

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1573 / 2006

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff: Usman Punjwani through Mr. Khalid Latif Advocate.

Defendant: Abdul Hannan through Mr. Mr. Yousuf Moulvi Advocate.
Mr. Suneel Talreja AAG.

For orders as to maintainability of Suit.

Date of hearing: 26.02.2018.
Date of order: 26.02.2018.

It appears that at the time of filing of this Suit various objections were raised by the office which included payment of separate Court fee, Limitation in terms of Article 113 of the Limitation Act and so also impleadment of Government of Sindh as a necessary party. On 29.11.2006 after overruling the objections for the time being, office was directed to assign number to this Suit. Subsequently, on 6.4.2010 following order was passed:-

“The Additional Registrar (O.S) on 28.11.2006 raised office objections on the maintainability of the present suit, according to the objections at Sr. No.2 and 3 the suit is barred under Article 113 of the Limitation Act and the subject lands of the present suit belong to the Government of Sindh and the Province of Sindh through the Secretary Land Utilization Department have not been joined in the present proceedings by the plaintiff. The learned counsel for the plaintiff states that the plaintiff had purchased the subject land in April, 1996 from the defendant and the subject land was allotted/granted to the defendant on 18.7.1993 when there was ban on allotment of lands by the Government. Learned counsel for the plaintiff is directed to satisfy the Court on the maintainability of the present suit in view of the office objections referred to above. Adjourned to 4.5.2010.”

Thereafter, this matter has been fixed on various occasions but the Counsel for the Plaintiff has not been vigilant enough to satisfy as to

the objection raised on 6.4.2010 and therefore, on 21.12.2017 once again Counsel was directed to come prepared. Today, the Counsel has assisted the Court insofar as the objection of limitation is concerned.

Learned Counsel submits that the agreement in question was entered into on 9.4.1996 and a total amount of Rs. 14,00,000/- was paid out of the total sale consideration of Rs. 48,00,000/- whereas, time was not the essence of the Contract and when the Defendant failed to respond to the legal notice dated 6.3.2006; instant Suit has been filed which is within time. According to the learned Counsel, during this intervening period there was a ban on the transfer of the plots in question and therefore, once such ban was lifted, the Plaintiff approached the Defendant for execution of Sale Deed and upon his failure, instant Suit has been filed. Per learned Counsel vide order dated 29.10.2014 balance sale consideration of Rs. 34,00,000/- has also been deposited therefore, the Suit is within time and the objection regarding limitation be overruled. In support he has relied upon ***Syed Hakeem Shah & others V. Muhammad Idrees and others (2017 SCMR 316)***.

On the other hand, learned Counsel for the Defendant submits that the agreement in question is denied, however, even otherwise, as per Plaintiff's own document at Page 43, it was well within their knowledge on 21.10.1997 that there was some dispute in respect of the plots in question with the Government, whereas, for the first time they issued a notice in the year 2006 and therefore, Suit is hopelessly time barred. According to the learned Counsel, limitation cannot be extended or counted from the date of notice, whereas, the dispute with the Government is still not finally resolved, therefore, no specific performance can be ordered. In support he has relied upon ***Messrs***

Imperial Builders and another V. Lines (Pvt.) and 3 others (PLD 2006 Karachi 593).

I have heard both the learned Counsel and perused the record. According to the Plaintiff's own case the agreement in question was entered into on 9.4.1996 whereas, the first notice which has been annexed with the plaint is dated 1.6.2006. Learned Counsel for the Plaintiff was time and again confronted as to what happened in between this period of more than 10 years, the learned Counsel could not support his case with any document. However, submits that since possession was handed over whereas, the Government ban was lifted in 2006 therefore, after lifting of the ban the Defendant was approached. As to possession such fact was vehemently denied by the learned Counsel for the Defendant and upon query of the Court the learned Counsel for the Plaintiff frankly conceded that there is no averment to that effect in the plaint itself. Insofar as the question of limitation is concerned, the law is very clear and settled in terms of Article 113 of the Limitation Act that a Suit for Specific Performance can be filed within three years from the date fixed for performance of the Agreement or if no such date is fixed, then from the date when such performance is refused by a party. Admittedly in the agreement the date for performance / payment of balance sale consideration is not fixed, and if the limitation is to be counted from the date of refusal, it is noticed that in the Legal Notice, which was issued on 1.6.2006 reliance has been placed on lifting of ban. There is nothing on record in writing, which could suggest that before the expiry of the limitation period of three years any acknowledgement was made by the Defendant for extension of the time. Legal Notice itself was issued when such limitation period stood expired and any response thereto on behalf of the Defendants

even including any alleged admission cannot enlarge the period of limitation. There is no enlargement of time within the limitation period. The law is clear and settled in this account that a Suit for Specific Performance is to be filed within three years as discussed hereinabove. The Hon'ble Supreme Court in the case of **Haji Abdul Karim v Florida Builders (Pvt) Limited (PLD 2012 SC 247)** has been pleased to uphold rejection of plaint in an identical situation wherein a Suit for specific performance was apparently time barred.

Therefore, in terms of Article 113 of the Limitation Act the Plaintiff's case is hopelessly time barred as though no date was settled in the agreement, but the limitation would be counted from the date when the Specific Performance was refused. Plaintiff has not stated specifically as to when such performance was refused, but as per legal Notice it was somewhere in 2006. However, as contended by the learned Counsel, the plaintiff has on his own annexed Public Notice (pg: 43-P/7) which is dated 21.10.1997, and clearly reflects that at that point of time the performance was refused, or could not have been honored as the property and its title vested in Government due to cancellation. The plaintiff ought to have approached the Court from that date and not from the date when according to the plaintiff regularization was permitted, which according to the stance of State in this matter through their intervener application is that such land belongs to them and stand cancelled from the name of defendant who has defaulted in payment of their dues.

To this no justifiable argument has been made that as to why the Plaintiff approached the Defendant so belatedly and did not come to the Court within the three years period of Limitation, notwithstanding the

fact that there was any alleged ban of the Government. This could not be taken as an excuse for enlarging the limitation.

Insofar as reliance on the case of *Syed Hakeem Shah (supra)* is concerned, in that case the entire consideration was already paid and possession was admittedly handed over, and the case of the party was that he was protected under S.53-A of the Transfer of Property Act, whereas, in this case both these things are lacking as neither the entire payment was made to the Plaintiff nor the possession was handed over and therefore, the ratio of the case so relied upon is not applicable. Even this is not a case of declaration or injunction or seeking any protection as above. This is only for specific performance.

It further appears that the land in question is in dispute and the Government claims that this land belongs to it therefore; on this count also a Suit for Specific Performance cannot be decreed.

In view of hereinabove facts and circumstances of this case, I am of the view that office objection regarding limitation must sustain as the Suit is apparently hopelessly time barred and therefore, it is hereby dismissed as being time barred.

J U D G E

ARSHAD/