

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 2059 of 2018

Date: Order with signature of the Judge

1. For order on CMA No.1242/2022
2. For hearing of CMA No.7879/2022
3. For hearing of CMA No.7878/2022
4. For examination of parties/ settlement of issues

21.08.2023

Mr. Irfan Aziz, advocate for the plaintiffs

Mr. Naeem Akhtar advocate for defendant No.1 along with Mr. Mushtaq Ahmed Jahangiri and Syed Waqar Hussain advocates

Mr. Iqbal Khurram advocate for respondent/KMC along with Mr. Junaid Alam, advcoate

Syed Hussain Shah, Assistant Advocate General

Mr. Naeem Akhtar Memon advocate files Vakalatnamas on behalf of attorney of defendant No.1 (a) to (g), which are taken on record.

This order shall determine CMA No.7878 of 2022, being an application under Order VII Rule 11 CPC, seeking rejection of the plaint. Admittedly, the same controversy was agitated between the same parties in Suit No. 1035 of 2000 and the said suit was decreed on 16.12.2003.

Per applicant's counsel the suit is prima-facie time barred and in any event not maintainable under the principles of res judicata, as laid out in section 11 of CPC. Per the plaintiff's counsel, the plaintiff only found out about the decree in his earlier suit in 2018, hence, filed the present suit. It is contended that the principles of res judicata are not attracted as Section 11 of CPC only applies in matters determined post adversarial proceedings and not those which are decided by compromise. It is further contended that the present application has been filed four years belatedly and since the issues have already been settled, therefore, no case is made out for rejection of plaint.

Heard and perused. Admittedly, the earlier suit, being Suit No.1035 of 2000, was filed by the same plaintiff in respect of the same cause of action, purportedly arising in 1990.

The assertion of the plaintiff's counsel that since the plaintiff did not know about the decree in the earlier suit, hence, could not take any legal recourse in such regard within time does not appeal to the court. It is the duty of the parties to remain vigilant and no benefit can be claimed simply on a plea of indolence.

The plaintiff's counsel also alleged collusion on the part of the plaintiff's attorney in the earlier suit. In this respect the record demonstrates that even when the plaintiff claims to have gained knowledge of the earlier decree no effort was made to challenge the same in appeal. On the contrary, it is demonstrated that the compromise had also been partly acted upon. No justification has been articulated as to why the present suit was filed to re-agitate the matter instead of filing an appeal, albeit belated. While the competent court would have had the occasion to consider any application seeking to condone delay, no case is made out to file a subsequent suit to agitate the same issue.

It is also surprising that even though the plaintiff's counsel alleges collusion on the part of his attorney, yet the present suit has been filed by a purported sub-attorney of the very attorney who had filed the previous suit and against whom allegations of collusion are being articulated. Upon query, it was specifically submitted that the plaintiff has taken no action against his attorney in respect of the alleged collusion.

The application under consideration provides a paragraph wise narrative of the facts and circumstances pleaded to seek the relief claimed. The counter affidavit contains no specific denial of the said narrative whatsoever. Since the commonality of the two suits has already been demonstrated by the applicant's counsel and admitted by the plaintiff's counsel, therefore, there is no need to dilate any further upon the said issue.

Insofar as the issue of limitation is concerned, paragraph 27 of the plaint clearly pleads that the cause of action arose in the year 1990. The bar of limitation has been clearly demonstrated by the applicant's counsel and the plaintiff's counsel has made no effort to dispel the same.

2. In view of the foregoing the present suit appears to be barred by law, *inter alia* being Section 11 CPC and Limitation Act 1908, therefore, this application is allowed, the plaint is hereby rejected.

J U D G E

Amjad/PA