

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.228 of 2022

Date	Order with signature of Judge(s)
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1. For orders as to maintainability of suit.
2. For hearing of CMA No.12608/2024.

27.09.2024

Mr. Muneer Ahmed, advocate for the plaintiffs.
Mr. Yousuf Moulvi, advocate and Ms. Raafia Murtaza, advocate for the defendants No.1 & 2.
Ms. Rehmat-un-Nisa, advocate for the defendant No.4/CBF.
Ms. Bisma Memon, advocate for the defendant.

Paragraph 19 of the memorandum of plaint pleads the cause of action and explicates that the same arose in 2008. The said paragraph also makes reference to the cause having accrued again, without prejudice to the tenancy thereof, in 2013, 2014 and 2015 also. Be that as it may, Mr. Yousuf Moulvi points out that the suit is hopelessly time barred per Article 120 of the Schedule to the Limitation Act 1908; since the limitation is 6 years and the suit was preferred in 2022. It is also identified that such infirmity was observed by the Court and the Court's objection as to maintainability remains highlighted since 2023.

Interestingly, the plaintiff's learned counsel did not deny the aforesaid, however, seeks to amend the plaint vide an application filed in 2024 to supplement the pleaded cause of action in an effort to mitigate the infirmity herein. The ground pleaded in the application is that the dates upon which the cause was stated to have accrued was a mistake.

The law requires Courts to first determine whether the proceedings filed there before are within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard¹. The Superior Courts have held that proceedings barred by even a day could be dismissed²; once time begins to run, it runs continuously³; a bar of limitation creates vested rights in favour of the other party⁴; if a matter was time barred then it is to be dismissed without touching upon merits⁵; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁶. Perusal of the memorandum of plaint demonstrates that the suit is time barred and no cavil to the same is articulated by the plaintiff's counsel.

The maintainability of suit is the question that is to be determined by the court at the very onset and whilst the law provisions for amendment of pleadings etc., the same ought not to be done to the manifest detriment

¹ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

² 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

³ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁴ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁵ *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.

⁶ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

of defendant or with a specific view to defeat the defense raised by the defendant. The suit is admittedly barred by limitation and it is unreasonable to comprehend that such a manifest infirmity escaped attention of the plaintiff until the same was identified by the Court or the defendant.

Learned counsel for the plaintiff was confronted with the aforesaid and queried as to why plaint may not be rejected under Order VII Rule 11(d) CPC. He remained unable to articulate any reasoning or rationale, save as recorded supra. Therefore, plaint is hereby rejected.

Judge

Khuhro/PA