

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**High Court Appeal No.57 of 2023**

Askari Bank Limited  
Versus  
Pakistan Defence Officers Housing Authority & others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Fresh Case

1. For order on CMA No.1150/2023 (Urgent).
2. For order on office objection a/w reply as at "A".
3. For orders on CMA No.1151/2023 (Exemption).
4. For hearing of Main Case.
5. For orders on CMA No.1152/2023 (stay).

**Dated: 21.03.2023**

Ms. Lubna Aman, Advocate for Appellant.

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1. Urgency granted.

2-5. A suit was filed for declaration that a cancellation order in respect of Plot No.4-C, 12<sup>th</sup> Commercial Street, Phase-II (Extn), DHA, Karachi passed by the Executive Board of plaintiff is valid and that the transfer order in favour of defendants No.2 and 3 in the suit as well as those documents in their favour are bogus.

Appellant filed an application under Order VII Rule 11 CPC with submissions that the suit is barred by time and that the suit plot was a mortgaged property in relation to which a judgment and decree has already been passed and the execution proceedings are pending.

We have heard learned counsel for the plaintiff and perused the record.

The conclusion drawn by the learned single Judge while deciding the application under Order VII Rule 11 CPC was that it involves serious questions of facts as the subject property remained involved in number of litigations and transactions and consequently in a slipshod manner the plaint cannot be rejected, more importantly

without any law in support of application for rejection of plaint. All grounds raised leads to an ultimate dismissal of suit but not rejection of plaint.

Respondent No.1, being plaintiff in the suit, sought some declarations for which evidence is required and the appellant in support of its application is unable to express itself if the plaint is barred by any law. Learned counsel for the appellant is unable to cite any article whereby a suit could be stated to be barred by time, however Article 91 of the Limitation Act provides that where the facts entitling the appellant to have the instrument cancelled is brought to knowledge cause be triggered, which situation is not expressed by the appellant. Even that, prima facie dependent on evidence. All questions of limitation are not pure questions of law as in the instant case the question of limitation is a mixed question of law and fact and expressed in relation to the Article 91 of the Limitation Act. The High Court Appeal as such merits no consideration and is dismissed in limine along with pending applications.

JUDGE

JUDGE

Ayaz Gul