

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

C. P. No.S-837 of 2018

R. A. No. 152 of 2021

Dated: Order with signature of Judge(s)

C.P. No.S-837 of 2018

For hearing of Main Case.

Date of Hearing : 25 May 2023

Petitioner : Syed Khurram Ilyas Naqvi through Mr. Afaq Yousuf, Advocate

Respondents No.1&2. : Nemo.

Respondent No.3 : Wasi Ahmed through Mr. Muhammad Daud Narejo, Advocate.

R.A. No. 152 of 2021

1.For orders on Office Objection a/w. reply as at 'A'.
2.For hearing of MA No.5200/2021.
3.For hearing of Main Case.

Date of Hearing : 25 May 2023

Applicant : Syed Khurram Ilyas Naqvi & Others through Mr. Afaq Yousuf, Advocate.

Respondent : Muhammad Yasir Shamsi called absent.

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. This Petition and Revision Application have been maintained before this Court each involving a common issue as to whether a Mr. Syed Khurram Ilyas is the owner of Shop No. 11, Mussarat Arcade, Block 13-A, Gulshan-e-Iqbal, Karachi (hereinafter referred to as the "Said Property") entitling him to maintain an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking

the eviction of one Mr. Wasi Ahmed who is in occupation of the Said Property.

A. R. A. No. 152 of 2021

2. This application has been maintained by Mr. Syed Khurram Ilyas Naqvi, Syed Asif Ali Naqvi, Mst. Shehla, Mst. Afshan and Mst. Sadaf under Section 115 of the Code of Civil Procedure, 1908 seeking to revise the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 upholding the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Suit No. 1262 of 2013 each of which confirmed the title of Mr. Muhammad Yasir Shamsi as the owner of the Said Property.

3. Mr. Muhammad Yasir Shamsi had instituted Civil Suit No. 1262 of 2013 before the Vth Senior Civil Judge Karachi (East) as against Mr. Syed Ilyas Naqvi and Mr. Syed Khurram Ilyas Naqvi alleging that he was the owner of the Said Property and inter alia seeking Specific Performance on a Sale Agreement dated 7 September 1987 that he claims was executed in his favour by one Mst. Mussarat Parveen and who admittedly is Mr. Syed Ilyas Naqvi's wife and Mr. Syed Khurram Ilyas Naqvi's mother. Mr. Muhammad Yasir Shamsi maintained that he had purchased the Said Property by a Sale Agreement dated 7 September 1987 from one Mst. Musarrat Parveen and after having paid the entire sale consideration to Mst. Musarrat Parveen had been handed over possession of the Said Property and who has been in possession since that date. In his capacity as the owner of the Said Property Mr. Muhammad Yasir Shamsi states that he had rented out the Said Property to Mr. Wasi Ahmed who is currently in occupation of the Said Property as a tenant of Mr. Muhammad Yasir

Shamsi. He further contends that the said Mst. Musarrat Parveen, when requested to issue a Sub-Lease for the Said Property, instead of doing so, sought additional payments for utility connections and for the execution of a sub-lease and which culminated in Mr. Muhammad Yasir Shamsi issuing a legal notice to Mst. Musarrat Parveen on 20 March 2012 directing Mst. Musarrat Parveen to execute and register a sub-lease in his favour. It seems that this has as of yet not been acceded to.

4. It would seem that in the interim Mr. Syed Ilyas Naqvi acting as an attorney of Mst. Musarrat Parveen executed a Deed of Sub-Lease in favour of Mr. Syed Khurram Ilyas Naqvi and asserting rights that he held over the Said Property, had instituted Rent Case No. 201 of 2012 as against Mr. Wasi Ahmed seeking his eviction from the said Property under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. Mr. Wasi Ahmed informed Mr. Muhammad Yasir Shamsi about the institution of Rent Case No. 201 of 2012 and only whereafter it became apparent to Mr. Muhammad Yasir Shamsi that Mst. Musarrat Parveen had through her attorney Mr. Syed Ilyas Naqvi on 23 November 2011 executed a Sub-Lease in favour of her son Mr. Syed Khurram Ilyas Naqvi and on which basis he was maintaining the application under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 as against Mr. Wasi Ahmed.

5. Mr. Muhammad Yasir Shamsi approached Mr. Syed Khurram Ilyas Naqvi asking him to cancel the Sub-Lease dated 23 November 2011 that had been issued in his favour and to issue a Sub-Lease in his own favour but which requests were not acceded to and which compelled Mr. Muhammad Yasir Shamsi to institute Civil Suit No. 1262 of 2013 before the Vth Senior Civil Judge Karachi (East) seeking therein various reliefs including, but not limited to, for the Cancellation of the Sub-Lease dated 23

November 2011 issued by Mst. Musarrat Parveen in favour of Mr. Syed Khurram Ilyas Naqvi and also seeking specific performance for the execution of a Sub-Lease in his favour.

6. In Civil Suit No. 1262 of 2013 the Vth Senior Civil Judge Karachi (East) framed the following issues:

- “ ...
- (i) *Whether the Suit is not maintainable?*
 - (ii) *Whether the Suit is time barred?*
 - (iii) *Whether the Plaintiff had purchased the Suit Property Viz Shop No. 11, situated at Plot No. A-32, Block 13-A, Gulshan e Iqbal Karachi from original owner namely Mst. Musarrat Parveen through her attorney/husband namely Syed Ilyas Ali Naqvi (defendant No. 1) vide sale agreement dated 07.09.1987?*
 - (iv) *whether the Plaintiff had legally entitled and right to get the possession of the Suit property on the basis of sale agreement dated 07.09.1987?*
 - (v) *Whether the defendant No. 1 being attorney is legally bound to execute the sale deed/Sub-lease in favour of Plaintiff on the basis of sale agreement dated 07.09.1987?*
 - (vi) *Whether Mst. Musarrat Parveen wife of Syed Ilyas Ali Naqvi, the original owner of suit property was expired on 28.10. 2008?*
 - (vii) *Whether the defendant No. 1 has fraudulently transferred the suit property in the name of his son/defendant No. 1 which is liable to be cancelled?*
 - (viii) *Whether the Plaintiff is entitled for compensation and damages of Rs. 500,000/- against defendants and also Rs. 500 per day to the plaintiff till the realization of the suit?*
 - (ix) *Whether the plaintiff is entitled to any relief?*
 - (x) *What should the relief be?”*

It is apparent that thereafter while Mr. Muhammad Yasir Shamsi adduced evidence, Mr. Syed Khurram Ilyas Naqvi did not adduce evidence and whereafter the Vth Senior Civil Judge Karachi (East) proceeded to Decree Civil Suit No. 1262 of 2013 holding that:

- (i) there being no date in the Sale Agreement dated 7 September 1987 for performance, as such under Article 113 of the First Schedule of the Limitation Act, 1908, Civil Suit No. 1262 of 2013 would have to be instituted within a period of three years

from the date of refusal and which would be calculated from the date of the issuance of the legal notice i.e. 20 March 2012. Civil Suit No. 1262 of 2013 having been instituted within a period of three years from the date of the legal notice was as such not barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908;

- (ii) that Mr. Muhammad Yasir Shamsi had adduced evidence of the Sale Agreement dated 7 September 1987, the entire payments made to Mst. Mussarat Parveen and the renting of the Said Property each of which had gone unrebutted;
- (iv) that Mr. Muhammad Yasir Shamsi having proved that he had entered into a Sale Agreement dated 7 September 1987 with Mst. Mussarat Parveen was entitled to obtain specific performance on that agreement entitling him to have executed in his favour a sub-lease for the Said Property;
- (v) that Mr. Muhammad Yasir Shamsi had proved that Mst. Mussarat Parveen had expired on 28 October 2008;
- (vi) that as Mr. Syed Khurram Ilyas Naqvi had failed to prove the Sub-Lease dated 23 November 2011 that had been issued in his favour a presumption must be attached that it had been fraudulently executed; and
- (vii) Mr. Muhammad Yasir Shamsi was entitled to relief and Civil Suit No. 1262 of 2013 was decreed.

7. Mr. Syed Ilyas Ali Naqvi and Syed Khurram Ilyas Naqvi maintained Civil Appeal No. 47 of 2019 before the IXth Additional District Judge Karachi

(East) as against the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Suit No. 1262 of 2013. It is apparent that during the pendency of Civil Appeal No. 47 of 2019 Mr. Syed Ilyas Ali Naqvi passed away and his Legal Representatives i.e. Mr. Syed Khurram Ilyas Naqvi, Syed Asif Ali Naqvi, Mst. Shehla, Mst. Afshan and Mst. Sadaf were arrayed as Appellants in his stead. Civil Appeal No. 47 of 2019 was heard by the IXth Additional District Judge Karachi (East) who by a Judgement and Decree each dated 15 July 2021 was pleased to dismiss Civil Appeal No. 47 of 2019 holding that there was no illegality or infirmity in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Suit No. 1262 of 2013 primarily on account of the fact that the evidence led by Mr. Muhammad Yasir Shamsi had gone unrebutted.

B. C.P. No. S-837 of 2018

8. Mr. Syed Khurram Ilyas had maintained an application under cause (ii) of sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 bearing Rent Case No. 201 of 2012 before the IIIrd Rent Controller Karachi (East) alleging that one Muhammad Fasih was his tenant in respect of the Said Property at a rent of Rs.12,000/- per month. Syed Khurram Ilyas contended that Muhammad Fasih was paying to him a monthly rent of Rs.12,000/- per month and having defaulted on such payment he made an application bearing Rent Case No. 201 of 2012 before the IIIrd Rent Controller Karachi (East) seeking the eviction of Muhammad Fasih.

9. It seems that at some point in these proceedings, the name of Muhammad Fasih was struck off the record and was substituted with the name of Mr. Wasi Ahmed who was thereafter the opponent in the rent case.

After adducing evidence, Rent Case No. 201 of 2012 was heard and decided by the IIIrd Rent Controller Karachi (East) and whereby Rent Case No. 201 of 2012 was on 23 April 2014 dismissed by that Court on the ground that there was no relationship of landlord and tenant as between Mr. Syed Khurram Ilyas and Mr. Wasi Ahmed.

10. Being aggrieved by the order dated 23 April 2014 passed by the IIIrd Rent Controller Karachi (East), whereby Rent Case No. 201 of 2012 was dismissed, Syed Khurram Ilyas maintained FRA No. 95 of 2014 before the VIIth Additional District Judge Karachi (East) and which was granted on 23 March 2017 and whereby it was directed that Mr. Wasi Ahmed was liable to being evicted from the Said Property.

11. Mr. Wasi Ahmed maintained a Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against the Judgement dated 23 March 2017 passed in FRA No. 95 of 2014 by the VIIth Additional District Judge Karachi (East) bearing C. P. No.S-776 of 2017 before this Court and which was granted on 10 October 2017 and on which date the following order was passed by this Court:

“ ... *Learned Appellate Court i.e. Additional District Judge VII, Karachi (East) passed the impugned judgment dated 20.03.2017 without discussing the evidence of the parties allowed the appeal. The judgment dated 29.03,2017 is set aside and the case is remanded back to trial court for passing fresh judgment after hearing both the parties and discussing the evidence within sixty (60) days.”*

12. It is apparent that by the Order dated 10 October 2017 passed in C. P. No.S-776 of 2017 which while setting aside the Judgement passed in FRA No. 95 of 2014 by the VIIth Additional District Judge Karachi (East) and without setting aside the Order dated 23 April 2014 passed by the IIIrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 remanded the matter to the “trial court” for adjudication i.e. the IIIrd Rent Controller

Karachi (East). This created an anomalous situation as to which court was to rehear the matter.

13. FRA No. 95 of 2014 seems to have been transferred to the Vth Additional District Judge Karachi (East) and who after noting that the order dated 20 March 2017 had been set aside reheard both the parties, reheard FRA No. 95 of 2014 and on 31 January 2018 upheld the order dated 23 April 2014 passed by the Illrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 and dismissed FRA No. 95 of 2014.

14. Thereafter, the Illrd Rent Controller Karachi (East) also “reheard” Rent Case No. 201 of 2012 and who on 15 March 2018 passed the following order:

“ ... *From the perusal of record further reveals that the Hon’ble VTH Addl. District Judge Karachi East by judgment dated 31.1.2018 again decided the FRA No. 95/2014 after rehearing the matter with the clear wording that “case was remanded back to appellate court for passing fresh judgment after hearing both the parties and discussing the evidence within 60 days. Thereafter the instant FRA was received to this court on 21.11.2017 by way of transfer from the court of Hon’ble District & Sessions Judge Karachi East for its disposal according to law.*

Learned counsel for the applicant pointed out about the short order received to this court wherein mentioned the wording remand back to trial court instead of appellate court to pass a fresh order after hearing, but record clearly shows that the order of Honourable Appellate court was set aside due to non-discussing evidence, and the dismissal of ejectment application remain in field as it.

In the light of above discussion and following the directions/wording of the Honorable High Court received to this court to decide afresh after hearing the parties. The Honorable Appellate Court/ADJ-V Karachi East has already decided the FRA again by interpreting the judgment/order of the Honourable High Court that the direction was to the appellate court for passing a fresh order which the Honorable Court has passed and dismissed the FRA vide judgment dated 31.1.2018. Opponent called absent and this court re-heard the applicant/landlord and has gone through the material/evidence available on record. After rehearing and going through the material available on record as well as judgment passed by Honorable Vth Addl. District Judge in FRA No. 95/2014 dated 31.1.2018 this court is of the view that I find no any fresh material on record nor the learned counsel for the applicant pointed any fresh material in his favour and the Honourable ADJ-V, Karachi East also dismiss F.R.A. again by discussing the evidence in compliance of orders of Honourable High Court dated 10.10.2017 passed in CP No.S-776 of 2017 by

fresh Judgment dated 31.1.2018 with detail findings and interpretation. Ejectment application disposed of accordingly."

C. Constitution Petition No. 837 of 2018 and Revision Application No. 152 of 2021

15. Syed Khurram Ilyas has now preferred Constitution Petition No. 837 of 2018 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning the order dated 31 January 2018 passed by the Vth Additional District Judge Karachi (East) in FRA No.95 of 2014 and along with Syed Asif Ali Naqvi, Mst. Shehla, Mst. Afshan and Mst. Sadaf has also maintained Revision Application No. 152 of 2021 against the Judgement and Decree each dated 15 July 2021 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No. 47 of 2019.

16. It is apparent that in the event that Revision Application No. 152 of 2021 fails, the Sub-Lease dated 23 November 2011 on the basis of which Mr. Syed Khurram Ilyas claims title to the Said Property would be cancelled and he would have no basis to maintain an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 as his basis for claiming to be a landlord would also fail.

17. Mr. Afaq Yousuf entered appearance on behalf of Mr. Syed Khurram Ilyas and the Applicants and contended that Mr. Syed Khurram Ilyas had a registered Sub-Lease in his favour and therefore there was ample evidence to show that he was the owner of the Said Property. In this regard he relied on a decision of this Court reported as **Afzal Ali vs. Azhar Iqbal**¹ which states that the reliance on an Agreement to Sell cannot be the basis for claiming to be an owner of a property. He stated that he had sent a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to the occupant of the Said Property and keeping in mind that he held a valid sub-

¹ 1997 MLD 2262

lease to the Said Property, as opposed to a Sale Agreement of Mr. Muhammad Yasir Shamsi he was entitled to be considered as the Landlord. Mr. Muhammad Daud Narejo entered appearance on behalf of Mr. Wasi Ahmed and contended that there did not exist a relationship of landlord and tenant as between the Petitioner and the Respondent No. 2 and as such Rent Case No. 201 of 2012 that had been filed by Mr. Syed Khurram Ilyas was not maintainable. He maintained that clearly the relationship of landlord and tenant required at the very least for a rent receipt to be issued or for payment of rent to be shown as to have been paid between the landlord and tenant and which having not been done clearly meant that Rent Case No. 201 of 2012 was not maintainable. He said that the execution of the Sub-Lease dated 23 November 2011 in favour of Mr. Syed Khurram Ilyas was a fraud as that same had been executed by Mr. Syed Ilyas Ali Naqvi acting on the basis of a Power of Attorney issued to him by Mst. Mussarat Parveen and which had been rendered as invalid on the demise of Mst. Mussarat Parveen. He contended that on this basis Rent Case No. 201 of 2012 was liable to be dismissed. He did not rely on any case law in support of his contentions. It is to be noted that no one appeared on behalf of Mr. Muhammad Yasir Shamsi in Revision Application No. 152 of 2021.

18. I have heard the Counsel for Mr. Syed Khurram Ilyas in C.P. No. S-837 of 2018 and which counsel also appeared for Mr. Syed Khurram Ilyas, Syed Asif Ali Naqvi, Mst. Shehla, Mst. Afshan and Mst. Sadaf in Revision Application No. 152 of 2021 and Mr. Muhamamd Daud Narejo for Mr. Wasi Ahmed and have perused the record. It is apparent that in the event that Revision Application No. 152 of 2021 that has been maintained by Mr. Syed Khurram Ilyas, Syed Asif Ali Naqvi, Mst. Shehla, Mst. Afshan and Mst. Sadaf is dismissed then the claim of Mr. Syed Khurram Ilyas in C.P. No. S-837 of 2018, that there has been an incorrect adjudication as to his status as a landlord, would also fail. I have therefore considered it appropriate to

decide Revision Application No. 152 of 2021 first. Both the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 and the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 held that Civil Suit No. 1262 of 2013 had been instituted within time. While noting that the Sale Agreement as purportedly executed as between Mr. Muhammad Yasir Shamsi and Mst. Musarrat Parveen was executed on 7 September 1987 it is apparent that there was no time specified for the performance of the Sale Agreement that had been settled in that agreement. Article 113 of the First Schedule of the Limitation Act 1908 stipulates the criteria for assessing whether a suit for specific performance is instituted within the period prescribed for limitation and was considered by the Supreme Court of Pakistan in the decision reported as **Haji Abdul Karim vs. Messrs Florida Builders (Private) Limited**² wherein it was held that:³

“ ... In the context of interpreting Article 113 of the Act, the provisions for the facility of reference are reproduced below:-

Description of Suit	Period of Limitation	Time from which Period beings to Run
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

And for the purpose of the above, it seems expedient to touch upon the legislative history of the Article. The prior Limitation Acts of 1871 and 1877, had in each of them the corresponding provision as in Article 113. However, the words in 1871 Act, were "when the plaintiff has notice that his right is denied", postulating that the second part of Article 113 was the only provision then regulating the limitation for the suits for specific performance and the commencement of three years period was dependent on the proof of the fact of notice of denial and the question of limitation was accordingly to be decided, having no nexus with the date even if fixed by the parties for the performance of the contract. The said provision however was expanded and these words were substituted in the subsequent Act of 1877, as are also found in the third column of the

² PLD 2012 SC 247

³ *Ibid* at pgs. 256-258

present Act. The change brought by the Legislature in 1877 Act was retained in Article 113 of the Act, by including the first part that the time would run from the '**date fixed**' for the performance is thus purposive and salutary in nature, which contemplates and reflects the clear intention of the legislature to prescribe the same (three years) period of limitation, however, providing that the parties who otherwise have a right to fix a date of their own choice in the agreement for the performance thereof, such date in consequence of law shall also govern the period of limitation as well for the suits falling in this category. Thus now the three years period mentioned in Column No. 3 of the Article runs in two parts:--

(i) from the date fixed for the performance; or

(ii) where no such date is fixed when the plaintiff has notice that performance is refused.

The reason for the said change as stated above is obvious. In the first part, the date is certain, it is fixed by the parties, being conscious and aware of the mandate of law i.e. Article 113, with the intention that the time for the specific performance suit should run therefrom. And so, the time shall run forthwith from that date, irrespective and notwithstanding there being a default, lapse or inability on part of either party to the contract to perform his/its obligation in relation thereto. The object and rationale of enforcing the first part is to exclude and eliminate the element of resolving the factual controversy which may arise in a case pertaining to the proof or otherwise of the notice of denial and the time thereof. In the second part, the date is not certain and so the date of refusal of the performance is the only basis for computation of time. These two parts of Article 113 are altogether independent and segregated in nature and are meant to cater two different sorts of specific performance claims, in relation to the limitation attracted to those. A case squarely falling within the ambit of the first part cannot be adjudged or considered on the touchstone of the second part, notwithstanding any set of facts mentioned in the plaint to bring the case within the purview of the later part. In other words, as has been held in the judgments reported as *Siraj Din and others v. Mst. Khurshid Begum, and others* (2007 SCMR 1792) and *Ghulam Nabi and others v. Seth Muhammad Yaqub and others* (PLD 1983 SC 344) "when the case falls within first clause the second clause is not to be resorted to". However, the exemption, the exclusion and the enlargement from/of the period of limitation in the cases of first part is permissible, but it is restricted only if there is a change in the date fixed by the parties or such date is dispensed with by them, but through an express agreement; by resorting to the novation of the agreement or through an acknowledgment within the purview of section 19 of the Act. And/or if the exemption etc. is provided and available under any other provision of the Act however, to claim such an exemption etc. grounds have to be clearly set out in the plaint in terms of Order VII Rule 6, C.P.C. We have examined the present case on the criteria laid down above, and find that according to the admitted agreement between the parties, 31-12-1997 was/is the 'date fixed' between them for the performance of the agreement, which has not been shown or even averred in the plaint to have been changed or dispensed with by the parties vide any subsequent express agreement. In this behalf, it may be pertinent to mention here that during the course of hearing Mr. Abdul Hafeez Pirzada, on a court query, has stated that there is no agreement in writing between the parties which would extend/dispense the date fixed and that he also is not pressing into service the rule of novation of the contract. We have also noticed that the petitioners have neither alleged any acknowledgment in terms of Article 19 of the Act, which should necessarily be in writing, and made within the original period of limitation nor any such acknowledgment has been pleaded in the plaint or placed on the record. Besides, no case for the exemption etc. has been set-forth in the plaint and the requisite grounds are conspicuously missing in this behalf as is mandated by Order VII, Rule 6, C.P.C. "

As per the decision of the Supreme Court of Pakistan, there are two entirely separate basis for determining the period of limitation in a *lis* seeking the specific performance of an agreement. Where a specific date is specified for performance of the agreement, then subject to any modification to that date for performance as may be agreed between the parties, that date will be the basis for determining the date from which the period of limitation will be calculated. In the alternative, if no date is specified in the agreement on which performance of the obligations are to determine, the limitation will accrue from the date when performance of the obligation is "refused".

19. I have perused the Sale Agreement dated 7 September 1987 and note that no date has been specified in that document as to by when the Agreement was being performed. As such I am of the opinion that both the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 and the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 have correctly held that the period of limitation should be calculated from the date when performance was refused. It is has also come on record that Muhammad Yasir Shamsi has issued a legal notice on 20 March 2012 seeking the performance of the Sale Agreement dated 7 September 1987 and which was refused and Civil Suit No 1262 of 2013 was instituted within a period of three years from the date of that refusal. There being no evidence led by Mr. Syed Ilyas Ali Naqvi or by Mr. Syed Khurram Ilyas to show that performance of the Sale Agreement dated 7 September 1987 was demanded by Mr. Muhammad Yasir Shamsi before that date or that it was refused before that date, I am of the opinion that clearly the date of the expiry of the time period seeking performance in the Sale Agreement dated 7 September 1987 should being the date from which the period of limitation should be calculated. This having been done by both the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 and by

the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 I am of the opinion that there is no infirmity of illegality in either the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 or in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 regarding the finding that Civil Suit No. 1262 of 2013 was instituted by the Mr. Muhammad Yasir Shamsi within the period prescribed in Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908.

20. Regarding the proof of the Sale Agreement dated 7 September 1987, it has come on record that Mr. Muhammad Yasir Shamsi adduced evidence both as to the Sale Agreement dated 7 September 1987, the payments made as well as to renting out the Said Property to Mr. Wasi Ahmed. Clearly under Article 117 of the Qanun e Shahdat the onus was on Mr. Muhammad Yasir Shamsi to adduce such facts in evidence and which he did. As Mr. Syed Ilyas Ali Naqvi and Mr. Syed Khurram Ilyas both failed to adduce evidence in this regard, the contentions of the Mr. Muhammad Yasir Shamsi went unrebutted and were proved by him. That being the case I cannot see how it can be averred that there was an infirmity or illegality in either the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 or in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 as to the existence of the Sale Agreement dated 7 September 1987 or the payments of the amounts pursuant thereto. I am therefore of the opinion that Mr. Muhammad Yasir Shamsi had proved the existence of the Sale Agreement dated 7 September 1987 and the payments of the amounts pursuant thereto to Mst Mussarat Parveen.

21. Mr. Muhammad Yasir Shamsi had alleged that Mst. Mussarat Parveen had expired on 28 October 2008. On this basis he contended that Mr. Syed Ilyas Ali Naqvi who had purportedly executed the Deed of Sub-Lease in favour of Mr. Syed Khurram Ilyas Naqvi in his capacity as the attorney of Mr. Syed Ilyas Ali Naqvi, had done so after the passing of Mst. Mussarat Parveen and therefore did not have the requisite authority on behalf of Mst. Mussarat Parveen to have executed the Deed of Sub-Lease in favour of Mr. Syed Khurram Ilyas Naqvi. In this regard the only evidence that was adduced by Mr. Muhammad Yasir Shamsi was a photograph of the gravestone of Mst. Mussarat Parveen. Again it is apparent that neither Mr. Syed Ilyas Ali Naqvi nor Mr. Syed Khurram Ilyas Naqvi adduced evidence on this issue under clause (g) of Article 129 of the Qanun e Shahdat Order, 1984 it has been stipulated that:

“ ... 129. Court may presume existence of certain facts:

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume..

(g) which could be and is not produced would, if produced, be unfavourable to the person who withholds it ; ...

as to illustration (g) : a man refuses to produce a document which would bear on a contract of small importance on which he issued. but which might also injure the feelings and reputation of his family;...”

The Supreme Court of Pakistan in the decision reported as **Jehangir vs. Shams Sultana**⁴ while interpreting this provision has held that:

“ ... *When the best evidence is intentionally withheld an adverse presumption ensures that if it was produced it would be against the person withholding it as per Article 129(g) of the Qanun e Shahdat, 1984.*

Clearly both Mr. Syed Ilyas Ali Naqvi and Mr. Syed Khurram Ilyas Naqvi were given an opportunity to refute the evidence as to the date of the demise

⁴ 2022 SCMR 309

of Mst. Mussarat Parveen and which the both failed to do. That being the case, a presumption was correctly drawn in the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 and in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 as against them regarding the validity of the Power of Attorney that had been used by Mr. Syed Ilyas Ali Naqvi to execute the Deed of Sub-Lease in favour of Mr. Syed Khurram Ilyas Naqvi and which had become invalid on account of the demise of Mst. Mussarat Parveen before 23 November 2011 that being the date when the Sub-Lease Deed was executed by Mr. Syed Ilyas Ali Naqvi in favour of Mr. Syed Khurram Ilyas Naqvi. In this regard I find no illegality or infirmity in the finding of both the by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 and of the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 that the Deed of Sub-Lease was executed fraudulently.

22. On the basis of the findings above, I am clear that there was no illegality or infirmity in either the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 or in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 and as such Civil Suit No. 1262 of 2013 was correctly decreed in favour of Mr. Muhammad Yasir Shamsi and that Mr. Syed Khurram Ilyas Naqvi has no right title and interest in the Said Property and hence Revision Application No. 152 of 2021 is misconceived and is not maintainable.

23. Having come to the conclusion that Revision Application No. 152 of 2021 is not maintainable and that Mr. Syed Khurram Ilyas Naqvi it would be apparent that Mr. Syed Khurram Ilyas Naqvi does not hold any right, title or

interest in the Said Property. In addition and as correctly held in the Judgement and Decree passed on 31 January 2018 in FRA No. 95 of 2014 by the Vth Additional District Judge Karachi (East) and the order dated 23 April 2014 passed by the Illrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 and which was reaffirmed in the order dated 15 March 2018 passed by the Illrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 there can be no doubt that a relationship of a landlord and tenant did not exist as between Mr. Syed Khurram Ilyas Naqvi and Mr. Wasi Ahmed and hence CP No. S-837 of 2018 must also fail.

24. For the foregoing reasons, I am of the opinion that there is no illegality or infirmity in either the Judgement and Decree dated 15 July 2021 passed by the IX Additional District Judge/MCAC Karachi (East) in Civil Appeal No. 47 of 2019 or in the Judgment and Decree dated 17 January 2019 passed by the Vth Senior Civil Judge Karachi (East) in Civil Suit No. 1262 of 2013 and hence Revision Application No. 152 of 2021 must be dismissed. Revision Application No. 152 of 2021 being dismissed and Mr. Syed Khurram Ilyas Naqvi admittedly not being the owner of the Said Property, the Judgement and Decree passed on 31 January 2018 in FRA No. 95 of 2014 by the Vth Additional District Judge Karachi (East) and the order dated 23 April 2014 passed by the Illrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 and which was reaffirmed in the order dated 15 March 2018 passed by the Illrd Rent Controller Karachi (East) in Rent Case No. 201 of 2012 were in order and consequentially CP No. S-837 of 2018 is also dismissed, albeit with no order as to costs.

JUDGE

Karachi dated 24 August 2023.

Nasir P.S.