

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.61 of 2024

[Furqan Ahmed Sheikh Vs. Province of Sindh & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui C.J.

Mr. Justice Jawad Akbar Sarwana

Hearing case (Priority)

1. For hearing of main case.
2. For hearing of CMA No.415/2024 (Stay).

10.12.2024

Mr. Rehan Kayani, Advocate for the appellant.
Mr. Saad Fayaz, Advocate for respondent No.6.
Mr. Mehran Khan, A.A.G. Sindh.

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Muhammad Shafi Siddiqui, C.J: This appeal has arisen out of an order whereby the plaint was rejected. The appellant (Furqan Ahmed Shaikh) filed Suit No.2811/2021 against respondent No.5 (Nasir Javed) and others for performance of an agreement dated 29.01.2016 which requires performance in nine months, whereas the suit was filed on 29.11.2021 on the pleadings that time was novated. Learned single Judge while relying on the case of Florida Builders reported as PLD 2012 Supreme Court 247 rejected the plaint ignoring the plea of novation as far as time constraint is concerned.

2. The brief facts are that after entering into agreement of sale of 29.01.2016, per pleadings, there was some dispute between the previous seller (Muhammad Qasim Raees) and purchaser i.e. respondent No.5 which ended up in the shape of a suit bearing No.986/2017. It seems that the dispute between previous seller / purchaser was on account of nonpayment of a part of sale consideration, and consequently, the possession was not handed over; hence though the title was drawn on 18.04.2014 by respondent No.5 but the possession was, by then, yet to be delivered per pleadings of the referred plaint.

3. Present plaint, however, discussed the events disclosed above which allegedly novated the performance time. This (apparently pleaded and argued) enabled the appellant / plaintiff

in Suit No.2811/2021 to satisfy themselves from not approaching the Court of law being given a comfort zone, in terms of paras 7 to 10 of the plaint. There was an issue of NOC which could not be issued perhaps on account of such nonpayment and that impediment could be seen in terms of paras 7, 8, 9 and 10 of the plaint. It appears that an attempt was made to show that the exact terms to perform the agreement were novated and altered to the extent that it may have been extended till such time an NOC was made available for sale from the concerned revenue authority and handing over of possession to appellant's seller. It is alleged in the plaint that the appellant obtained copies of the pleadings of Suit No.986/2017 filed by Muhammad Qasim Raees (previous seller) whereas the previous seller stated that the physical possession of the suit plot was lying with him and he apprehended that respondent No.5 did not want to pay the balance amount and take possession of the suit land, etc.

4. Be that as it may, the impugned order is heavily dependent on one part of the case of Florida Builders which also in terms of para 5 enabled a buyer to set his case in either of the limbs of Article 113 of the Limitation Act. The first limb of Article 113 sets a date of performance from the date as set in the agreement and if no such date is fixed then it is reckoned from the date of the refusal. The plaint apparently took us to tentative understanding that there was some novation in terms of paras 7 to 10 and that could well be read as if the seller urged the plaintiff to wait till such NOC is obtained and / or that respondent No.5 was handed over possession of the suit land by Muhammad Qasim Raees (previous seller) as per Suit No.986/2017 and that has not at all been considered by the learned single Judge whereas the case of Florida Builders caters for the exemption of limb-1 of Article 113 in case it is made out.

5. Florida case thus provides the exemption i.e. the exclusion and the enlargement from/of the period of limitation, but it is restricted only if there is a change in the date fixed by the parties or such date is dispensed with by them, but through an express novation agreement; or through an acknowledgment. While any such agreement could be in writing, the agreement of such nature could also be oral, which could extend the time between the parties

for the performance of the agreement and that part of the pleadings perhaps skipped the attention of and an inference could have been drawn by the learned single Judge when he considered the application for rejection of the plaint. It is universal principle that for rejection of plaint, pleadings of plaint count most. While considering the pleadings of the parties and affidavit in support of the injunction application, we are of the view that the exemption provided in the Florida case itself provides a room and that has enabled the plaintiff to seek the probe of alleged extension by way of a trial and impugned order has curtailed such right. Hence we deem it appropriate to set aside the impugned order, remand the case to the trial Court for the settlement of issues including the issue of limitation if so desired by the parties and the matter shall then be taken to its logical end on merits. The appeal stands disposed of alongwith listed application.

CHIEF JUSTICE

JUDGE

Asif