

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Yahya Afridi, JJ

BASHIR AHMED through Legal Representative and others---Appellants

Versus

MUHAMMAD HUSSAIN and others---Respondents

Civil Appeal No.42-L of 2010, decided on 28th February, 2019.

(On appeal against the order dated 23.5.2005 of the Lahore High Court, Lahore passed in C.M.No.1/2002 in W.P. No.136-R/82.)

Civil Procedure Code (V of 1908)---

---S. 12(2)---Limitation Act (IX of 1908), S. 18 & First Sched. Art.181---Application under S.12(2), C.P.C, filing of---Limitation---Fraud---In terms of Art.181 of First Sched. to the Limitation Act, 1908, the period of limitation to file an application under S. 12(2), C.P.C. would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrued to the aggrieved applicant, which in case of an application under S.12(2), C.P.C. would be the date when the impugned decision based on fraud and concealment was passed---In case the aggrieved person had, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of the decision under Art.181, to the date of knowledge of the said decision under S.18 of the Limitation Act, 1908---Ground of fraud or concealment had to be specifically pleaded with clear particulars and should not be a vague assertion.

Faizum alias Toor v. Nander Khan 2006 SCMR 1931; Mian Muhammad and others v. Pir Bakbsh and others 2005 SCMR 1505; Fida Hussain v. Ghulam Sarwar 2002 SCMR 1554; Mst. Amtul Kabir and others v. Safia Khatoon and others 1991 SCMR 1022; Muhammad Iqbal and another v. Muhammad Alamgir and others 1990 SCMR 1377; Ghulam Shabbir v. Mst. Nur Begum and others PLD 1977 SC 75; Izzat Bakhsh v. Nazir Ahmad and 13 others PLD 1976 SC 508; Faizum alias Toor v. Nander Khan and others 2006 SCMR 1931; Akbar Ali Khan and others v. Mukamil Shah and others 2005 SCMR 431 and Haji Muhammad Saleem v. Khuda Bakhsh PLD 2003 SC 315 ref.

Asif (grandson of Bashir Ahmad) in person.

Nemo for Respondents.

Date of hearing: 28th February, 2019.

JUDGMENT

YAHYA AFRIDI, J.---This Court had granted leave to appeal in the petition moved by Bashir Ahmad (deceased) through his legal heirs, the present appellant, against the order of the learned Division Bench of the Lahore High Court, Lahore dated 23.05.2005 passed in Writ Petition No.136-R/82 in terms that:

"Inter alia contends that the learned Division Bench of the Lahore High Court did not appreciate that the, petitioner was not a party in Writ Petition No.136/1982; that the said petition was allowed by the judgment dated 7.10.1982 and the same has adversely affected petitioner's right qua the land subject matter of this petition without hearing him.

2. Having heard the learned counsel for the petitioner at some length leave is granted to consider, inter alia, whether the learned High Court could have dismissed his application under section 12(2) notwithstanding the fact that the land subject matter of this petition was in petitioner's possession an allottee and he was not even impleaded as a party."

2. In essence, the issue in hand is whether the application under Section 12(2) of the Code of Civil Procedure, 1908 ("the C.P.C.") filed by the present appellant on 07.08.2002, challenging the decision of the learned High Court dated 17.10.1982 passed in Writ Petition No.136-R/82, was time-barred under The Limitation Act, 1908 ("the Act") or otherwise.

3. Before we consider the merits of the present appeal, it would be appropriate to note that the essential purpose of the Act is to prescribe the period of limitation for an aggrieved party to enforce his existing right. The said period for different nature of suits, appeals and applications have separately been prescribed in the various Articles contained in the First Schedule of the Act ("the schedule"). The legislature has, in Section 3 of the Act, also provided for peculiar circumstances in which the period of limitation prescribed in the various Articles of the Schedule can be extended or altered. The said provision reads:

"3. Dismissal of suit, etc., instituted etc., after period of limitation. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence."

(emphasis added)

4. One of the instances for extension of the period of limitation envisaged in the above provision is under Section 18, wherein an aggrieved person who has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him. Faced with the above disposition, the time limited for instituting a suit or making an application by the aggrieved person is to commence from the time when the fraud first became known to him or, in the case of the concealed document, when he first had the means of producing it or compelling its production. Section 18 of the Act reads as under:

Section 18

"Effect of fraud. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application--

- (a) against the person guilty of the fraud or accessory thereto, or
- (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document; when he first had the means of producing it or compelling its production."

5. A careful review of the above referred provisions reveals that Section 3 prescribes for the period of limitation for the institution of suits and the filing of appeals or applications, while Section 18 provides for the commencement of the period of limitation for only suits and applications to the exclusion of appeals. Therefore, Section 18 of the Act becomes an umbrella provision for all the Articles of the Schedule when a right in a suit or application is pleaded, inter alia, on the grounds of fraud or concealment.

6. Prior to insertion of Section 12(2) of the C.P.C. vide Ordinance No. 10 of 1980, any person aggrieved of the validity of a decree on the plea of fraud, misrepresentation or concealment of fact could institute a fresh suit challenging the same. In such circumstances, the period of limitation for filing a suit was to be determined in view of Article 95 of the Act read with Section 18 (supra). Article 95 of the Act reads:

Article 95

		Time from which period
Description of suit	Period of limitation	begins to run

To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	[Three years]	When the fraud becomes known to the party wronged.
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7. With the insertion of Section 12(2) in the C.P.C., any person aggrieved of a judgment passed on fraud, misrepresentation or concealment of facts was barred to institute a fresh suit and was mandated to file an application agitating his grievance before the same court which passed the said decision. In the changed scenario, the limitation for filing the application would not be governed in terms of the provisions provided under Article 95 of the Act, as the same relates to suits and not an application, which was to be filed by an aggrieved party under Section 12(2) of the C.P.C.

8. There is no period of limitation prescribed in the Act for filing an application under Section 12(2) of the C.P.C. And Article 95, being a provision for filing a suit, would not be applicable for an application being filed under Section 12(2) of the C.P.C. Therefore, residuary Article 181 of the Act would come into play to govern the period of limitation.

9. Let us now review Article 181 of the Act, which reads:--

Description of application	Period of limitation	Time from which period begins to run
181. Application for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908	Three years	When the ritght to apply accrues

A careful reading of the above provision clearly reveals that the period of limitation to file an oplication under Section 12(2) of the C.P.C. would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrues to the aggrieved applicant, which in case of an application under Section 12(2) of the C.P.C. would be the date when the impugned decision based on fraud and concealment was passed. In case the aggrieved person has, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of the decision under Article 181 of the Act, to the date of knowledge of the said decision under section 18 (supra). Reference may be made to the case of Faizum alias Toor v. Nander Khan (2006 SCMR 1931), Mian Muhammad and others v. Pir Bakhsh and others (2005 SCMR 1505), Fida Hussain v. Ghulam Sarwar (2002 SCMR 1554), Mst. Amtul Kabir and others v. Safia Khatoon and others (1991 SCMR 1022) and Muhammad Iqbal and another v. Muhammad Alamgir and others (1990 SCMR 1377).

10. In the instant case, the right to apply accrued to the appellant when the writ petition of the private respondent was accepted by the High Court on 17.10.1982. The appellant, on the other hand, challenged the said decision under Section 12(2) of the C.P.C. after almost two decades, on 07.08.2002. Hence, the said petition, on the face of this essential fact, was time-barred within the contemplation of Article 181 of the Act. Since the appellant, in his petition, had pleaded fraud by the private respondents for not impleading him in their petition, and thereafter, concealing from him the knowledge of the decision of the High Court, his case would deserve consideration for the commencement of the period of limitation prescribed under Section 18 of the Act. In the present case, no specific date of knowledge has been stated in the application filed by the appellant under Section 12(2) of the C.P.C. However, in paragraph 11 of the said application, a vague reference to the date of knowledge as to the decision of the High Court has been made, i.e. when the partition proceedings were initiated by the private respondents. This vague assertion on such a crucial fact would not be of any legal avail to the appellant,

as a mere bold assertion of fraud or concealment would not legally suffice to establish the appellant's said claim. Moreover, it is by now a settled principle that when a person raises the ground of fraud or concealment to allege his claim or defend his stance, the same has to be specifically pleaded with clear particulars. Some of the leading cases decided by this court are Ghulam Shabbir v. Mst. Nur Begum and others (PLD 1977 SC 75), Izzat Bakhsh v. Nazir Ahmad and 13 others (PLD 1976 SC 508), Faizum alias Toor v. Nander Khan and others (2006 SCMR 1931), Akbar Ali Khan and others v. Mukamil Shah and others (2005 SCMR 431) and Haji Muhammad Saleem v. Khuda Bakhsh (PLD 2003 SC 315).

11. Therefore, after having viewed the matter from every angle, we find that the application of the appellant under Section 12(2) of the C.P.C., having been filed after a lapse of twenty years, and that too, without mentioning of any specific date of knowledge, was correctly rejected by the learned High Court in its impugned decision.

12. Accordingly, for the reasons stated hereinabove, the impugned decision passed by the learned High Court is in accord with the settled principles of civil administration of justice, and thus, warrants no interference by this Court. The instant appeal being bereft of merit is dismissed.

MWA/B-2/S Appeal dismissed.