

**Judgment Sheet**

**HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**Civil Revision Application No.71 of 2024**

*[Muhammad Aslam and another vs. Province of Sindh and others]*

Applicants by : M/s Irfan Ahmed Qureshi & Noreen Shaikh,  
Advocates

Respondent No.2 by : Mr.Aslam Pervez Sipio, Advocate

Respondents No.5 to 7 by : Mr.Muhammad Arshad S. Pathan, Advocate

Respondents No.1, 3 & 4 by: Mr.Allah Bachayo Soomro, Addl. A.G Sindh

Date of hearing : **19.5.2025 & 26.5.2025**

Date of Decision : **04.8.2025**

**J U D G M E N T**

**ARBAB ALI HAKRO, J.-** Through this Revision Application under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C**"), the applicants impugn the Judgment dated 10.02.2024 and Decree dated 12.02.2024, passed by the learned appellate Court<sup>1</sup>, whereby the applicants' appeal was dismissed, thus affirming the Order dated 02.11.2022, passed by the trial Court<sup>2</sup>, which had rejected the plaint under Order VII Rule 11 CPC.

2. The compendious account of this civil revision delineates that the applicants instituted a suit seeking Specific Performance, Declaration, Cancellation and Permanent Injunction against the respondents concerning shops bearing Nos. 02 and 13, situated in Sakhi Wahab Paradise, Shopping Centre, Saddar, Cantonment, Hyderabad ("**suit property** "). It is averred that the applicants, engaged in business, following in the footsteps of their late father Muhammad Usman's construction trade, previously managed in

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<sup>1</sup> In Civil Appeal No.304/2022 (Re: Muhammad Aslam and another vs. Province of Sindh and others), by VII-Additional District Judge, Hyderabad

<sup>2</sup> In F.C Suit No.Nil/2022 (Re: Muhammad Aslam and another vs. Province of Sindh and others), by VII-Senior Civil Judge, Hyderabad

partnership with Respondent No.05, Siddique Hussain, involving investments exceeding one crore rupees in various projects. Among these ventures was the Sakhi Wahab Paradise Shopping Centre in Saddar, Cantonment, Hyderabad, where applicant No. 02 booked Shops No. 02, 07, and 13 on the ground floor, fully paying the agreed sum. While Shop No. 07 was sold to a third party with the registered deed executed, Shops Nos. 02 and 13 remained unsettled, despite Respondent No. 05 receiving the total sale consideration. Efforts to obtain the registered documents and settle outstanding investments proved futile. Possession of Shop No. 13 was granted, merged with Shop No. 02 by the applicants, yet Respondent No. 7 later unlawfully claimed ownership based on a fraudulent sale deed executed by Respondent No. 05 without informing the applicants. Respondent No.7 subsequently issued a legal notice demanding possession and mesne profits. Applicants responded, asserting their lawful purchase and complete payment. Legal notices exchanged between the parties went unresolved, while Respondent No. 07 filed Rent Application No. 10 of 2022 for eviction, excluding applicants from proceedings. Upon learning of the rent case, applicants sought legal intervention under Order I Rule 10 CPC, reaffirming 22 years of possession and their vested rights. The delay by Respondents No. 05 and 07 in taking action suggests an attempt to obstruct applicants' legal claims. Given the unjust deprivation of their rightful ownership, the applicants filed the present suit.

3. Upon the institution of the plaint, the trial Court, after providing an opportunity of hearing to the learned counsel for the applicants and conducting a meticulous examination of the averments contained therein, along with the documents annexed thereto, rendered its decision rejecting the plaint vide Order dated 02.11.2022. Dissatisfied with the determination, the applicants filed an appeal before the appellate Court, which resulted in dismissal through a Judgment dated 10.02.2024 and decree dated 12.02.2024. Aggrieved by the concurrent findings of both the learned lower courts, the applicants have invoked the revisional jurisdiction of this Court through the instant Revision Application.

4. At the very outset, the learned counsel for the applicants contended that the trial court committed a legal error in rejecting the plaint, which was

subsequently upheld by the appellate Court illegally. He further argued that the agreement to sell was executed on 14.03.1996, whereas the Sale Deed was executed on 21.07.2012 by Respondent No. 5 in favour of his wife, Respondent No.7. The legal notice issued by Respondent No. 7 was received by the applicants on 30.09.2019, and the suit was instituted on 22.10.2022. It was argued that the cause of action accrued to the applicants upon receipt of the notice dated 30.09.2019 regarding the rent application. Furthermore, since the agreement to sell did not specify a fixed date for execution, the suit filed by the applicants was within the prescribed time. Learned counsel also contended that the question of limitation is a mixed question of law and fact, which ought to be determined after framing issues and recording evidence. Additionally, he argued that, considering the multiple prayers involved, it is a settled principle of law that a plaint cannot be rejected piecemeal. In conclusion, the learned counsel prayed for accepting the present revision application by setting aside the impugned Judgment, decree, and Order of both the courts below. In support of his arguments, he relied upon case law reported as **2024 PLD S.C 1108, PLD 2021 S.C 434, and 2007 SCMR 741.**

5. Conversely, learned counsel representing Respondents No. 5 to 7 argued that the trial court had rightly rejected the plaint, a decision subsequently upheld by the appellate Court without any apparent irregularity or legal infirmity in the findings of either forum. He emphasised that the suit had been instituted after a prolonged delay of approximately 23 years, rendering it hopelessly barred by limitation. Furthermore, he contended that no agreement exists between the applicants and Respondents Nos. 5 and 7, against whom the applicants are seeking specific performance. He further pointed out that the agreement dated 19.11.1996 was executed between the applicants and one Muhammad Arif, who was not made a party to the suit as a defendant. Hence, he asserted that the trial court had rightly rejected the plaint.

6. Learned Additional Advocate General (A.A.G.) and the learned counsel representing Respondent No.2 (Cantonment Board) similarly endorsed the legality and validity of the impugned Judgment, decree, and Order passed by the courts below, affirming that the findings therein were rendered in accordance with the law and did not suffer from any legal infirmity.

7. The arguments advanced by the parties have been meticulously examined, and the available record, including the case law relied upon, has been thoroughly scrutinised. In order to ascertain whether the findings of the courts below have ensured comprehensive and equitable justice, it is imperative to critically evaluate the concurrent conclusions arrived at by the lower courts.
8. Upon a scrupulous and exhaustive perusal of the case record, it becomes incontrovertibly manifest that the applicants instituted a suit on 22.10.2022, seeking reliefs in the form of Specific Performance, Declaration, Cancellation, and Permanent Injunction. The gravamen of their claim is predicated upon two Agreements to Sell, dated 14.3.1996 and 19.11.1999. The first Agreement to Sell, executed on 14.3.1996, pertains to Shops Nos. 2 and 7, purportedly acquired by Applicant No.2 from Zulfiqar Hassan Ali Affandi through his Attorney, namely Siddique Hussain (Respondent No.5 herein). However, a considerable legal concern is that Zulfiqar Hassan Ali Affandi has not been arrayed as a party in the present suit. Pursuant to the stipulations enshrined within the said Agreement to Sell, Applicant No.2 purchased the aforementioned commercial shops for an aggregate consideration of Rs. 4,000,000/-, of which he allegedly remitted Rs. 2,000,000/-. Clause 2 of the agreement postulates that an amount of Rs. 1,500,000/- shall be discharged in monthly instalments of Rs. 100,000/- over a period of fifteen (15) months from the date of execution. Clause 3 further stipulates that the residual consideration of Rs. 500,000/- shall be tendered to the vendor upon the transfer of possession and subsequent execution and registration of the Lease Deed, to be effectuated within sixteen **(16) months** from the date of the agreement.
9. The statutory framework governing the limitation period for suits seeking specific performance is encapsulated within Article 113 of the Limitation Act, 1908, which mandates that such a claim must be instituted within three (3) years. For elucidation, the text of Article 113 is reproduced infra:

Description of suit	Period of limitation	Time from which period begins to run
113. For specific performance of a contract.	[Three years]	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

10. The commencement of the limitation period under the foregoing statutory provision is contingent upon two distinct scenarios: (1) If a precise date for performance is explicitly delineated within the contractual framework, the right to sue accrues within three (3) years from such fixed date and (2) in the absence of an explicitly stipulated date, the limitation period is triggered upon refusal of performance, and must be invoked within three (3) years from the date the plaintiff becomes aware of said repudiation. The first scenario applies where time is of the essence, mandating adherence to a specific timeline. In such circumstances, the limitation period commences from the date stipulated in the agreement, rather than the date of refusal. Judicial precedent has expounded upon this principle. The Supreme Court of Pakistan, in the case of **Muhammad Ramzan**<sup>3</sup>, has propounded that where a contract specifies a month, albeit devoid of a precise date, such designation nonetheless constitutes a fixed date, triggering the commencement of the limitation period from the end of that month. Similarly, in the case of **Zain Khan and others**<sup>4</sup> This Court adjudicated that where contractual performance is stipulated within a certain period, the culmination of that period is deemed the date fixed for the purposes of Article 113 of the First Schedule to the Limitation Act.

11. Conversely, in instances where no specific date is delineated, the limitation period commences upon refusal of performance. However, jurisprudential dicta unequivocally underscore that a plaintiff cannot remain in abeyance indefinitely; equity demands that a reasonable litigant discern the refusal within a reasonable timeframe.

12. In the instant matter, the Agreement to Sell, dated 14.3.1996, categorically stipulates that the Lease Deed was to be executed within sixteen (16) months from the date of execution, thereby culminating on 14.7.1997. Ergo, this date is deemed the fixed date for the purposes of Article 113. Consequently, the limitation period commenced from that date, and the suit should have been instituted within three (3) years, expiring on 14.7.2000. Nevertheless, the applicant filed the present suit on 22.10.2022, a manifestly

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<sup>3</sup> Muhammad Ramzan vs. Muhammad Qasim (2011 SCMR 249)

<sup>4</sup> Zain Khan and others vs. Taj Roshan and others (2018 CLC Note 116)

belated invocation of legal proceedings. Given the substantial lapse of 22 years and 3 months, the action is patently time-barred, warranting dismissal on account of statutory limitation.

13. Upon methodical examination of the second Agreement to Sell dated 19.11.1999, it emerges that the said agreement was executed between one Muhammad Arif (the vendor) and Applicant No.2 (the vendee), pertaining specifically to Shop No.13. The perusal of the agreement discloses that the said vendor, Muhammad Arif, purportedly sold the shop to Applicant No.2 through the aforementioned agreement. It is, however, a significant legal shortcoming that Muhammad Arif, the primary contracting party, has not been impleaded as a defendant in the present suit. The non-joinder of this vital party strikes at the very root of the claim, rendering the suit procedurally defective and legally untenable. Further dissection of the agreement reveals that the total agreed sale consideration for Shop No.13 was Rs. 800,000/-, delineated into specific tranches to be discharged over time. As per Clause 1, an upfront payment of Rs.200,000/- was made by Applicant No.2 as booking amount, presumably at the time of execution of the agreement. Clause 3 of the agreement elucidates that the remaining balance of Rs.560,000/- was to be paid in sixteen (16) equal monthly instalments of Rs.35,000/- each, thereby anticipating complete payment within approximately one year and four months from the date of the agreement. The language employed in Clause 5 imposes a categorical and unequivocal duty on the vendee/applicant No.2 to punctually remit each monthly instalment without failure. The obligation to adhere strictly to the payment schedule is framed in mandatory terms, leaving no room for latitude or discretionary indulgence. Clause 7 of the agreement crystallises the condition precedent for the vendor's performance. It stipulates that upon receipt of the entire sale consideration in full and final settlement, the vendor shall be under a binding obligation to execute and deliver a legally enforceable Sale Deed, Lease Deed, Sub-Lease Deed, or Irrevocable General Power of Attorney, thereby perfecting title in favour of the purchaser in respect of Shop No.13.

14. Notwithstanding the above, the plaintiffs in the present suit have confined their prayer for relief to Specific Performance in respect of Shops No.2 and 13 only, as is evident from the averments in the plaint. More crucially, however, in

Paragraph No.7 of the plaint, the applicants have themselves made a categorical admission which has a dispositive bearing on the maintainability of the present suit. The relevant extract reads:

*“For Shop No.13, the consideration amount was fixed as Rs.800,000/-, out of which Applicant No.2 paid an amount of Rs.200,000/- as advance booking. Thereafter, the remaining amount was required to be paid after settlement of accounts and no account was settled in between the parties. The remaining amount of Rs.565,000/- remained outstanding against the applicants.”*

15. This unequivocal admission operates as a judicial estoppel, precluding the applicant from contending otherwise. It reflects a glaring and inexcusable failure on the part of Applicant No.2 to perform his contractual obligations, which formed the basis for seeking equitable relief like specific performance. It is a trite principle of equity and contract law that he who seeks equity must do equity. That specific performance is a discretionary remedy, which is not available to a party who is himself in breach of the contract. Moreover, from a statutory standpoint, the claim is afflicted by fatal legal infirmity on account of limitation. In the present scenario, even if the final date for performance is assumed to have coincided with the completion of the 16-month instalment period following the agreement dated 19.11.1999, the contractual performance would have become due by 19.3.2001. Adding three years from that date, the statutory deadline for instituting the suit would have lapsed on or before 19.3.2004. However, the applicants filed the present suit on 22.10.2022, a delay of over 18 years and 7 months from the expiry of the limitation period. Such an inordinate and unexplained delay renders the suit hopelessly time-barred and impermissible under the provisions of the Limitation Act.

16. In light of these irrefutable deficiencies, the suit is not only procedurally untenable and legally barred but also devoid of the equitable considerations necessary for the invocation of discretionary relief.

17. Where, upon a plain reading of the contents of the plaint in conjunction with the annexed and undisputed documentary evidence, specifically, the Agreement to Sell, it becomes apparent on the face of the record that the claim is barred by limitation as contemplated under Article 113 of the First Schedule to the Limitation Act, 1908, the trial court is under no statutory or equitable

compulsion to frame factual issues or permit the parties to lead evidence. In such instances, where the bar of limitation is patent and manifest from the pleadings and accompanying documents, the Court is empowered under Order VII Rule 11(d) CPC to reject the plaint at the very inception, as the action is not maintainable in law. Judicial prudence does not require courts to entertain suits that are inherently ex-facie barred by law.

18. In the present matter, the courts below, upon proper application of judicial mind, correctly invoked their jurisdiction to reject the plaint summarily. In the circumstances, the concurrent findings of the courts below are reasonable and in accordance with law, and no illegality or jurisdictional error could be pointed out therein to warrant interference.

19. In light of the aforementioned discourse, the impugned Judgment, decree, and Order of both lower courts have been judiciously and rightly passed. Therefore, this revision lacks merit and stands **dismissed** accordingly.

**JUDGE**

AHSAN K. ABRO