

IN THE HIGH COURT OF SINDH AT HYDERABAD

Ilnd Appeal48 of 2022 : Muneer Ahmed Mallah Vs.
Ali Nawaz & Others

For the appellant : Mr.Muhammad Saleem Hashmi, Advocate.

Date of hearing : 20.11.2023.

Date of announcement : 20.11.2023.

ORDER

Agha Faisal, J. The appellanthad filed F.C.Suit No.5/2020 before the Senior Civil Judge Dadu and vide order dated 19.09.2020 the plaint was rejected under Order VII Rule 11 CPC *inter alia* on the premise that the suit was time barred. The District Judge Dadu dismissed Civil Appeal No.95 of 2020 vide judgment dated 22.03.2022 and maintained the order of trial Court. The pertinent observation is reproduced herein below:

“Coming to the sale agreement dated 02.6.2010, on the basis of which, he had prayed that, he may be declared as owner of Suit property. Admittedly, agreement to sale is not a title document, for bringing Suit for declaration. Moreover, on the basis of Sale Agreement only, the appellant seeks cancellation of a Registered Sale deed, which is a public document. Yet there is an other legal aspect of the case, which makes F.C.Suit No.5/2020 of appellant as not maintainable i.e point of limitation. Case file shows that, on 16.10.2020, appellant had filed F.C.Suit No.5/2020, for cancellation of Registered Sale deed dated 11.10.2012 viz. after more than eight years from its execution. In para No.7 of the plaint, appellant himself has averred that, on 18.01.2014, he came to know regardingRegistered Sale Deed dated 11.10.2012, when Mukhtiarkar Revenue Dadu and Sub-Registrar Dadu had appeared in his Execution application. If Limitation is to be calculated from here viz. date of knowledge to appellant i.e 18.01.2014, he had filed Suit on 16.10.2020, viz after six years and 10 months for cancellation of Registered Sale deed dated 11.10.2012. Per Article 91 & 92 of Limitation Act, 1908 of first schedule of Limitation Act, 1908, a period of three years has been fixed for filing Suit for Declaration and Cancellation of Registered Sale deed. Thus, F.C.Suit No.5/2020, before trial Court was time bared by around three years and ten months”.

Learned counsel initially argued that Suit was not time barred at all, however, was asked to read out the specific paragraph in memorandum of plaint wherein cause of action was pleaded. It was demonstrated therefrom that appellant himself claimed that registered deed, sought to be cancelled, was dated 11.10.2012 and knowledge thereof was obtained on 18.01.2014, hence, *prima facie* barred by limitation apparent from plain reading of the plaint itself. Learned counsel then pivoted his argument and submitted that since valuable rights were involved, the appellant ought not out to have been non-suited merely on the technicality of limitation.

Heard and perused. The delay in preferring the suit has been adequately particularized in the initial order of rejection of plaint and subsequently in the appellate judgment. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / dates relied upon to render the findings of the suit being time barred.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such

¹Mehmood Khan Mahar vs. Qamar Hussain Puri & Others reported as 2019 MLD 249.

regard². The Superior Courts have held that proceedings barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

Be that as it may, a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed along with pending application.

Judge

A.Rasheed/stenographer

²*Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

³2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁴*Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁵*Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁶*Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁷*WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁸*Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.