

FORM No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Case No. W.P. No.18653 of 2016

Bank of Punjab, etc.

Versus

Additional District Judge, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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04.01.2017

Rana Asif Saeed, Advocate for the petitioners.

This single order will dispose of Writ Petitions No.18653 of 2016 and 18654 of 2016, involving common questions of law and facts.

2. Through these constitutional petitions, petitioners have challenged the legality of orders dated 16.09.2016 passed by respondent No.2 whereby objection petitions filed by petitioners were dismissed and judgments dated 28.11.2016 whereby appeals filed by petitioners against the said orders, were also dismissed.

3. Precise summary of the case is that in two separate suits for recovery filed by respondent No.3 in both the petitions, learned trial court passed a decree amounting to Rs.14,80,000/- and Rs.1,60,000/- in their favour respectively. Execution petitions were filed before respondent No.2/executing court, on 27.02.2016. Petitioners filed objection petitions against the same, inter alia

on the grounds that these are hopelessly time barred and proper parties have not been impleaded. Respondent No.3 (in both the writ petitions), resisted the objection petitions and filed written replies. Through impugned orders dated 16.09.2016, respondent No.2 dismissed these objection petitions, filed by the petitioners. Appeals filed by the petitioners against the said orders were also met with the same fate vide impugned judgments dated 28.11.2016 passed by respondent No.1. Resultantly, petitioners have filed the present petitions only to the extent of question of limitation.

4. Learned counsel for petitioners argued that impugned judgments and orders passed by respondents No.1 & 2 respectively, in both the writ petitions are against the law and facts of the case. Further argued that execution of decree could have been brought within three years of passing the decree and there is a delay of about one and half year. Therefore, the impugned orders dated 16.09.2016 and judgments dated 28.11.2016 passed by respondents No.1 and No.2 respectively are liable to be set aside. Learned counsel has placed reliance on “Pakistan Burma Shell Company Now/Shell Pakistan Ltd through Legal Advisor/General Attorney Shell Pakistan Shell, Karachi v. Messrs Nawaz and sons through Proprietor and another” (2016 MLD 1779), “Manzoor Ellahi Qureshi through Legal Heirs v. Muhammad Bilal Abbas and 2 others” (2012 CLC

1227) and “Mahboob Khan v. Hassan Khan Durrani” (PLD 1990 SC 778).

5. Arguments heard. Record perused.

6. At the outset, learned counsel for the petitioners was confronted with the maintainability of these writ petitions, however, without dilating upon technical knockout, I would prefer to decide the controversy on merits as these writ petitions are filed within a period in which the petitioners could have availed the opportunity of revision under Section 115 CPC.

7. Primary and critically important question involved in these cases is that as to whether the period of limitation for filing of execution petition shall be reckoned from the date of decision of appeal by the lower appellate court/respondent No.1 i.e. 26.10.2015 or 12.11.2011, the date, when both the suits were decreed by the trial court.

8. Learned counsel for the petitioners has placed reliance on a judgment of this Hon’ble Court cited as “Pakistan Burma Shell Company Now/Shell Pakistan Ltd through Legal Advisor/General Attorney Shell Pakistan Shell, Karachi v. Messrs Nawaz and sons through Proprietor and another” (2016 MLD 1779), which in my opinion is of no help to the petitioners on two counts, firstly because in the said judgment appeal filed before the first appellate court was neither modified nor reversed nor affirmed as the appeal was withdrawn.

Therefore, it was observed that in such eventuality principle of merger shall not apply and the date of decree by the trial court shall be taken into account for the purposes of filing execution petition. Secondly, contrary to the stance of the petitioner, in this judgment it has been explicitly and categorically observed that where the first appellate court had decided the appeal on merits, principle of merger shall apply. This view has been affirmed in judgment cited as “Bakhtiar Ahmed v. Mst. Shamim Aktar and others” (2013 SCMR 5) as under:-

“Limitation for filing execution application to commence from date of accrual of right--- Partial decree was passed in favour of plaintiff (petitioner) by the High Court on 17-3-2003---Defendant (respondent) filed petition for leave to appeal before the Supreme Court, which was dismissed on 31-3-2005 and leave was refused---Execution petition was filed by plaintiff on 3-12-2007 but it was dismissed by the Executing Court being time barred---First Appellate Court and High Court upheld order of Executing Court and dismissed appeals filed by plaintiff---Contention of plaintiff was that after dismissal of defendant's petition for leave to appeal, he filed execution petition within the allowed time of three years, and that under Ss.47 & 48(2), C.P.C. execution petition could be filed within six years. Defendant's petition for leave to appeal was dismissed on 31-3-2005 and no stay was granted by the Supreme Court---Plaintiff

could have filed execution petition within three years w.e.f. 17-3-2003, the date of judgment of the High Court which had attained finality--- Under Art.181 of the Limitation Act, 1908, period of limitation of three years for filing of execution application would commence from the date of accrual of right, which, in the present case, was 17-3-2003 when partial decree was passed by the High Court.

In another judgment cited as **2003 SCMR 436**, it has been observed that:

“Appeal being continuation of suit decree, in suit would only be finalized on the disposal of appeal as the decree of Court of first instance would merge into decree of Appellate Court, which alone could be executed. However, till the time, appeal or revision was not filed or such proceedings were pending and no stay order was issued, the decree would remain capable of execution, but if the decree was under challenge in pending appeal or revision and was not executable, the decree ultimately passed by the Court of last instance in appeal or revision as the case may be, would be executed irrespective of the fact that decree of the lower Court was modified, affirmed or reversed. Thus, if decree was under challenge in appeal and could not be executed, the limitation for filing an execution petition would not run against the decree-holder pending disposal of appeal.”

9. Learned counsel for the petitioners while vehemently arguing his case has placed reliance on **(PLD 1990 SC 778)** titled as “Mehboob Khan v. Hassan Khan Durrai” which according to my view is inapt and not applicable to the case in hand, reason being that Section 48 of Civil Procedure Code is the subject matter of the said judgment which deals with an altogether different situation. Moreover, it has only been observed in this judgment that residuary Article 181 of Limitation Act prescribing a period of three years shall govern for filing of execution petition of a decree. As to whether limitation shall commence from the date of decision of the appellate court, keeping in view the principle of merger, was not the subject matter of said pronouncement.

10. Now coming to the legal as well as factual aspect of the case in hand, admittedly, both the decrees were passed on 12.11.2011 by the learned trial court/civil judge and appeals were dismissed on 26.10.2015 by respondent No.1/first appellate court, in between according to the counsel for the petitioner, decree remained suspended. Whereas, execution petitions were filed by the decree holders/respondent No.3 in both the petitions on 27.02.2016. Period between dismissal of appeal by the learned first appellate court/respondent No.1 and filing of execution petitions is around four months which is well within time for the purposes of filing an execution petition. I may observe here that the

executing court in the impugned order dated 16.09.2016 has, probably due to inadvertence mentioned Section 48 of the Limitation Act instead of Article 181 of the Act *ibid*.

11. Keeping in view the law laid down in the afore-cited judgments and what has been discussed above, I am not persuaded to interfere with the judgments/orders of both the courts below. Consequently, both these petitions do not succeed and **dismissed in *limine*** with no order as to cost.

**(MUDASSIR KHALID ABBASI)
JUDGE**

APPROVED FOR REPORTING

JUDGE

Maqsood