ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
R.A. No.130 of 2012

Dated: Order with signature of Judge(s)

1. For hearing of CMA No. 3691 of 2012
2. For hearing of CMA No. 3692 of 2012
3. For hearing of CMA No. 3693 of 2012
4. For hearing of Main Case.

Date of Hearing	:	1 June 2023
Petitioner	:	Masood Alam through Mr. Naheed Afzal Khan, Advocate
Respondent No. 1	:	Mst Ghulam Fatima through Mr. Danish Raza, Advocate
Respondent No. 2	:	Nemo
Respondent No. 3	:	Nemo

O R D E R

MOHAMMAD ABDUR RAHMAN, J. This application has been maintained by the Applicant under Section 115 of the Code of Civil Procedure, 1908 seeking to revise the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 upholding the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007.

2. Civil Suit No.19 of 2007 had been instituted by the Applicant as against the Respondent being a Suit for declaration, specific performance of contract and injunction involving an immovable property bearing House No. P-208/3 Batha Town No.2, Peoples Colony Block-N North Nazimabad, Karachi (hereinafter referred to as the “Said Property”).

3. According to the Applicant the Said Property was owned by one Saddaruddin, who was the Applicant’s maternal aunt’s husband and who had housed the Respondent No.1 in this property at the behest of the

Applicant. It is submitted by the Applicant that the relationship of the Applicant and the Respondent No. 1 was so close that in or around the year 1995 they decided to marry one of their daughters a Mst. Razia Sultana with the Applicant. The Applicant alleges that pursuant to the engagement he gave the Respondent No. 1's family various gifts and also assisted the Respondent No. 1 in getting a lease issued for the Said Property in her name.

4. The Applicant alleges that on 7 August 1996 the Respondent No. 1 executed an unregistered deed purportedly receiving a sum of Rs.150,000/- from the Applicant as full and final consideration for the purchase of the Said Property with an understanding to execute a sale deed as and when asked for by the Applicant.

5. For whatever reasons the engagement between the Applicant and the said Razia Sultana ended and whereafter on 13 November 2006 the Applicant sent a legal notice to the Respondent No. 1 directing her to execute a sale deed for the transfer of the Said Property into the name of the Applicant. When the Respondent No. 1 refused the Applicant instituted Suit No.19 of 2007 before the VIth Senior Civil Judge Karachi (Central) inter alia seeking specific performance on the basis of document entitled an undertaking dated 7 August 1996 whereby he seeks that the Respondent No. 1 should transfer the Said Property into his name.

6. The Respondent No. 1 has filed her Written Statement to Suit No.19 of 2007, denying the contentions of the Applicant. She contends that she is the owner of the Said Property. She denied having ever executed the unregistered deed on 7 August 1996 which she states has been forged. She aside from denying having executed the Agreement of Sale also denies having received any sale consideration for the sale of the said property and states that the entire Suit is a fraud and was barred

under Article 113 read with Section 3 of the Limitation Act, 1908. The matter was heard by the VIth Senior Civil Judge Karachi (Central), who framed the follows issues, which it deemed to be adjudicated in this matter and which were as under:

> " .. 1. *Whether the suit is not maintainable?*
> 2. *Whether the Defendant received Rs.150,000/- from the plaintiff being sale consideration and executed a deed dated 07.08.1996 in respect of suit property?*
> 3. *Whether the Undertaking/Deed dated 07.08.1996 is forged document?*
> 4. *Whether the plaintiff is entitled for the relief as claimed?*
> 5. *What should the decree be?"*

7. By a Judgement dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 the Court held that:

(i) the Suit having been filed 10 years after the purported under taking dated 7 August 1996 was barred under Article 113 of the Limitation Act, 1908; and

(ii) the undertaking dated 7 August 1996 was in fact a forged document as there were contradictory statements made as between the Applicant and his witness regarding that document.

8. Being aggrieved with and dissatisfied by the dismissal of the Suit the Applicant preferred Civil Appeal No.136 of 2011 before IVth Additional District Judge Karachi (Central) and which appeal was by a Judgment and Decree dated 28 April 2012 also dismissed holding that:

(i) the Suit having been filed 10 years after the purported under taking dated 7 August 1996 being executed was barred under Article 113 and Article 114 of the Limitation Act, 1908;

(ii) the Applicant had not been able to show that any sum of money was paid by him to the Respondent No. 1 on 7 August 1996 at the time of the execution of the undertaking by the Respondent No. 1 whereby she purportedly agreed to sell the Said Property to the Applicant;

(iii) that while the witnesses to the undertaking executed on 7 August 1996 have adduced evidence to prove the execution of that document, the document is not stamped; and

(iv) the undertaking dated 7 August 1996 had not been proved in terms of Article 117 and 79 of the Qanun e Shahdat Order, 1984;

9. Mr. Naheed Afzal Khan on behalf of the Applicant contended that both the Judgment dated 28 April 2012 passed by IVth Additional District Judge Karachi (Central) and the Judgment dated 23 September 2011 passed by VIth Senior Civil Judge Karachi (Central) had misinterpreted the evidence of one of the Applicant's witness namely Sheikh Nizamuddin who had purportedly deposed that the sale agreement had been executed on a plain paper and not on stamp paper and which was the basis of holding that the agreement was not valid. He contended that the document having been proved it was incumbent on that court to have Decreed the Suit. He sought that this Court should revise the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 upholding the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 and decree the Suit.

10. Mr. Danish Raza on behalf of the Respondent No. 1 has contended that Civil Suit No. 19 of 2007 having been instituted 11 years after the purported undertaking dated 7 August 1996 was clearly a contrived suit and should be dismissed. She contended that Civil Suit No. 19 of 2007 having been instituted 11 years after the execution of the undertaking dated 7 August 1996 was clearly barred under Article 113 read with Section 3 of the Limitation Act, 1908. She pleaded that in the facts and circumstances this Application was misconceived and should be dismissed.

11. I have heard the counsel for the Applicant and the Respondent No. 1 and have perused the record. The Supreme Court of Pakistan has in the decision reported as ***Haji Abdul Karim vs. Messrs Florida Builders (Private) Limited***[1] interpreted the manner in which Article 113 of the First Schedule of the Limitation Act 1908 is to be applied and wherein it was held that:[2]

> " … *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 present Act. The change brought by the Legislature in 1877 Act was retained in Article 113 of the Act, by including the*

[1] PLD 2012 SC 247
[2] *Ibid* at pgs. 256-258

*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 in 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 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".

17. The criteria applied in the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and in the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 are both clearly incorrect. Each of those courts have stated that the period for limitation would commence from the date of the undertaking i.e. 7 August 1996 The criteria to be applied, as held by the Supreme Court of Pakistan, is to commence from either a specified date that has been mentioned in the oral agreement of sale for performance and in the event that no date is specified then limitation is to be calculated from the date when the Respondent No. 1 refused to perform his obligations Regrettably, both IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 have not applied the law correctly. Admittedly, the undertaking dated 7 August 1996 mentioned no specific date for the performance of the contract. In the absence of a precise date for performance of the contract, the court should have calculated limitation under Article 113 of the First Schedule of the Limitation Act, 1908 from the date when performance was refused i.e.after the Applicant had sent a legal notice to

the Respondent No. 1 on 13 November 2006. The suit having been filed within three years of the issuance of the legal notice, I cannot see how it can be held that the suit has been filed after the time prescribed in Article 113 of the First Schedule of the Limitation Act, 1908. Clearly there is an illegality in both the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 as each of the courts have incorrectly applied the provisions of Article 113 of the Limitation Act, 1908.

18. The second ground that has been maintained in the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 upholding the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 is that the undertaking dated 7 August 1996 having not been executed on a stamp paper rendered that document invalid. Under Section 35 and 36 of the Stamp Act, 1899

> " ... *35. Instruments not duly stamped inadmissible in evidence, etc.–*
>
> *No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.*
>
> *Provided that–*
>
> *(a) any such instrument not being an instrument chargeable with a duty not exceeding twenty-five paisa only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five-rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*
>
> *(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of 108[98][the Government], or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

36. Admission of instrument where not to be questioned.– Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

These provisions came to be examined by the Supreme Court of Pakistan in the decision reported as ***Qazi Abdul Ali vs. Khawaja Aftab Ahmed*** [3] wherein it was held that:

" … *According to section 36 of the Stamp Act, 1899, document once admitted in evidence could not be challenged at any stage of proceedings on the ground for not being duly stamped except under section 61 thereof. In Ch. Muhammad Saleem v. Muhammad Akram and others (PLD 191 SC 516) the question as to whether an agreement which was not stamped can be admitted in evidence or not came up for consideration and this Court while relying on an Indian case-law, with approval, has held that "once a document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, section 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of Appeal or Revision to go behind that order." Similarly in Union Insurance Company of Pakistan (Pvt.) Ltd. v. Muhammad Siddique (PLD 1978 SC 279) wherein the issue was relatable to an unstamped arbitration agreement, this Court has specifically held as under:--*

> *"Section 35, Stamp Act, 1899 prescribes that no instrument, which is not properly stamped, "shall be admitted in evidence for any purpose..... or shall be acted upon....." Now merely because an instrument cannot be admitted in evidence for any purpose as because it cannot be acted upon by the persons specified in the section, does not mean that such an instrument is invalid, and it is not irrelevant to observe here that the words have to be construed strictly, because they are to be found in a provision of a penal nature. Therefore, it would be against all canons of construction to enlarge the meaning of these words, so as to render invalid instruments which fall within the mischief of the section. After all, instruments, which are not duly stamped, are executed every day, and most persons, who incur obligations under such instruments, honour their liabilities under such instruments, regardless of the provisions of section 35. In any event, this section is attracted only when an instrument is produced before the persons specified in the section. But, for example, an instrument would be produced in evidence only when there is a dispute about it, therefore, if the intention of the Legislature*

[3] 2015 SCMR 284

> *had been to render invalid all instruments not properly stamped, it would have made express provision in this respect, and it would also have provided some machinery for enforcing its mandate in those cases in which the parties did not have occasion to produce unstamped instruments before the persons specified in the section. Additionally, there is nothing in the section which would support the plea that an instrument becomes invalid, if it falls within the mischief of the section. After all, if an instrument is invalid, it must be invalid for all purposes, but proviso (d) to the section expressly saves unstamped instruments in most criminal proceedings, whilst the other provisos to the section enable the parties to overcome the disabilities attached to an instrument not properly stamped by paying the requisite duty together with a penalty, therefore, this would suggest that the object of the section is to protect public revenue. Again, if an instrument is invalid, it should not be admissible in evidence and it is so stated in section 35. But the next section prescribes that if an instrument has been admitted in evidence, howsoever erroneously, its admissibility cannot be questioned at any stage thereafter, and even the appellate Court's powers to entertain an objection about the admissibility of documents have been removed by section 61 which instead empowers the appellate Court to collect the duty payable on the unstamped instrument* together with a penalty." (Emphasis is supplied)"

19. The interpretation cast by the Supreme Court of Pakistan on the provision of Section 35 and Section 36 of the Stamp Act, 1899 indicates that where a document is not properly stamped then under Section 35 of the Stamp Act, 1899 then, subject to the provisions of that section, it cannot be admitted into evidence until it is stamped. It is to be noted that a distinction needs to be made in this regard between the validity of the document and the admission of a document into evidence to prove a fact. A deficiency in stamp duty does not invalidate a document, it simply renders it being inadmissible in evidence until it is stamped. As such taking an example if in a suit for specific performance for the purchase of an immovable property, the Agreement of Sale is not properly stamped then until that document is stamped it could not be adduced in evidence by the Plaintiff to prove that document. It naturally follows if the Plaintiff does not stamp the document, then the document having not been admitted in evidence the *lis* of the Plaintiff should necessarily fail as the basis of the suit for specific performance i.e. the Agreement of Sale was not adduced in evidence and ***not because the document was invalid***. However, it is to be noted that under Section 36 of the Stamp Act, 1899 where a deficiently stamped document is adduced in evidence without any

objection then notwithstanding that it has not been stamped, the document would be considered as having been validly admitted and can be adduced in evidence but would still be liable for the payment of duty and a penalty in accordance with Section 61 of the Stamp Act, 1899. It is apparent that the undertaking dated 7 August 1996 was adduced into evidence by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 without any objection. That being the situation I am at a loss to understand how in both the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 both the courts have come to the conclusion that the undertaking dated 7 August 1996 was invalid. Clearly the document having been incorrectly stamped could not have been treated as being invalid and at best could have been impounded for deficient stamp duty, The document, however, having been admitted in evidence without objection would, under Section 36 of the Stamp Act, 1899, be admissible in evidence and the findings given in both the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 that the undertaking dated 7 August 1996 was invalid on the basis of not having been properly stamped is clearly incorrect.

20. The sole issue that remains to be determined is as to whether the undertaking dated 7 August 1996 which purports to act as the agreement of sale as between the parties has been proved by the Applicant. It is not disputed that the Respondent No. 1 denies the execution of the document and as such the burden to prove the existence of the Agreement lay on

the Applicant. Under Article 117 of the Qanun e Shahdat Order, 1984 it has been clarified that:

> " … *117. Burden of proof:*
>
> *(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person*."

As such prima facie the obligation is on the Applicant to prove both the existence of the Sale Agreement in the undertaking dated 7 August 1996. Regarding the manner in which a document is to be proved Article 79 of the Qanun e Shahdat Order, 1984 it has prescribed that:

> " … *79.* ***Proof of execution of document required by law to be attested****:*
>
> ***If a document is required by law to be attested****, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given Evidence.*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.*

(Emphasis is added)

This section may be read in conjunction with the provisions of Article 17 of the Qanun e Shahdat Order, 1984.

> " ... ***17. Competence and number of witnesses****:*
>
> *(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah:*
>
> *(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,*
>
> *(a) In matters* ***pertaining to financial or future obligations****, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and*
>
> *(b) In all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant."*

(Emphasis is added)

Clearly the undertaking dated 7 August 1996 is a documents that “pertains to financial and future obligations” and which has been reduced to writing and would therefore need to be proved by either two men or one man and two women. In his evidence one Shaikh Nizamuddin adduced evidence but the other witness Mohammad Sajid did not. That being the case, the Undertaking dated 7 August 1996 being the basis on which the claim of the Applicant lies remain unproved and cannot be sustained and both the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 have correctly held that the undertaking dated 7 August 1996 was not properly proved in accordance with Article 79 read with clause (a) of Sub-Section (2) of Section 17 of the Qanun e Shahdat Order 1984 and that being held the claim for specific performance would also fail. This Application therefore must be dismissed.

21. For the foregoing reasons, while there are material irregularities in both the Judgment and Decree dated 28 April 2012 passed by the IVth Additional District Judge Karachi (Central) in Civil Appeal No.136 of 2011 and the Judgment dated 23 September 2011 and Decree dated 5 October 2011 passed by the VIth Senior Civil Judge Karachi (Central) in Civil Suit No.19 of 2007 the finding of both the courts that undertaking dated 7 August 1996 having not been proved was correct and hence the findings of those courts that specific performance thereon could not be granted is upheld. This Application is along with all listed application dismissed with no order as to costs.

JUDGE

Karachi dated 31 August 2023