.L.A.81-P/2019
(Against the order dated 14.12.2018 passed by the Peshawar High Court, Peshawar in FAO No.71-P/2009)

Misree Khan & others ...Petitioner(s)

Versus

Abdul Ghafoor & others ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Asif, ASC via video link from Peshawar

For the Respondent(s) : NR

Date of Hearing : 14.11.2024

O R D E R

Shahid Waheed, J: This case presented a simple question for the grant of leave to appeal against the judgment, dated 14th of December, 2018, of the Peshawar High Court. That question was: Could the plaint of the petitioners' declaratory suit, given the facts, be rejected on the ground of limitation? While hearing arguments on this question, we noticed some misunderstanding on the part of the High Court concerning its jurisdiction. So, the second question that attracted our attention was whether, in a case where an order of rejection of plaint in terms of Order VII, Rule 11, of the Code of Civil Procedure, 1908 (CPC) was passed by a Court exercising revisional jurisdiction, a first appeal would be available to the aggrieved party?

2. We take up the first question first. To answer this question, it is essential to state a few facts about the

case and a little detail on how it progressed in the court's hierarchy. The petitioners before us are the unsuccessful plaintiffs. On 19th of July, 2006, they had brought a suit seeking a declaration that mutation No.2357 and 2357, both sanctioned on 15th of March, 1975, were illegal and ineffective upon their rights. The respondents traversed the allegations levelled in the plaint by submitting their joint written statement. The respondents also filed a separate application under Order VII, Rule 11, CPC, seeking rejection of the plaint on two-fold legal objections. The first was that the contents of the plaint did not disclose the cause of action, and the second was that the suit was out of time. The petitioners contested this application. On coming the matter for consideration, the Civil Judge concluded that the objections raised could not be resolved summarily, as they necessitated an inquiry by recording evidence. He, therefore, dismissed the application with his order dated 28th of May, 2008. The respondents then applied for the revision of the order dated 28th of May, 2008. The Additional District Judge noticed substance in the objections and, revising the order of the Civil Judge, rejected the plaint by his order dated 17th of December, 2008. The petitioners then went to the Peshawar High Court. In the later part of this judgment, we will mention in detail which jurisdiction of the Peshawar High Court they went to and to which they should have gone. However, it is important to note that the next forum to evaluate the orders issued by the two courts on the objections raised by the respondents was the High Court.

The findings returned by the Additional District Judge were found by the High Court to be valid enough to reject the plaint. The petitioners, therefore, could not succeed in the High Court.

3. The petitioners now seek leave to appeal against the judgment of the High Court by canvassing the first question. It is well recognised that per Article 120 of the Limitation Act, 1908, the limitation period of six years for a suit for declaration begins to run when the right to sue accrues. The objection to the suit was that since it had not been instituted within six years, its plaint must be rejected at the outset. Before proceeding further, we take a pause to say that rejecting the plaint under Order VII, Rule 11, CPC is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to exercising power under Order VII, Rule 11, CPC are stringent. This Court has consistently held that the averments in the plaint must be read as a whole to determine whether it discloses a cause of action or whether the suit is barred under any law. This includes a bar created due to the lapse of the limitation period. At the stage of exercise of power under Order VII, Rule 11, CPC, if the averments in the plaint ex-facie do not disclose a cause of action or on a reading thereof, the suit appears to be barred under any law; the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. Based on the principle stated above, when, in the present case, we read the plaint as a whole and

proceed on the basis that the averments made therein are correct, it comes up that the said pleadings ex facie discloses that the suit is barred by limitation. The petitioners were aggrieved by the entries recorded in two mutations: mutation No.2357 and mutation No. 2358. These two mutations were sanctioned on the 15th of March, 1975. Here, two material dates were to be examined to determine the limitation period during which the petitioners could seek relief from the Court against the alleged illegal revenue entries. The first was when the right to sue accrued to the petitioners. The second was when the suit was instituted. As regards the first, it is well recognised that there can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement or threat to infringe that right. It implies that the date of accrual of the cause of action, and not the cause of action itself, would be terminus a quo for computing limitation time under Article 120 of the Limitation Act, 1908. This depended mainly upon the material facts on which the petitioners' pleadings relied for their claim. In the case at hand, the petitioners, in their plaint, had explicitly stated that before the year 2000, they had approached the respondents to rectify the wrong. Upon their refusal, the jirga was convened, and subsequently, the remedy was also pursued under the laws governing the Federally Administered Tribal Areas. All these material facts pleaded by the petitioners indicated two things: first, they knew about the disputed mutations before the year 2000, and second, upon the refusal of the respondents to recognise

their rights, the cause of action had also accrued much before the year 2000. Still, on the contrary, they took more than six years to bring their suit before the Civil Court on the 19th of July, 2006. Given the circumstances, the suit of the petitioners could not be held to be instituted within time. Thus, the District Court rightly rejected its plaint under Order VII, Rule 11, CPC, and the High Court correctly upheld the rejection.

4. The second question that caught our attention was not raised by the petitioners. As such, it could not serve as a basis for granting leave to appeal. This particular question emerged from a misunderstanding on the part of the High Court, and we think it necessary to clarify it for future reference.

5. A thorough examination of the records indicates that the Additional District Judge (District Court) had rejected the plaint of the petitioners' suit, acting within his revisional jurisdiction as provided for in Section 115 CPC. Subsequently, the petitioners sought to contest that order by filing an application with the High Court under the same section. However, this application effectively represented a second revision, which was not permissible due to the prohibition stipulated in subsection (3) of Section 115 CPC. Recognising this significant legal obstacle, the petitioners chose to withdraw their second revision application. The order pertaining to this second revision application is

particularly noteworthy, and we have included it below for clarity and context:

> *"States that in view of the bar contained in section 115(3) of the CPC, second revision is barred and that he be allowed to withdraw this revision petition with the permission to file Writ Petition.*
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> *Dismissed as withdrawn. The petitioner may, if so advised, file a fresh Writ Petition."*

In light of the guidance outlined in the above order, the petitioners initiated legal proceedings by submitting an application under Article 199 of the Constitution of the Islamic Republic of Pakistan (i.e. W.P. No.1146 of 2009). This application was scheduled for a hearing before a Division Bench of the High Court on the 26th of October, 2009. During the proceedings, the Division Bench came to hold that the order rejecting the plaint should be regarded as a decree as defined in section 2(2) CPC. Upon being informed of this legal position, the counsel representing the petitioners sought permission to withdraw W.P. No.1146 of 2009 in order to pursue the alternative remedy of appeal. The High Court granted this request with the following order:

> *"After hearing the learned counsel at some length, when it was pointed out to him that since through the revisional order of the Additional District Judge, the plaint has been rejected, though the suit has been dismissed but it was for all practical purposes rejection of the plaint and not dismissal, therefore, it was an appealable order as a decree under section 2(2) CPC. On this learned counsel requested for withdrawal of this writ petition with a request that certified copies of the documents attached with this writ petition should be returned to him for enabling him to file an appeal in accordance with law. Office is accordingly directed to return the certified copies after retaining photo*

> *copies of the documents attached with the writ petition, who may, if so advised, file appropriate proceedings in accordance with law."*

After W.P. No.1146 of 2009 was returned, the petitioners preferred a First Appeal against Order (FAO). It is important to note that Sections 104 and Order XLIII, CPC, specify the types of orders that can be appealed. The High Court entertained this appeal for consideration, which resulted in a judgment that led to the filing of this petition.

6. The legal recourse taken by the petitioners in the High Court indicates a lack of clarity regarding the appropriate remedy for an aggrieved person when a Court exercising revisional jurisdiction issues an order to reject a plaint in accordance with Order VII, Rule 11, CPC. We are therefore obliged to clarify the confusion surrounding the remedies available against such orders. The petitioners had approached three distinct jurisdictions of the High Court to seek an order that would annul the judgment made by the Additional District Judge (District Court). We will analyse each of these jurisdictions to determine which one is permissible.

7. We will first examine the scope of jurisdiction established under Section 115 CPC. This jurisdiction is referred to as revisional jurisdiction and is conferred upon both the District Court and the High Court. Two fundamental principles regarding this matter are well founded. The first principle states that if an application has been filed under subsection (1) of Section 115 CPC, no

further application of this nature may be made. The second principle indicates that the High Court will not entertain any proceedings in revision against a revisional order made by the District Court. The essence of these two principles is that a second revision under Section 115, CPC is not permissible. Given this legal framework, it follows that a second revision of an order rejecting a plaint under Order VII, Rule, 11 CPC, by the District Court cannot be pursued by invoking Section 115 CPC before the High Court.

8. We will now delve into the intriguing realm of the second jurisdiction of the High Court, commonly known as the first appeal. Within this category, we can identify two distinct types of first appeals: one involving an appeal against an order and the other concerning an appeal against a decree. It is important to understand that certain orders hold special significance under the law. For instance, an order that rejects a plaint under Order VII, Rule, 11 CPC is classified as a decree, as outlined in Section 2(2) CPC. This classification is vital because it informs the avenues available for challenging such orders. When it comes to appealing decrees, Section 96 CPC permits appeals against all decrees without exception. In contrast, the path for appealing orders is more restrictive; appeals can only be made against those orders expressly enumerated in Section 104 or Order XLIII, CPC. A noteworthy point to consider is that an order made under Rule 11 of Order VII, CPC is conspicuously absent from this list of appealable orders. Consequently, it remains impermissible to challenge such an

order through an appeal. This brings us to a question: if a Court exercising its revisional jurisdiction issues an order to reject a plaint, would a first appeal under Section 96 CPC still be an available option? A thorough examination of Section 96 CPC indicates that any decree issued by a Court exercising original jurisdiction is appealable. According to Section 2(2) CPC, an order that rejects a plaint qualifies as a decree; nevertheless, such an order can only be appealed when issued by a Court exercising its original jurisdiction. While, a revisional court discharging jurisdiction under Section 115 CPC does not operate under original jurisdiction. Therefore, although a revisional court's order rejecting a plaint is classified as a decree, it cannot be appealed under Section 96 CPC[1].

9. The preceding analysis clearly demonstrates that when a District Court issues a decree while exercising its revisional jurisdiction, the remedy options are significantly limited under the Code of Civil Procedure, 1908. Expressly, a second revision is not permitted, and parties cannot file a first appeal because the District Court's order arises from its jurisdiction in a revisional capacity. Furthermore, it is important to note that a second appeal against such a decree is also not permissible; this type of appeal can only be made concerning decrees issued by Courts operating in their appellate jurisdiction. However, in instances where parties feel aggrieved by revisional orders, they may pursue a writ application under Article 199 of the Constitution. It is crucial

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[1] *Qadir Bakhsh Shah v. Additional District Judge* ***(2004 SCMR 1638).***

to understand that this writ application must go beyond merely alleging illegality. It must establish that the underlying merits of the case have been adversely impacted and that a party's legal rights have been compromised as a result. This requirement emphasises the need for a meaningful connection between the alleged procedural irregularities and the substantive rights of the parties involved[2].

10. The analysis presented above allows us to conclude that in the present case the petitioners' writ application was a suitable and legitimate avenue to contest the revisional order issued by the Additional District Judge. It was inappropriate for their application to be returned to them under the pretext of seeking an appeal. This irregularity arose from a mix of confusion and misunderstanding within the Court process, yet it did not have an adverse impact on the substance of the petitioners' case. Given these circumstances, we have decided to overlook this procedural misstep.

11. The outcome of this petition is that it has not succeeded and is therefore dismissed. Leave to appeal is refused.

Judge

Judge

Islamabad
14.11.2024
APPROVED FOR REPORTING
Rashid I*

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[2] *Noor Muhammad v. Sarwar Khan* ***(PLD 1985 SC 131)****; Muhammad Zahoor v. Lal Muhammad* ***(1988 SCMR 322)****; Hassan Din v. Abdus Salam* ***(PLD 1991 SC 65)****; and Qamar ud Din v. Muhammad Din* ***(PLD 2001 SC 518)****.*