

THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Abdul Mobeen Lakho.

High Court Appeal No.303 of 2024
[Syed Shah Rafiuddin v. Shah Abdul Raheem and others]

Appellant : Syed Shah Rafiuddin through Mr.
Dildar Khan Jahangiri, Advocate.

Respondents : Nemo.

Date of hearing : 22-11-2024

Date of order : 22-11-2024

JUDGMENT

Adnan Iqbal Chaudhry J. - This High Court Appeal is from order dated 07.08.2024 passed in Summary Suit No. 2055/2018 by a learned single Judge, dismissing an application under section 5 of the Limitation Act, 1908 and then dismissing the suit as time-barred.

2. It was the case of the Appellant/plaintiff that in furtherance of an agreement to settle the debt of Rs. 317,476,000/- owed to him by the Respondents, the Respondent No.1 issued five (5) post-dated cheques totaling Rs. 150,000,000/-; that first of those cheques, the one dated 15.07.2014, was presented to the bank on or about 28.11.2014, but was dishonoured with the note that the account was closed; that before the other four cheques could not be presented to the bank, both the Appellant and the Respondents were arrested by the NAB and the original cheques were also taken into custody; that upon being released by the NAB, the Appellant filed suit on 14.11.2017 under Order XXXVII CPC for recovery of Rs. 150,000,000/- being the sum of the aforesaid five (5) cheques. It appears that the Appellant/plaintiff was advised that recovery on the cheque dated 15.07.2014 was time-barred, and therefore he made an application under section 5 of the

Limitation Act to the extent of that one cheque dated 15.07.2014. The learned single Judge held that section 5 of the Limitation Act was not applicable to condone delay in instituting a suit, and while dismissing such application, also dismissed the suit.

3. Learned counsel concedes that section 5 of the Limitation Act cannot be invoked for a time-barred suit. However, he submits firstly that the application by the Appellant/plaintiff under section 5 had been filed under the misconception that recovery on the cheque dated 15.07.2014 was time-barred when it was actually not, as limitation of three years was to be computed from 28.11.2014 *viz.* the date of dishonor of the cheque. His second submission is that even if the claim on the cheque dated 15.07.2014 was time-barred, the claim on the other four cheques was not, and therefore the suit could not have been dismissed.

4. Heard learned counsel and perused the record.

5. There can be no cavil that if a suit or relief is time-barred then section 5 of the Limitation Act cannot be pressed into service to extend or condone limitation. For a suit under Order XXXVII CPC, limitation is governed by Article 64-A of the Limitation Act, 1908, which prescribes a period of 3 years from the date when the debt becomes payable.¹

6. Apparently, in dismissing the suit the learned single Judge was under the impression that the claim in the suit was only in respect of one cheque dated 15.07.2014. In fact, as evident from para 10 of the plaint, the claim in the suit was in respect of five cheques of different dates. Though the dishonor of each cheque may constitute a separate cause of action, Order II Rule 3 CPC permits a plaintiff to join those causes of action in one suit if the defendant is the same. Therefore, even if the claim on one of the cheques was time-barred, the suit could not have been dismissed for the claim on the other four cheques

¹ *Bank of India Ltd. v. Muhammad Ashraf*, PLD 1965 (W.P.) Karachi 69.

which appeared to be within limitation. In our view, that suffices for allowing the appeal.

7. We are conscious that the other four cheques were never presented for payment as mandated by section 64 of the Negotiable Instruments Act, 1881, and therefore a question arises to the maintainability of the suit on those four cheques. However, section 64 is subject to section 76 of the Negotiable Instruments Act which lists circumstances in which presentment becomes unnecessary, and it has yet to be considered in the suit whether presentment of those four cheques was unnecessary when there was evidence that the bank account on which those cheques were drawn had been closed.

8. The other submission of learned counsel is that that the application under section 5 of the Limitation Act was a mistake, as limitation for the claim on the cheque dated 15.07.2014 was to be computed from the date of its dishonor *viz.* 28.11.2014, thus making that claim within limitation. In our view, the submission does not address Article 64-A of the Limitation Act where the *terminus a quo* is “when the debt becomes payable”. However, since this aspect of the matter was not urged before the single Judge, we refrain from expressing any further opinion. The Appellant may urge that point before the learned single Judge.

9. With the above observations, the appeal is allowed. The order dated 07.08.2024 passed in Suit No. 2055/2018, to the extent of dismissal of the suit, is set-aside and the suit is restored.

JUDGE

JUDGE

NADEEM*