

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 175 of 2020

[Muhammad Iqbal Khamisani v. Hotel Metropole (Pvt.) Ltd.]

DATE

ORDER WITH SIGNATURE OF JUDGE

06-04-2022

Mr. Muhammad Kamran Baloch, Advocate for the Plaintiff.
Mr. Ahmed Khan, Advocate for Defendants.

Adnan Iqbal Chaudhry J. - This order decides CMA No. 2572 of 2020, which is an application under Order VII Rule 11 CPC for rejection of plaint.

2. It is averred in the plaint that in the year 1995-96 the Defendant No.1 had executed agreements to lease certain shops/rooms in Hotel Metropole to the Plaintiff for a period of forty three [43] months, extendable for a further period of 11 months by mutual consent (para 5); that pursuant to such leases, the Plaintiff was in possession of said shops/rooms and was paying rent to the Defendant No.1 (paras 10 to 12); but that, subsequently, the Defendant No.1 dispossessed the Plaintiff from said shops/rooms and demolished the same (paras 13 and 18). The main prayer in the suit is: *"to direct the defendant No.1 to perform / abide by the terms and conditions of Agreement to Lease in respect of shops/rooms bearing Nos. 242, 243, 244, 245, 20,1-A and Tea Hall situated at Metropole Ltd. Club Road, Karachi, Pakistan or in alternate Nazir of this Hon'ble Court may be appointed to execute Agreement to Lease in favor the plaintiff in respect of above mentioned subject premises."* The Plaintiff also prays for damages for loss sustained due to unlawful dispossession.

3. At the outset learned counsel for the Defendants drew attention to the fact that out of the shops/rooms made subject matter of the suit, the name of the Plaintiff appears only on one of the lease agreements viz. for Room No. 244, and yet he seeks relief in respect of other premises in the building. The primary ground taken for rejection of the plaint is that the suit is time-barred. Learned

counsel for the Defendants submitted that though it is the case of the Defendants that the lease agreements are fabricated, but even taking the plaint at face value, the cause of action for the suit admittedly arose to the Plaintiff on 29-12-2005 when the Plaintiff was allegedly dispossessed, and thus the suit filed in the year 2020 is hopelessly time-barred.

4. Learned counsel for the Plaintiff accepted that the Plaintiff was dispossessed from the shops/rooms in the year 2005. However, he submitted that the suit was not brought earlier as the parties were in negotiation. The thrust of the submission of learned counsel was that the application for rejection of plaint was by an unauthorized person whose Power of Attorney was executed by one Mr. Feroze Jamal who was not the authorized officer of the Defendant No.1. But then the Defendant No.1 has been sued through Mr. Feroze Jamal and an application for rejection of plaint has also been filed by the Defendant No.2. However, as discussed *infra*, that is not relevant for the present purposes.

5. Heard the learned counsel.

6. The plaint of the suit has already been discussed in para 2 above. Though it is the Plaintiff's case that he was dispossessed unlawfully from said shops/rooms, but he has not framed the suit as one for recovery of possession; rather, the suit and the relief has been framed as one for specific performance of the lease agreements i.e. by way of a direction to the Defendants to renew the lease agreement.

7. Be that as it may, the date on which the Plaintiff was allegedly dispossessed is hand-written in para 24 of the plaint as "29-12-2005". That date is also borne from letters dated 29-12-2005 filed with the plaint (page 169) whereby the Plaintiff and other lessees complained to the Defendant No.1 that the latter's staff had dispossessed them from the shops/rooms in the building. Learned counsel for the

Plaintiff also acknowledged that the act of dispossession took place in the year 2005. Though he submitted that the parties were in negotiation since then, the plaint does not plead to exclude any period for the purposes of limitation. Even if the suit can be taken as one for possession under section 8 of the Specific Relief Act, though it has not been framed as such, the period of limitation for such a suit under Article 142 of the Limitation Act, 1908 is 12 years from the date of dispossession (2005). The suit filed in the year 2020 would still be time barred. Section 3 of the Limitation Act, 1908 mandates that a suit filed beyond the period of limitation shall be dismissed even where limitation is not taken as a defense.

8. For the foregoing reasons, the suit is dismissed as time-barred along with pending applications.

JUDGE