IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION No. 1824 OF 2019
(Against the Judgment of Peshawar High Court, Bannu Bench dated 07.02.2019 in C.R. No.133-B of 2016)

Khan Bahadur Khan ...Petitioner

VERSUS

Khan Malook Khan ...Respondent

For the Petitioner: Mr. Muhammad Tariq Javed Qureshi, ASC
For the Respondent: N.R

Date of Hearing: 10.05.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the judgment passed by the learned Single Judge of the Peshawar High Court, Bannu Bench in Civil Revision No. 133-B/2016 on 07.02.2019, whereby the Civil Revision filed by the petitioner was dismissed.

2. At the very outset, we have noted that the Revision Application was preferred on 01.10.2016 to assail the judgment dated 24.05.2016 passed by the learned Additional District Judge, Lakki Marwat. The sequential order of events divulges that an application for certified true copy of the Judgment and Decree was submitted on 20.07.2016, i.e. after 55 days. Nevertheless, an application for condonation of delay was moved in the High Court but the reasons put forward for condonation were not found satisfactory by the learned High Court which is clearly manifesting from the impugned judgment which states that the delay of each and every day was not explained by the petitioner. Ultimately, the Revision Application was dismissed by the learned Peshawar High Court as being barred by time.

3. The learned counsel for the petitioner on one hand admitted that the Revision Application was time barred and no plausible reason was presented in the High Court for justifying the delay but, on the other hand, he articulated that despite the issue of limitation the learned

High Court should have considered the case on merits instead of nonsuiting the petitioner on the question of limitation. In support of his contention, he referred to the Judgment of this Court rendered in the case of Hafeez Ahmad and others Vs. Civil Judge, Lahore and others **(PLD 2012 SC 400).**

4. Heard the arguments. In order to examine whether in the concurrent findings recorded by the Trial Court and Appellate Court, complete and substantial justice has been afforded or not? We have also scrutinized the precision and meticulousness of the judgments and decrees of the learned Trial and Appellate Courts with a fair opportunity of audience to the learned counsel for the petitioner to satisfy us as to what illegality, perversity or irregularity was committed by the aforesaid Courts in their respective judgments and decrees. In response, the learned counsel mainly contended that the question of limitation was not properly adverted to with the caution that the suit was filed in the Civil Court after inordinate delay. In order to thrash out this plea, we have examined in depth the judgment of the Trial Court in which Issue No.2 was related to the question of limitation. In the case in hand, the question of limitation was a mixed question of law and fact so, in order to nonsuit on the ground of limitation, it is necessary to look at the averments of the plaint in which the plaintiff has jotted down the cause of action which is essentially insinuated the state of affairs accrued or accumulate to lodge the claim in the court of law. The expression “cause of action” means a bundle of facts which, if traversed, a suitor claiming relief is required to prove for obtaining judgment. In the instant case, the finding recorded by the Trial Court on the point of limitation is quite rational in view of the averments of the plaint in which it was lucidly expressed that the cause of action accrued one month prior to the institution of the suit when the defendant denied the claim, but this averment of the plaint was evasively denied in the written statement and the line of reasoning put forward with regard to the accrual of cause of action was not shattered during the cross examination. After considering the entire evidence adduced by the parties, the learned Trial Court held in the judgment that no witness of the mutation testified with regard to the payment of sale consideration to the plaintiff by the defendant; the procedure provided under Section 42 of the Land Revenue Act was also ignored by the Revenue Officer while attesting the impugned mutation in Jalsa-e-Aam. It was further

observed that initially the impugned mutation was entered as a gift but later on it was entered as a sale mutation with a sale consideration of Rs.57,400/-. The bottom line is that the plaintiff/respondent proved his case in the Trial Court on the strength of his evidence but the defendant failed to prove his case. Consequently, the learned Trial Court cancelled the impugned mutation and decreed the suit of the respondent No.1. Being aggrieved by this judgment, the petitioner preferred a Civil Appeal before the Additional District Judge but, vide judgment dated 24.05.2016, the appeal was also dismissed while taking into consideration the evidence led by the parties in the Trial Court. The Appellate Court on the basis of evidence also reiterated in its Appellate judgment that neither the two attesting witnesses to the mutation, namely Muhammad Asif Khan and Malik Mir Haider Zaman (Lambardar), nor the then Halqa Patwari, who made entries in the daily diary, were produced to substantiate the claim of the defendant/purchaser. Even the Revenue Officer, who attested the mutation, was not produced.

5. In the case of Hafeez Ahmad (supra), this Court considered the question whether suo moto jurisdiction under Section 115 of the CPC 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 and held that 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. It was further held that such petition could be treated as an information even if it suffers from procedural lapses or loopholes.

6. While browsing the aforesaid dictum, one cannot lose sight of the well settled elucidation of law that each case has to be decided on its own facts and circumstances. No doubt the revisional jurisdiction is pre-eminently corrective and supervisory and there shall be no harm if the Court seized of a revision petition exercises its suo motu jurisdiction to correct the errors of jurisdiction committed by a subordinate Court. We are also sanguine to the well-established proposition of law, without any ambiguity or doubt, that the

proceedings before a revisional Court are to ensure strict adherence to safe administration of justice and, if required in a fit case, the exercise of suo motu jurisdiction may not be conveniently avoided or overlooked. Whether a case is fit or not for exercising suo motu jurisdiction always rests on the discretion of the Court but in the case in hand, the jurisdiction was invoked on the application of party which was on the face of it time barred and no plausible explanation or justification was set forth in the condonation application with the fundamental ingredient or element of explaining delay of each and every day hence it was rightly dismissed by the learned High Court.

7. The learned counsel articulated that though the revision application was time barred but it could have been considered as information to the High Court for invoking suo moto jurisdiction despite delay in approaching the Court. We do not subscribe this perception and theory within the precincts of the facts and circumstances of the present *lis* mainly for the reason that if the institution of a revision application on the application of a party is left open ended without regulating the conditions to apply or without respecting the period of limitation specified for it, or even laying an information without any gauge of a regulated timeline, then it will create serious chaos and turmoil with no end and the litigation between the parties will never set at rest and the tool or weapon of laying information beyond the limitation period will be used to enjoy an unlimited luxury of litigation to settle personal grudges actuated by malice as a sword of Damocles hanging over the head of other side. This approach or frame of mind will bring forth a multiplicity of litigation and proceedings that will be tantamount to granting an unbridled license to every litigant to file a revision application in this fashion as an information at any time, irrespective of the relevant period of limitation or with laches at his whims and leisure nonetheless, the case is made out or not for exercising suo moto jurisdiction will not only seriously damage and deteriorate the very purpose of providing the safety valve or cutoff date of limitation but will also turn into an aftermath of rendering the rigors of limitation redundant and superfluous, adding together, the grave contravention of doctrine of finality, primarily focused on long-lasting and time-honored philosophy by means of legal maxim “Interest reipublicae ut sit finis litium” which recapitulates that “in the interest of the society

as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation".

8. All the more so the case of Hafeez Ahmad (supra) unequivocally makes obvious that this Court has not outrightly shelved or abandoned the condition of limitation for revision application rather it was held that the question depends on the discretion of the Court because the exercise of revisional jurisdiction in any form is discretionary and the Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. Nothing has been placed before this Court to show that the petitioner took a plea before the High Court to treat the Revision Application as information due to some alleged grave illegality or irregularity committed by the courts below. The aforesaid judgment has deciphered us that, even in the above dictum, it was not the intention or spirit of the judgment that in all circumstance or come what may the High Court or District Court should consider every time barred revision as an information but the exercise of jurisdiction based on the prescribed parameters of revisional jurisdiction which is meant to cure and rectify serious illegality or irregularity which was not available in the case in hand in the wisdom of learned High Court for exercising suo moto jurisdiction by treating time barred revision as an information.

9. The jurisdiction vested in the High Court under Section 115 C.P.C is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C. In the case of Atiq-ur-Rehman Vs. Muhammad Amin (**PLD 2006 SC 309**), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an

illegality of the nature in the judgment which may have a material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. There is a difference between the misreading, non-reading and misappreciation of evidence, therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This Court in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others (**2010 SCMR 1630**) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity affecting the merits of the case are not open to question at the revisional stage.

10. We have gone through the judgments rendered by the lower *fora* and also gone through the evidence led by the parties but did not find any illegality or irregularity in the proceedings which may justify any interference by this Court in the concurrent findings, therefore, this Civil Petition is dismissed and leave is refused.

Judge

Islamabad the
10th May, 2022
Khalid
Approved for Reporting

Judge