

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Dr. Syed Fiaz Ul Hassan Shah

H.C.A. No.308 of 2019

Highway Housing Project Appellant

Versus

Mrs. Shabeena Farhat Respondent

Appellant : Through Mr. Abdul Qadir Khan, Advocate
a/w Syed Nouman Zahid Ali, Advocate.

Respondent : Through Mr. Badar Alam, Advocate
a/w Mr. Kashif Badar, Advocate.

Date of Hearing : 23.10.2025

Date of Short order : 23.10.2025

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J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J :- Instant High Court Appeal has been filed against the Judgment dated 02.09.2019 and Decree dated 06.09.2019 passed by the learned Single Judge, on the original side of this Court, in Suit No.119 of 2006, whereby, the suit filed by the Respondent seeking specific performance of the contract, permanent and mandatory injunctions and damages was partly decreed to the extent of enforcement of contract by way of execution of Lease Deed in favor of the Respondent.

2. Brief facts appears from the record are that the Appellant launched a real estate development project and the Respondent/Plaintiff has booked an open commercial Plot No.C-A/15, measuring 120 Square Yards at the total costs of Rs.14,400/- (Rupees Fourteen Thousand Four Hundred only) in the said Project under the name of style of 'Highway Housing Project. Initially, the Respondent paid 50% of the sale price. Later the balance consideration has also been paid by the Respondent. Per averments of plaint, after passage of considerable time when the Appellant/Defendant did not fulfill their obligations, a Legal Notice was addressed to defendants/appellant (produced in evidence as Exhibit P/13) dated 26.06.2004. It is the case of plaintiff/respondent, that the defendants/appellants have launched another Housing Scheme, namely, 'Golden Palm City' at Gwadar by using the funds of genuine allottees of subject Housing Project. It is further pleaded that plaintiff/respondent has suffered colossal losses because in the intervening period, the costs of construction is increased manifold and in this regard the plaintiff/respondent has quantified her damages to the tune of Rs.1,37,16000/= (Rupees One Crore Thirty Seven Lac Sixteen Thousand only). The plaintiff/respondent has also demanded that to compensate the latter, defendants/appellant should allot a plot of same value as of subject property in its above named new Housing Scheme.

3. On the other hand, the Legal Team of defendants/appellant has controverted the stance and has vehemently argued that the present proceeding is hopelessly time barred, as the same is filed after 22 years from the date of transaction. It is further argued so also pleaded in the Written Statement that the plaintiff/respondent is not entitled for any damages or compensation because the defendants/appellant have committed no wrong against the person of plaintiff/respondent nor acted in an illegal manner, which could rise the claim of damages.

4. From the pleadings of the parties, following issues were framed by the Court on 18.11.2013:

- i. Whether the defendant No.1 admittedly having already received entire consideration amount prior to filing of suit and lease money and stamp duty during proceedings in the suit, is bound to execute Indenture of Sub-Lease before the concerned Sub-Registrar, in favour of plaintiff, in respect of commercial plot No.CA/15 measuring 120 Sq. Yds., situated in its Housing Scheme at 52 Deh Khanto, Tapo Landhi, Karachi?
- ii. Whether the defendant avoided and failed to perform its obligations within a reasonable time to develop its Housing Scheme, handover possession of subject plot to the plaintiff and to execute Indenture of Lease in her favour, if so its effect?
- iii. Whether the plaintiff is entitled for specific performance of the contract if any, upon having committed breach by not paying the outstanding dues on time inspite of Circular / Notice dated 10.12.1979 and reported reminders dated 11.11.1981 and 24.02.1982 by the defendant?
- iv. Whether due to any act and omission by the defendant, plaintiff has suffered losses and is entitled to claim compensation/damages as prayed in the plaint, if so to what extent?
- v. Whether the claim of the plaintiff is sustainable in law in absence of any express agreement/brochure?
- vi. What should the decree be?

5. Both the parties have led the evidence before the learned Single Judge. The learned Single Judge after scrutiny of record on the basis of evidence produced by the parties has recorded its findings on the aforesaid issues in the following terms:

“19. Since the relief of Specific Performance has been granted, therefore, Issue No.4 with regard to claim of damages does not require any finding. Accordingly, the present suit is decreed in the above terms, that the Plaintiff is entitled for Specific Performance of Contract only and the Defendant should forthwith execute the sub-lease in respect of the subject property, costs/charges whereof is already deposited with the Nazir of this Court. However, if

some additional charges are required to be paid. inter alia. towards stamp duty, execution and registering of sublease. then the same shall be borne by the Plaintiff.

20. Suit is partly decreed.”

6. Learned counsel appearing on behalf of the appellant while reiterating the aforesaid facts has vehemently argued that the impugned judgment and decree have been passed by the learned Single Judge without applying its judicious mind; that the learned Single Judge has erred to appreciate that the suit of plaintiff/respondent was patently time barred, as such, was liable to be dismissed as per Article 113 of the Limitation Act; that learned Single Judge while passing the impugned judgment and decree failed to appreciate that once period of limitation start running it does not stop as sections of Limitation Act are substantive in nature, which controls the applicability of the Articles of the said Act, which are merely procedural; that the learned Single Judge has erred to appreciate that it is the duty and obligation of a party to pursue his legal remedy with diligence, and if such remedy is not availed within prescribed statutory period, then vested rights accrues to the other side; that the impugned judgment suffers from misreading and non-reading of the relevant evidence and as such, liable to be set aside.
7. Conversely, learned counsel appearing on behalf of the respondent has supported the impugned judgment and decree by vehemently opposing the contentions of the learned counsel for appellant.
8. We have heard learned counsel for the parties, perused the record and the evidence adduced by the parties.
9. The learned counsel for the Appellant has primarily focused on the issue of limitation, arguing that the suit is time-barred under Article 113 of the

Limitation Act. According to the Appellant, the contract between the parties was executed in 1979, while the suit was instituted on 10.09.2004—after a delay of nearly 26 years. It is contended that the learned Single Judge failed to appreciate this delay and its legal implications. However, upon careful examination of the record and the arguments presented, we note that the terms and conditions of the contract are governed by the Application Form dated 09.11.1971. We find no merit in the Appellant’s argument that the Respondent breached the contract by failing to pay the additional 25% of the sale consideration within three months from the date of execution of contract on 09.11.1978. The limitation period, according to the Appellant, should have commenced from the date of this alleged breach. This argument is untenable for two key reasons. First, the learned counsel for the Appellant has conceded that it is an admitted fact that the Appellant received 50% of the total sale consideration as earnest money. Although the Respondent did not pay the next 25% within the stipulated three-month period, the Appellant voluntarily accepted both the second and final 25% installments, thereby receiving the full sale consideration within the same year. Second, under the terms of the contract, no further obligation remained on the part of the Respondent after full payment was made. The remaining obligations under the contract were to be performed by the Appellant. Therefore, the limitation period cannot be reckoned from the alleged breach in 1978, as the Appellant’s acceptance of the delayed payments effectively waived the strict timeline and under the Contract breached committed at the part of the Appellant.

10.Reverting to the question of limitation, it is observed that the Appellant initially filed an application in the Suit under Order VII Rule 11 of the Code of Civil Procedure (CPC), seeking rejection of the plaint on the ground that it was barred by time. The learned Single Judge accepted this contention and rejected

the plaint accordingly. However, the Respondent challenged this order by filing High Court Appeal No. 241 of 2004. In the said appeal, the impugned order of the learned Single Judge—passed in view of the office objection concerning limitation—was set aside, and the matter was remanded for decision of suit on merits. We are mindful of the fact that the limitation can be a question of law or question of fact or mixed question of law and fact.

11. The issue of limitation, now raised by the Appellant, had already been adjudicated at the initial stage of the suit through an application under Order VII Rule 11 CPC. The learned Single Judge initially rejected the plaint on limitation grounds, but this order was challenged by the Respondent in High Court Appeal No. 241/2004. The learned Division Bench, while disposing of the appeal, not only remanded the matter for decision on merits but also made specific findings regarding the date of execution of the contract and the absence of any cancellation of allotment or refusal by the Appellant. However, the concluding para of said High Court Appeal pertinent which is reproduced as under:

“Limitation to seek specific performance of contract is governed under two eventualities are, contemplated by Article 113 of the Limitation contract, one where time is essence of the contract and is fixed secondly Art, that sets the limitation rolling in cases of specific performance of where no time is fixed for the performance of the contract. There is no dispute as regard first part of Article 113 of Limitation Act is concerned Imitation of three years would commence from the date fixed in the agreement. Instant case is covered by second part, where no date is specified, then limitation of three years would start rolling from the date/C when the plaintiff had notice of refusal by the vendor. In cases of such nature, limitation is to be liberally construed without causing any injury in the intention of the Legislature; it must be in aid to advance cause of Justice and to curb mischief. In present case there is nothing on record to show that appellant/plaintiff had any notice of refusal by the respondents d there seems to be no reasons for the refusal as, entire sale consideration, was apparently received.”

Underline supplied

12. Although the Division Bench observed that “even otherwise, all such matters are to be thrashed out at the time of evidence and not at the stage of office objection,” the question of limitation was squarely addressed and rejected through a judicial order. That order has attained finality and is binding upon the parties. Therefore, the Appellant is estopped from re-agitating the same issue at this stage. Any further consideration of limitation must be confined to factual matters demonstrable through evidence, and not by way of re-litigation of a settled interlocutory issue.

13. We have observed that the objection raised by the learned counsel for the Appellant under Article 113 of the Limitation Act pertains to two distinct scenarios: first, where time is of the essence in the contract; and second, where limitation is triggered by a refusal to perform contractual obligations. In the present case, the first scenario does not apply, as time was not the essence of the contract. However, the second scenario may be relevant, provided there is a clear act of refusal.

14. The Appellant, being a builder engaged in a large-scale development project involving hundreds of plots for the general public, bore a duty to communicate any decision of cancellation to the allottees in a timely and formal manner. In the absence of any cancellation letter or express refusal to perform the contractual obligations—particularly with respect to the suit plot—the cause of action remains contingent upon the continuing assurances and representations made by the Appellant. These included the promise to execute the lease deed in favor of the Respondent, which sustains the Respondent’s claim and defers the accrual of limitation. The Respondent has enumerated bonafide reasons in the paragraph of his causes of action in the plaint, which is reproduced for convenience:

“That the cause of action accrued in the facts and circumstances stated above, time in the year 1978 when the defendants

announced a Housing Scheme namely Highway Housing Project and pursuant thereto the plaintiff got booked the said commercial plot at total cost of Rs.14,400/-, including development charges, payable in installments and made first payment on 09-04-1978, when the defendant vide letter dated 10-12-1979 intimated the plaintiff regarding execution of lease agreement in favour of those allottees who have paid of the installments, when the plaintiff vide receipt dated 05-01-1980 made payment of second installment of Rs.3,500/-, when the defendants vide letter dated 11-11-1981 and 24-02-1982 demanded payment of last installment of Rs.3,700/-, which was paid by the plaintiff vide receipt dated 01-03-1982 and the same was acknowledged by the defendants vide their letter dated 03-03-1982, thereafter when the plaintiff was kept waiting by the defendants for execution and registration of lease agreement and vide letter dated 03-03-2004 and 04-03-2004 contacted the defendants for getting information regarding the present position of the Housing Project, which was avoided by them and thereafter when the plaintiff came to know that the defendants without completing their 1st housing project and fulfilling their obligations to its allottees have launched another housing scheme, under the name of Golden Palm City, when the plaintiff vide her Legal Notice dated 26-06-2004 called upon the defendants to intimate the present position of their said Housing Project and demanded execution of lease agreement in her favour, which was neither complied with nor responded by the defendants and the same causes of action continue to accrue till filling of this suit.”

15.The learned Single Judge has comprehensively addressed the issue of limitation, relying on settled principles laid down by the Apex Court. The suit was instituted in 2004, following the Respondent’s discovery of the Appellant’s fraudulent conduct—namely, launching a new project to solicit funds from the public instead of delivering possession and providing basic amenities as promised. The Appellant, on unfounded grounds, purported to forfeit the amount paid by the Respondent, alleging default. This conduct reveals a two-fold contradiction: first, the Appellant had received the full sale consideration, leaving no basis for forfeiture; and second, there was no issuance of any letter of refusal to perform the contract or cancellation of the allotment of the suit plot. It stands established that upon realizing the Appellant’s failure to execute the Lease Deed and his diversion of the project, the Respondent filed the suit based on a continuing cause of action, as stated in paragraph 8 of the plaint and

affirmed during her oral testimony. These assertions remained unchallenged during cross-examination. The Appellant failed to rebut the Respondent's pleadings and evidence, and did not discharge the burden of proof regarding the alleged default or limitation. Notably, no cancellation or refusal letter was produced for the period between 1978 and 2004. On the contrary, the Appellant candidly admitted the factual position both in his evidence and through his counsel. In view of the absence of any formal repudiation of the contract, it is evident that the Appellant continued to delay performance of his obligations. The Respondent, upon learning of the new project—"Golden Palm City"—on the same land, initiated the suit within a reasonable time. Therefore, the Appellant cannot evade his contractual duties on the pretext of delay or lapse of time.

16. These were reasons for our short Order dated 23.10.2025.

JUDGE

JUDGE

Karachi
Dated: 28th October, 2025.