

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.338 of 2023

Muhammad Aslam
Versus
Ahsan Ali through Legal Heirs and another

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

1. For order on office objection.
2. For hearing of main case.
3. For hearing of CMA No.4223/2023 (stay).

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Dated 01.02.2024

Mr. Maaz Waheed, Advocate for the Appellant.

Mr. Irfan Hassan, Advocate for Respondent No.2/KMC.

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Mr. Muhammad Zareen Khan, Advocate files vakalatnama
on behalf of legal heirs of Respondent No.1, taken on record.

We have heard Mr. Maaz Waheed, learned counsel for the
appellant and perused the record.

The dispute has a chequered history; as far back as in 2000
a suit No.1035/2000 was filed ten years after on a cause that
triggered on 17.07.1990. The suit was for declaration, possession,
permanent injunction and for a claim of Rs.5 crore, perhaps for
damages. The suit was decreed on 16.12.2003, which decree was
set aside in J.M. No.24/2004 vide order dated 28.03.2005 by
consent. Eventually, the suit was dismissed on account of non-
presence of the plaintiff/ appellant herein, on 12.12.2005.

After a lapse of twelve years, ten months and nine days of
the suit's dismissal and then suit No.2059/2018 was filed on the
same cause of action that is "17.07.1990", which is the same date
which gave a cause to the appellant when the earlier suit was filed.

Though the learned Single Judge was not apprised of the fact that it was not the decree, but a dismissal decree that was passed on 12.12.2005 when it was dismissed for non-prosecution, but nonetheless it ended up as a dismissal of the suit and decree was drawn accordingly.

The other side of the picture is that on the strength of a document which, per learned counsel, was not available at the relevant time, was made subject matter of the instant suit when its cancellation was sought in terms of prayer clause-b of suit No.2059/2018. It is a document in the shape of a lease executed by Karachi Metropolitan Corporation on 17.04.1993. The document was otherwise available for its cancellation in the year 1993 and subsequently when earlier suit referred above was filed in 2020. Nonetheless, it is pleaded that it was not in the knowledge of the appellant that the said document was executed, as the Karachi Metropolitan Corporation never informed the appellant about the existence of the said document per letter attached. The counsel for the appellant had perhaps no answer to the second proposition of law that the suit was also barred by time on any counts urged during arguments.

If the time was not triggered on 17.07.1990, for instant suit, which is disclosed in the plaint, then no extraneous material could be looked into for counting the time for calculating the limitation. The cause of action in the instant suit is disclosed as 17.07.1990, nonetheless it is suggested by Mr. Maaz Waheed that at the most the date of the dismissal of suit for non-prosecution could have been counted as a date of cause of this suit (suit No.2059/2018), as it was dismissed for non-prosecution and nothing could have preclude the appellant from filing fresh suit as it was dismissed for

non-prosecution. While this proposition is not debated, even then the suit is barred by time, as the subsequent suit was filed after almost twelve years, ten months and nine days of such dismissal of suit. As suggested by Mr. Maaz that Article 142 of the Limitation Act would apply which provides 12 years, the instant suit is still beyond twelve years, notwithstanding that the twelve years of limitation would still be a debatable proposition considering facts of the case.

In addition to it, neither any application for condonation of delay was filed before the learned single Judge explaining each and every day that is twelve years, ten months and nine days, nor any application in this regard was filed before this Court for appropriate orders, hence no interference is required and the appeal is dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul