

ORDER SHEET
HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 30 of 2021

Date: Order with signature(s) of Judge(s)

1. For order on CMA No.3670/2022
2. For order on office objection
3. For hearing of main case
4. For hearing of CMA No. 481/2021

28.11.2023

Mr. Muhammad Atif Shujaat, advocate for the appellant.
Mr. Muhammad Mustafa, advocate for respondent No.2.

This High Court Appeal impugns an order of 29.01.2021 whereby plaint in Suit No.1602/2006 was rejected under Order 7 Rule 11 CPC. Earlier another suit No.119 of 2005 was filed which was dismissed as being barred by time. Based on the consideration that the agreement was executed in the year 1990 having no specific date of performance, an appeal was preferred whereby the appellate court permitted, as conceded by the respondents' counsel above, to file a fresh suit. This conclusion drawn by an order of appellate Court was not challenged by the respondent, as was conceded. A fresh suit was then filed before this Court which faced an application under Order VII Rule 11 CPC. The learned Single Judge was of the view that a notice of the cancellation of General Power of Attorney was issued by the defendant No.2 of the suit which counts as an implied intention (of defendant/Respondent) of the refusal to perform the agreement as well hence cause triggered from that date.

There is no prima-facie evidence that such notice was served upon the appellant. On a presumptive view of service of notice for cancellation of Power of Attorney, a plaint cannot be rejected as it apparently is a triable issue and the evidence ought to have been recorded as to whether such "registered general power of attorney" was cancelled by an instrument duly signed by the appellant or otherwise and got registered too.

This suit was apparently filed in the year 2006 and the cause apparently triggered within three years from the date of filing of a suit in terms of the pleadings. In terms of article 113 of the Limitation Act it could either be triggered from the specific “date” of performance assigned in the agreement or specific refusal. Since date of performance is not provided in the agreement it ought to be triggered on account of refusal which refusal is a triable contest. The appeal to such an extent as such is allowed and the impugned order is set aside. The case is remanded to the learned Single Judge for proceeding in accordance with law. It is expected that preliminary issue including but not limited to the limitation will be framed, apart from other issues on the basis of pleadings of the parties.

This High Court Appeal stands disposed of in the above terms along with pending applications.

JUDGE

JUDGE

Amjad/PA