

Order Sheet  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.340 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA 3316/2023
2. For orders on CMA 3317/2023
3. For hearing of main case

08.12.2023

Mr. Muhammad Hanif Kalhoro advocate for applicant.

Briefly stated, F.C. Suit No.81 of 2023 was filed before Senior Civil Judge Dadu for specific performance of contract. It was pleaded that the suit plot was purchased by an oral agreement in the year 1987 and installments were completed in 1995, however, the oral contract was not honored by the counterpart, admittedly passed away in 2011. It is manifest that no claim was made for 16 years while the counter party was alive, post consummation of purportedly oral contract, and the suit was filed in 2023 against a purported legal heir thereof. The trial Court found the suit to be time barred per Article 113 of the Limitation Act 1908 and was pleased to reject the plaint vide order dated 14.10.2023. Civil Appeal 64 of 2023 was filed before Additional District Judge-III Dadu and vide judgment dated 11.11.2023 the same was dismissed.

Present revision assails the respective orders, however, the applicant's counsel has remained unable to dispel the bar of limitation. Learned counsel submits that since valuable rights are involved, therefore, the applicant ought to have been nonsuited on a mere technicality of limitation.

Heard and perused. The delay in preferring the suit has been adequately particularized in the initial order and subsequently in the appellate judgment. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / dates relied upon to render the findings of the suit being time barred.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose<sup>1</sup>. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard<sup>2</sup>. The Superior Courts have held that proceedings barred by even a day could be dismissed<sup>3</sup>; once time begins to run, it runs continuously<sup>4</sup>; a bar of limitation creates vested rights in favour of the other party<sup>5</sup>; if a matter was time barred then it is to be

<sup>1</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

<sup>2</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>3</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>4</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>5</sup> *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

dismissed without touching upon merits<sup>6</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>7</sup>. It has been maintained by the honorable Supreme Court<sup>8</sup> that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the either impugned order is an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law<sup>9</sup> that where the forum of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

Ali Haider

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<sup>6</sup> *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

<sup>7</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

<sup>8</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

<sup>9</sup> Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.