

ORDER
10.10.2023

1. Leaned counsel for the petitioner present. Mr. Muhammad Jan learned District Attorney alongwith Ghulam Shahir, Assistant Secretary for official respondents present. Counsel for private respondents No. 17 to 24 present.

2. Arguments on maintainability of execution petition heard. Record perused.

3. Main objection upon the maintainability of this execution petition is with regard to limitation. Contention of the respondents are that execution is barred because of being time barred. Section 48 deals with the cases in which execution is barred. It reads as:

"Section 48 Execution barred in certain cases. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of [six years] from-

(a) the date of the decree sought to be executed, or

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed-

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of [six years,] where the judgment-debtor has, by fraud or force, prevented the execution of the decree at sometime within [six years] immediately before the date of the application; or

(b) to limit or otherwise affect the operation of Article 183 of the First Schedule to the Limitation Act, 1908 (IX of 1908)."

"Order XXI Rule 10. Application for execution.

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof."


Limitation Act 1908. It is pertinent to mention here that vide order dated 23.12.2021 appeal filed by the petitioner was converted into execution petition wherein learned tribunal has held that:

"We have also scanned the order of appointment order of the appellant Annexed with the appeal as Annexure-C. The said appointment order has immediate effect. Obviously, the question of seniority apt to arise through present appeal is the outcome of the appointment order dated 12.01.2009 issued in consequence of the judgment of this Tribunal, therefore, the question of seniority with particular reference to the judgment of this Tribunal is a question which relates to the execution which relates to the execution of the judgment whether the same has been executed having regard to operative para are not. As this Tribunal has got the power of Civil Court within the meaning of sub-section (2) of Section 7 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 besides inherited powers under Rule 27 of

the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 to pass orders to meet with end of justice.”

4. The petitioner seeks execution of the order dated 05.05.2008 which was earlier passed in favour of the appellant and due to said order appeal filed on 17.05.2017 by the appellant was converted into execution petition. So now through instant execution this Tribunal will have to implement/execute order dated 05.05.2008 in accordance with section 48 any application for execution after six years of passing of order/decreed cannot be entertain and no order for its execution shall be made by the court. The appeal was filed on 17.05.2017 which was converted into execution petition. This execution petition was filed after nine years of passing of decree/judgment of this Tribunal, which is beyond prescribed period of limitation of six years. Therefore, in my humble view execution in the instant case is time barred hence, dismissed. Cosign.

5. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 10th day of October, 2023.*


(Rashida Bano)
Member (J)