

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

(AFR)

Civil Appeal No.443/2021

(On appeal from the judgment dated
14.09.2020 passed by the Peshawar High
Court, Bannu Bench in C.R. No.44-B/18)

Chief Executive, PESCO Department, Government of Khyber
Pakhtunkhwa, Peshawar and others

...Appellant

Versus

Afnan Khan and another

..Respondents

For the appellants: Mr. Sabit Ullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For respondent No.1: Mr. Imad Anjum Durrani, ASC

Date of hearing: 14.10.021

ORDER

GULZAR AHMED, CJ -. By the impugned judgment dated 14.09.2020 the High Court has dismissed the civil revision filed by the appellant on the ground that it was time barred, in that, though it was filed within the limitation period but it was returned by the Office with certain objections and it was re-submitted beyond the period allowed by the Office. The other ground is that the resolution of the Board of Directors of the Company has not been filed.

2. So far as the treatment of the civil revision by the High Court vide the impugned judgment is concerned, we may note that such treatment of civil revision by the High Court is altogether contrary to the law laid down by this Court in the case of Hafeez

Ahmad and others Vs. Civil Judge, Lahore and others (PLD 2012 SC 400) which is the judgment of a 5-Member Bench of this Court. Paras-15 and 17 whereof are as follows:-

"15. In all the judgments cited and discussed above it has been held that revision petition filed under section 115 of the Code is liable to be dismissed if filed beyond ninety days and that section 5 and section 12(2) of the Limitation Act are not applicable but it does not appear to be correct in view of the discussion made above, except to the extent of Section 5 of the Limitation Act. It is, however, significant to note that in none of these judgments, the part of the provision relating to the exercise of suo motu jurisdiction by the revisional court has either been argued or adverted to except in the judgment rendered in the case of **Province of Punjab through Collector and others v. Muhammad Farooq and others (supra)**. In the aforesaid judgment, no doubt, this Court held that section 12(2) of the Limitation Act is not applicable yet it did not approve of dismissal of a revision petition on the score of limitation. It, instead, appreciated the decision on merits in the exercise of suo motu jurisdiction of such Court, if, the conditions sine qua non for such exercise are satisfied.

16.

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 dismissed it on technical grounds.....”

3. We note that so far the question of limitation is concerned, the appellant had filed the civil revision in the High Court within time but it was returned by the Office with certain objections to be complied with by the appellant and to be re-submitted within the time allowed by the Office. The counsel for the respondents himself has relied upon the case of Farman Ali Vs. Muhammad Ishaq and others (PLD 2013 SC 392) where this Court has elaborately discussed the issue with regard to the filing of civil revision in the High Court and the manner in which the High Court and its Office are required to deal with the same. In this respect, reference to the High Court Rules and Orders have been made, particularly, to Rules 6, 7, 9 and 9-A.

4. Learned counsel for the respondents was asked whether these Rules were followed by the High Court and its Office, he was unable to make any submission in this regard and simply states that though the civil revision was filed in time but its re-submission after complying with the office objections was out of time. If that be so then the Office had to follow Rule 9-A of the High Court Rules and such seems to have not been done, in that, notice was not affixed on

the notice board and further, the case was not fixed for hearing as a motion case about which the appellant may have been put on notice.

5. It seems that the civil revision came up for hearing before a Bench of the High Court and it proceeded to pass the impugned judgment dismissing the same without advertting at all to the question as to what has transpired in filing of the civil revision and how the Office of the Court and the Court acted and dealt with the same for which provision has been made in the High Court Rules.

6. As regards the question of filing of resolution, we note that the very civil revision was not filed by the Company rather it was filed by the Chairman, WAPDA and Chief Executive, PESCO and these are the two authorities who were also impleaded by the respondent as defendants in the suit. Once the respondent himself has chosen to make a specific designation in the organization/company as party to the suit and not the organization/company, the objection with regard to filing of the resolution by the Company could not be justifiably raised or on that basis the civil revision filed by the appellant could not have been dismissed.

7. The impugned judgment of the High Court lacks legal support, in that, the High Court did not attend to the judgments of this Court which it has time and again rendered in dealing with not only the question of filing of civil revision and its limitation period but also on the point of filing of resolution. We may note that this Court in the case of XEN PESCO/WAPDA District Karak & others V. Nawaz Zada etc. has passed an order on 17.09.2020 in Civil Petitions No.872, 1154-1158 of 2019 where this very question was dealt with as follows:-

"2. Learned counsel for the petitioners contend that from the title of the complaint before the consumer Court and so also from the title of appeals it is evident that same have been filed against the officials of the statutory/corporate entities and not against the entity itself. Therefore, the assumption that cases ought to have been filed under the proper authority of the Board of Directors of the company is not in consonance with law. The cases relied upon are all by or against a corporate legal entities, whereas, the present controversy is by and between private individuals/consumers and officials of the company concerned."

Same being the case here before us such observation of this Court, apparently, is applicable. In the circumstances, we find the impugned judgment dated 14.09.2020 to be suffering from legal defect and thus the same is set aside, and the matter is remanded to the Peshawar High Court, Bannu Bench for deciding Civil Revision No.44-B/2018 afresh and in accordance with law. The appeal is allowed in the above terms.

Islamabad,

14th October, 2021

Nasir Khan /-

'Approved for reporting'