LIMITATION GOVERNING APPLICATION U/S 12 (2) CPC AND STARTING POINT OF LIMITATION

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

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COURT: **HON'BLE CHIEF JUSTICE ABDULLAH BALOCH**

SUBJECT: CIVIL LAW

DATE: 27 JULY 2024

BY: WASEEM AHMED RESEARCH OFFICER

QUERY: **LIMITITION GOVERNING APPLICATION UNDER SECTION 12 (2) & STARTING POINT OF LIMITATION**

In order to answer the query it is condign to state that the period of limitation for filling application under section 12 (2) CPC is governed by Article 181 of the Limitation Act 1908, which provides a maximum timeframe of three year to challenge a judgment, decree or order obtained on the basis of practicing fraud. Howbeit, in the light of the judicial precedents, particularly pronounced by the Hon' ble Supreme Court of Pakistan, It is by now a well settled principle of law that if decree is obtained by fraud and misrepresentation, the clock of limitation would start running from the date when the decree became known to the appellant as provided under Section 18 of the Limitation Act.

BASHIR AHMED through Legal Representative and others Versus MUHAMMAD HUSSAIN and others P L D 2019 Supreme Court 504 Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Yahya Afridi, JJ

"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 Schedale shall be dismissed, although limitation has not been set up as a defence."*
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> *(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:

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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:*

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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:--

A careful reading of the above provision clearly reveals that the period of limitation to file an aplication 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).

MOHAMMAD SALEEM KHAN Versus MOHAMMAD IBRAR ISMAIL and 5 others [2021 Y L R 1128] [Gilgit-Baltistan Chief Court]

Before Ali Baig, J

"7. It is a well settled principle of law that if decree is obtained by fraud and misrepresentation, the limitation would start running from the date when the decree became known to the appellant as provided under Section 18 of the Limitation Act. Moreover, it is also well settled principle of law that limitation is a mix question of law and facts and requires production of evidence; hence, the learned Additional District Judge Gilait should have admitted the application filed under section 12(2), C.P.C. and framed the issues including issue of limitation and after recording of evidence the application should have been decided on merits. Reference in this regard in made to the reported judgments of the superior courts, 1986 SCMR 1496 and 2001 MLD page 1265."

FAUJI FOUNDATION Versus Raja GHAZANFAR ALI and others----Respondents 2013 C L C 746 [Lahore] Before Sagheer Ahmed Qadri, J

8. Admittedly as no limitation is provided for filing of petition under section 12(2), C.P.C., hence, residuary Article 181 of the Limitation Act is applicable, wherein period of 3 years is provided for filing of any such application. That period of three years further can be calculated from the date of knowledge of the alleged fraud or misrepresentation committed by a party. Herein this case, admitted facts are that petitioner right from the beginning was arrayed as defendant in suit for partition, which was initially dismissed, went in appeal before the learned Additional District Judge wherein preliminary decree dated 13-5-2004 was passed and matter was sent to the learned trial Court to further proceed in accordance with law to act upon the preliminary decree. Admittedly, the final decree was passed on 8-11-2006, which was also challenged by the petitioner and ultimately vide order dated 26-5-2009 the learned trial Court put the property into auction for sale to implement the said decree. As already *mentioned, that order was also challenged by the petitioner in Civil Revision which resulted in dismissal and Writ Petition No.1650 of 2009 was filed which also ended in failure. Petitioner thereafter filed C.P.L.A. No.1657 of 2009 and after arguing at length learned counsel for the petitioner opted to withdraw the same on 17-9-2010 whereby learned counsel for the petitioner while withdrawing that petition perhaps got an observation by the Hon'ble Supreme Court of Pakistan that petitioner wanted to get redressed their grievance through any other process of law and without commenting upon that the Hon'ble Supreme Court of Pakistan dismissed the petition while observing in para 2 of the order:---*

> *"Be that as it may, this petition is disposed of as not pressed."*

Sheikh MUHAMMAD SADIQ---Petitioner Versus ELAHI BAKHSH and 2 others---Respondents 2006 S C M R 12 [Supreme Court of Pakistan] Present: Sardar Muhammad Raza Khan and Muhammad Nawaz Abbasi, JJ

6. We having gone through the record, find that a gross error of misreading of evidence was committed by the Court of first instance as well as the revisional Court and this is settled proposition of law that a jurisdictional error committed in the judicial or quasi-judicial proceedings by a Court or Tribunal, as the case may be, can be corrected by the High Court in its constitutional jurisdiction. The strict application of the general rule in the present case that concurrent finding of fact even if erroneous, cannot be interfered in the constitutional jurisdiction, would amount to protect the fraud and deprive the respondent from his valuable property by defeating the cause of justice. The contention of the learned counsel that the application under section 12(2), C.P.C. was barred by time and no plausible explanation was offered by the respondent for not filing the same within the prescribed period has no substance. This is settled law that limitation for setting aside an order obtained through fraud or misrepresentation, would start from the date of knowledge and in the present case, the respondent has categorically stated that he filed application under section 12(2), C.P.C. immediately on coming to know about the decree in 1986, therefore, in absence of any evidence to the contrary, the presumption would be that respondent had no knowledge of decree, before 1986 and consequently, we would take no exception to the verdict given by the High Court on the question of limitation. The contention of learned counsel regarding rejection of plaint has also no force as the suit for declaration was filed taking the plea of part performance of the agreement of sale but there was no proof of existence of such an agreement therefore, despite there being no bar for conversion of a suit for declaration filed on the basis of an agreement into a suit for specific performance in an appropriate case, no such permission could be given in the facts of the present case.

Conclusion

In light above precedents, it is evident that the period of limitation for filing an application under Section 12(2) of the Code of Civil Procedure (CPC) is governed by Article 181 of the Limitation Act 1908. This article prescribes a three-year period to challenge a judgment, decree, or order obtained through fraud or misrepresentation. Judicial precedents, particularly from the Supreme Court of Pakistan, have established that the limitation period commences from the date the fraud or misrepresentation becomes known to the aggrieved party, as stipulated under Section 18 of the Limitation Act. In conclusion, the jurisprudence surrounding Section 12(2) CPC and the Limitation Act 1908, particularly Articles 181 and 18, establishes a clear framework for addressing grievances arising from fraudulently obtained decrees.

Addendum

1- **2024 SCMR 1390**
2- **2019 PLD SC 504**

The End