

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

1st Appeal No. 88 of 2024

Date	Order with signature of the Judge
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Fresh Case

- 1 For orders on Misc. No. 1555 of 2024 (U/A)
- 2 For orders on Misc. No. of 2024 (Ex/App)
- 3, For orders on Misc. No. _____ of 2024 (Stay/App)
4. For hearing of main case.

07.08.2024 Mr. Ghulam Shabbir Pathan, Advocate for
the Petitioner

Through this first appeal under Section 96 of the Code of Civil Procedure, 1908 (“**C.P.C**”), the Plaintiff (**appellant herein**) has impugned Orderthe dated 22.5.2024, passed by learned District Judge, Karachi South (“**the trial Court**”), in Summary Suit No. Nil of 2024, through which the trial Court Suo-Moto rejected the plaint of summary suit as being barred by limitation.

2. The appellant filed a suit to recover PKR 23,850,000 from the respondent based on 11(eleven) cheques issued between December 20, 2017 and December 28, 2018. The respondent, who ran a travel agency named Prime Travel Agency, received this amount from the appellant in the form of Pakistani rupees and euros at different times. The respondent had promised to return the amount within four to five months. However, when the respondent failed to return the amount, the appellant deposited one of the cheques dated 27.11.2018 for PKR 850,000 on 16.5.2019. The cheque was dishonoured, leading the appellant to lodge an

FIR No.157/2019 under Section 489-F PPC at the Frere Police Station in Karachi. During the pendency of the criminal case, the appellant and respondent reached a compromise, which was documented in a Memorandum of Undertaking (MoU) dated 14.02.2020. Both parties moved an application under Section 249 Cr.PC, which was granted on 26.02.2020. Despite the execution of the MoU, the respondent failed to return the appellant's money, prompting the appellant to file the suit.

3. Upon the submission of the plaint, the appellant was notified by the learned trial court to present arguments on the issue of the suit's maintainability, considering it might be time-barred. After hearing the appellant, the learned trial court rejected the plaint of the summary suit vide impugned Order.

4. At the outset, the counsel for the appellant contended that the learned trial Court did not take into account the fact that FIR No.157/2019 was registered by the appellant in response to the dishonour of the cheque. This criminal case was pending before the concerned Magistrate, during which the respondent entered into an MoU to return the amount but failed to fulfil the terms and conditions of the MoU. As a result, the appellant filed an application to reopen the criminal case on March 24, 2022, granted on March 12, 2023. Therefore, the proceedings are ongoing, and any delay should be condoned. The counsel argued that the trial court should decide the entire suit after recording evidence supported by relevant documents. He concluded that the learned trial court committed an error by summarily rejecting the plaint without considering the appellant's bonafide claim. Therefore, he prayed that the impugned Order be set aside and the suit be remanded back to the trial Court with directions to decide the suit on its merits.

5. We have heard the arguments advanced by learned Counsel for the appellant and minutely perused the material available on record, including the case law cited at the bar.

6. Upon meticulous scrutiny of the dossier, it is unequivocally manifest that a Memorandum of Understanding (MoU) was consummated and endorsed by both the appellant and respondent on 14.02.2020 and subsequently tendered before the Court of learned Magistrate, who passed the Order on 26.02.2020. A suit under Order XXXVII C.P.C could be instituted within a 03 years from the date the amount becomes due, in accordance with Section 64-A of the Limitation Act, 1908. Furthermore, as per subsection (1) of section 19, in the event that an acknowledgement of liability pertaining to any property or right has been documented in writing and signed by the party against whom such property or right is claimed prior to the expiration of the prescribed period for a suit or application, a fresh period of limitation shall be computed from the time when the acknowledgement was thus signed. Even if we construe the aforementioned MoU as a written acknowledgement, which was signed by the respondent on 14.2.2020 and the learned Magistrate passed the Order on 26.02.2020, as per the contents of the said MoU, the appellant will abstain from demanding the return of his loan amount up to six months from the date of signing the MoU. Even if we consider that the 03 years period would commence after six months of signing the MoU dated 14.02.2020, which starts from 14.8.2020 and would culminate on 14.8.2023, the present suit was instituted by the appellant on 13.5.2024, after a delay of approximately more than eight months beyond the prescribed period. For this delay, no plausible explanation has been furnished by the appellant, and merely adopting the stance that he was preoccupied with reopening the criminal proceedings, which

was in continuation of civil proceedings, does not constitute a valid ground to condone such delay.

7. In the circumstances, the learned trial Court rightly dismissed the suit for being barred by limitation. The appellant had not made any case for interference in the impugned Order in this appeal. This appeal, devoid of merit, is **dismissed** in *limine*.

JUDGE

JUDGE