

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Shahid Waheed, JJ**Mst. JAMEELA BIBI (DECEASED) through LRs---Petitioner****Versus****Mst. FATIMA BIBI (DECEASED) through LRs---Respondent**

C.P. No. 3125 of 2020, decided on 19th January, 2023.

(Against the order dated 29.09.2020 of the Lahore High Court, Lahore, passed in Civil Revision No. 160480 of 2018)

Limitation Act (IX of 1908)---

---First Sched. & Art. 181---Civil Procedure Code (V of 1908), S. 115---Application for restoration of civil revision dismissed in default---Limitation period---Three years---Period of limitation for filing an application for restoration of a civil revision (dismissed in default) is three years under Article 181 of the First Schedule to the Limitation Act, 1908--- Petition for leave to appeal was converted into appeal and allowed with the Supreme Court expressing its concern that for applications for restoration of a suit and an appeal, the period of limitation under the Limitation Act, 1908 is 30 days, whereas the period for filing an application for restoration of a civil revision is three years; that the logic for such differentiation is not clear and may be taken up in some appropriate case for consideration.

Ghulam Qadir and others v. Sh. Abdul Wadood and others PLD 2016 SC 712 ref.

Ch. Amir Hussain, Advocate Supreme Court (through video link from Lahore) for Petitioner.

M. Afzal Janjua, Advocate Supreme Court for Respondent.

Date of hearing: 19th January, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The civil revision filed by the petitioner before the High Court was dismissed for non- prosecution on 30.03.2019. The petitioner filed an application for restoration of the said revision on 15.10.2019. The said application was dismissed by the High Court through the impugned order dated 29.09.2020 passed in C.Ms. Nos.1 and 2 of 2019 on the ground that it was barred by time.

2. We have heard the learned counsel for the parties and examined the record of the case. The application for restoration of the civil revision of the petitioner was dismissed on the basis of Article 168 (mistakenly mentioned in the impugned order as Article 169) of the Third Division of the First Schedule of the Limitation Act, 1908 ("The Act"), which provides for a period of thirty days for maintaining such an application in case of an appeal. Perusal of the First Schedule of the Act reveals that Article 163 deals with application for restoration of the suits dismissed for non-prosecution and provides for a period of thirty days from the date of dismissal for filing such an application, while Article 168 provides for readmission of an appeal dismissed for want of prosecution and provides a period of limitation of thirty days from the date of dismissal for filing an application for restoration. There is, however, no specific article, which deals with the application for restoration of civil revision dismissed in default, therefore, reliance has to be placed on Article 181 of the First Schedule to the Act, which provides that for an application for which no period of limitation is provided elsewhere in the Schedule the period of limitation is three years from the date when the right to apply accrues. In the present case Article 181 is attracted and a period of three years is available to the petitioner to make an application for restoration of the civil revision. See Ghulam Qadir and others v. Sh. Abdul Wadood and others (PLD 2016 SC 712).

3. In this background of the matter, the impugned order is set aside. This petition is converted into appeal and allowed.

4. We, however, express our concern that for applications for restoration of a suit and an appeal, the period of limitation under the Act is 30 days, whereas the period for filing an application for restoration of a civil revision is three years. The logic for such differentiation is not clear and may be taken up in some appropriate case for consideration as this distinction has not been questioned in the instant case.

MWA/J-1/SC Appeal allowed.

