

Stereo. H C J D A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.214918/2018
(Khalid Meer etc. Versus Faqeerullah Minhaj etc.)

J U D G M E N T

Date of Hearing	06.06.2018
Petitioners by:	Syed Muhammad Kalim Ahmad Khurshid, Advocate.
Respondent No.3 by:	Mian Abdul Saeed, Advocate. Respondent No.3 in person.

Atir Mahmood, J.: This civil revision is directed against judgment and decree dated 21.12.2017 passed by learned Additional District Judge, Sheikhpura who dismissed appeal of the petitioners and upheld judgment and decree dated 09.12.2012 passed by learned Civil Judge, Sheikhpura whereby suit of respondent No.3 for possession through specific performance was decreed.

2. On 25.05.2018, objection was taken by respondent No.3 that this civil revision is barred by time. In response thereto, the petitioners have filed C.M. No.3-C/2018 under Section 151 of CPC for condonation of delay which has duly been contested by respondent No.3 by filing written reply thereto.

3. Learned counsel for the petitioners *inter alia* submits that the civil revision was filed within time on 21.03.2018 but the Office raised objection thereupon and returned the same to the petitioners and compelled the petitioners to prepare Paper Books in which a lot of time was consumed and after doing the needful, the civil revision was re-filed on 25.05.2018. He contends that since the revision petition was filed within time, the same could not be treated as barred by time even if filed beyond the prescribed time limit. He argues that even if

there is any technical flaw in the revision petition or it is barred by time, the same could not deprive the revisional court of its corrective and supervisory jurisdiction. In support of his arguments, he has relied upon the law laid down in cases Mst. Sabira Bi v. Ahmed Khan and another (2000 SCMR 847), Muhammad Boota v. Bsharat Ali (PLD 2014 Lahore 1), Mst. Banori v. Jilani (deceased) through LRs etc. (PLJ 2011 SC 895), Farman Ali v. Muhammad Ishaq and others (PLD 2013 SC 392) and Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 SC 400).

4. On the other hand, learned counsel for respondent No.3 submits that the revision petition after objection of incompleteness of the file by the Office was returned to the petitioners to re-file it within three days but it was re-filed after sixty days without any plausible reason, therefore, it was badly barred by time. He points out that the only objection raised by the Office was regarding incompleteness of the petition and no objection of preparation of paper books is reflected from the objection memo, therefore, it is nothing but an afterthought. He has relied upon the law laid down in cases Asif Ali Shah v. The Superintending Engineer, Quetta Circle, Quetta and another (PLD 1963 SC 263), Sultan Muhammad v. Muhammad Ashraf and 4 others (1991 CLC 269 Lahore), Naheed Ahmad v. Asif Riaz and 3 others (PLD 1996 Lahore 702), Muhammad Ahmad v. Muhammad Ali and another (PLD 1996 Lahore 158), Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224), Mst. Sabiran Bi v. Ahmad Khan and another (2000 SCMR 847) and Safdar Ali and 5 others v. Defence Housing Authority through Secretary and other (2011 YLR 1809 Lahore).

5. I have heard the arguments of learned counsel for the parties and perused the record. I have also gone through the case law cited by both sides.

6. The crux of arguments of learned counsel for the petitioners is that since the revision petition was filed within time but returned with objection(s) by the Office, it cannot be treated as time barred even if it was re-filed after the prescribed period and that even a time barred revision petition could not debar the High Court from exercising its revisional jurisdiction if it satisfies conditions for exercise of its *suo motu* jurisdiction.

7. The sole ground of learned counsel for the petitioners taken during the course of arguments and also noted in para 2 of C.M. No.3-C/2018 filed by the petitioners for condonation of delay in re-filing the revision petition is that the revision petition was filed within limitation but due to office objections, the same was returned and the office compelled the petitioners to prepare Paper Books which took a lot of time and as soon as the needful was done, the same was re-filed. Learned counsel for the petitioners has argued that if the petitioners after receiving the file had not returned back, the Office was required to issue notice to them under Rule 9-A of the Rules and Order *ibid*. The file was admittedly returned to the petitioners on the day it was filed, i.e. 21.03.2018. When the file was lying with the petitioners and not with the Office, the Office was not supposed to issue notice to the petitioners and it was the sole responsibility of the petitioners to resubmit the file within the prescribed time. Had the Office retained the file with it, the situation would have been different and the Office would also have been responsible for issuing notice to the petitioners. Since the file remained with the petitioners from the date when the objection was raised till the date it was refilled, the Office was not required to issue notice under Rule 9-A *ibid*. In this perspective, the contention of learned counsel for the petitioners that the petitioners ought to have been issued notice by the Office for resubmission of the petition has no force which is accordingly discarded. Admittedly, the civil revision was filed on 21.03.2018 on the 90th (last) day of its time

limitation which was returned vide Diary No.187025 on the same day through the objection memo which reads as under:

“26. Incomplete file.

.....

To be re-submitted after removing of the objection within 03 days.”

Bare reading of above makes at least two things crystal clear: (i) the only objection put by the office on the petition was that it was incomplete and (ii) the file was returned to the petitioners with direction to re-file it within three days after removing the office objection. This objection was raised by the Deputy Registrar of this Court who has such powers under Rule 9, Chapter 1 of Rules and Orders of Lahore High Court (Volume V). There is no dispute that the Deputy Registrar could raise the said objection in light of the powers conferred upon him under Rule 9 *ibid*. The petitioners were obliged to comply with the direction given to them through the objection memo and re-file the petition within three days after having removed the objection(s) raised by the office but they took long time of sixty days to do the needful, as such, the revision petition was barred by time by sixty days. Reliance is placed on the dictums laid down by the Hon’ble Supreme Court in case Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224) wherein it has been held that:

“The circumstances pointed out by the learned Judge quite clearly show that the petitioner’s officials acted with gross negligence in re-filing the revision petition. They took almost one year in doing what they were required to do in seven days and the explanation offered by them for this inordinate delay has not been found to be convincing by the learned Judge and rightly so, in our view. It has not been denied that the High Court Rules and Orders empowered the Deputy Registrar to raise the objections and fix the time for removing the same. That being so, revision petition re-filed long after the expiry of the period specified by the office was rightly dismissed as time barred.”

(Underline is mine)

8. Apropos argument of learned counsel for the petitioners that the Office compelled the petitioners to prepare paper books of the file which caused delay in re-filing the petition, therefore, the petitioners could not be penalized for the act of the office. As noted above, the only objection raised by the Office through the objection memo was of incompleteness of the petition. The objection memo nowhere states that the paper books will also be prepared by the petitioners before resubmission of the petition. Furthermore, there is neither any such routine nor practice of the Office, particularly for cases of civil revisions, to ask for preparation of paper books. There is nothing on record even to suggest that the office had asked the petitioners to prepare paper books. Even otherwise, there is no provision under the High Court Rules and Orders to compel a revision petitioner to submit a paper book of a 'Revision Petition'. In the circumstances, I am of the view that no direction for preparation of paper books was given by the Office to the petitioners and the said plea is nothing but just an afterthought of the petitioners to avoid the consequences of delay in re-filing the revision petition.

9. Learned counsel for the petitioners while relying upon the law laid down in cases Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 SC 400) and Farman Ali v. Muhammad Ishaq and others (PLD 2013 SC 392) has argued that even a time barred revision petition could not debar the High Court from exercising its revisional jurisdiction if it satisfies conditions for exercise of its *suo motu* jurisdiction, therefore, it is entertainable. In a latest judgment in case Province of Punjab through District Officer Revenue, Rawalpindi and others v. Muhammad Sarwar (2014 SCMR 1358), the Hon'ble Supreme Court of Pakistan has held that:

“14. It follows from the above discussion that there are two situations in which the Court can exercise its revisional powers; on its own motion; or on the application by an aggrieved party. The former is the general supervisory power and discretionary in nature where the Court is empowered to examine the record of

any case decided by a Court subordinate to it to rectify any error or irregularity. Such power is exercisable where the Court itself finds any error of the nature provided in section 115, CPC without there being any right in favour of a party aggrieved of an order or judgment of a subordinate Court. However, when the revisional jurisdiction is invoked by an aggrieved party, it is subject to the statutory provisions now incorporated in section 115, C.P.C. The second proviso thereto in unambiguous terms lays down the period of limitation for applying to the Court by mentioning that “provided that such application shall be made within ninety days”. Like all other statutory provisions prescribing time period in which a matter is to be brought before the Court the second proviso to section 115(1), C.P.C. to be applied with the same vigour. Thus, where an aggrieved party seeks redressal against the Judgment or order through the revisional powers of the Court under Section 115, C.P.C. he has ninety days to make the application, failing which the application is liable to be dismissed.

(Emphasis provided)

It is evident from the dictums laid down by the apex court noted above that where the Court itself takes note of any error or irregularity in the decision of the court subordinate to it to rectify it, it may exercise its discretionary and supervisory powers of *suo motu* but where a party aggrieved from order or judgment of a court invokes revisional powers of the court, the time limitation of ninety days provided in second proviso of Section 115, CPC is to be adhered to strictly. Since the petitioners aggrieved of the decisions of learned court below have approached this Court invoking its revisional jurisdiction, there is no occasion of exercising *suo motu* powers by this Court in light of the judgment of the august Supreme Court *supra*. The contention of learned counsel for the petitioners is accordingly repelled.

10. Another contention of learned counsel for the petitioners is that the revision petition suffering from some defect, i.e. non-filing of pleadings, could not be dismissed being barred by time and at the best, it could be treated as being not maintainable. In this regard, he has relied upon the law laid down by the apex court in case Mst. Sabiran

Bi. V. Ahmad Khan and another (2000 SCMR 847). In the same judgment, it has been held that:

“Learned counsel also relied on 1992 CLC 296, PLD 1996 Lahore 158, PLD 1996 SC 706 and 1997 SCMR 1224 but in our opinion these judgments are distinguishable on facts from the case in hand because in the reported judgment the memos. of petitioners/appeals were handed over by Deputy Registrar to the Advocate for the purposes of removing office objections within the time fixed for this purpose but they did not adhere to the time and refiled petitions etc. after considerable delay. Thus, the Court concluded that in such situation the petitioners are time barred; whereas in the instant case the prominent distinction is that memo. of petition was never handed over to the counsel for petitioner for removing office objections.”

(Emphasis provided)

Perusal of above reveals that in the case relied upon by learned counsel for the petitioners, the memo of petitions/appeals were not handed over to the Advocates/petitioners of those petitions/appeals. The above observation of the apex court suggests that its decision might have been different from that it rendered in the judgment *supra*, had the petitions were handed over to the petitioners. In this case, the petition was admittedly handed over to the petitioners on the day it was filed, therefore, the said case law is not attracted in this case. Therefore, the instant case is squarely distinguishable from that relied upon by learned counsel for the petitioners, as such, it does not help the petitioners in any manner.

11. The application, C.M. No.3-C/2018, has been filed by the petitioners for condonation of delay under Section 151, CPC which provision is only attracted where no other provision is provided by law. This revision petition has been filed under Section 115, CPC which itself provides time limitation of 90 days from the date of passing of judgment of the lower court, therefore, this application, having been filed under Section 151, CPC, is not maintainable.

12. In a nutshell, the revision petition was filed by the petitioners firstly on 21.03.2018, i.e. 90th (last) day of limitation of time when it was returned to the petitioners with the direction to resubmit it within three days after removing objection of incompleteness of the petition. Thereafter, it was filed on 25.05.2018, i.e. after sixty days of its return, therefore, it was barred by time. C.M. No.3-C/2018 filed by the petitioners under Section 151, CPC is not maintainable which is accordingly **dismissed**. As a consequence, revision petition in hand is also **dismissed** as being barred by time.

(ATIR MAHMOOD)
Judge

Approved for reporting.

Judge

*Akram**