

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 327 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[Abdullah Soomro V. Hajjan Haseena Begum & others]

Date of hearing : 24.02.2025
Date of decision : 24.02.2025
Appellant : Through Mr. S. Ali Ahmed, Tariq, Advocate
Respondent No.1 : Through Mr. S. Zaeem Haider Mussavi, Advocate.

JUDGMENT

Muhammad Iqbal Kalhoro, J: This Appeal has been filed against impugned order dated 04.09.2024, passed by the learned Single Judge of this Court on Original Side, rejecting the Plaint under Order VII Rule 11 CPC, 1908 on the ground that the Suit for Specific Performance, Declaration, Injunction, Cancellation of Documents and Damages was barred by time under Article 113 of the Limitation Act, 1908.

2. The learned Single Judge apparently for considering limitation under Article 113 of the Limitation Act, 1908 has referred to execution of date of original sale agreement i.e. 27.02.2002 as the relevant date when the cause of action accrued to the Plaintiff to file the Suit. However, a perusal of Paragraph 9 of the Plaint reveals that initially, earnest money of Rs.2,30,000/- (Rupees Two Lac and Thirty Thousand only), out of total sale consideration of Rs.20,00,000/- (Rupees Two Million only), was given to the Defendants by the Plaintiff on the date of execution of sale agreement. However, subsequently, the first sale agreement was substituted by another agreement dated 30.10.2002 and thereafter on different dates, the Plaintiff kept on giving certain amounts to the Defendants out of total sale consideration. As per Para No.9, the last payment of Rs.10,000/- (Rupees Tend Thousand only) out of sale consideration was given to the Defendants on 16.02.2014. Now, the remaining sale consideration is only Rs.8,80,000/- (Rupees Eight Lac and Eighty Thousand only). This fact reflects that Defendants after first sale agreement have been receiving the amount from the Plaintiff to sale consideration up to the year 2014. Only in May, 2019, as per plaint, after only exchange of Legal Notices between the parties, the Plaintiff came to know of refusal of the Defendants to perform their part in the sale agreement.

3. While rejecting the Plaint, the learned Single Judge has not referred to these purported transactions in the impugned order, nor the fact that the point of limitation is a mixed question of facts and law. When the Plaintiff has alleged refusal by the Defendants to perform their part of agreement in the year 2019, and it is denied by the Defendants, it would require evidence to determine the date of refusal or otherwise, and consequently the question whether the Suit is barred by time or not. The Plaintiff's assertions in this regard cannot be summarily rejected without affording him an opportunity to establish the same.

4. Then, the impugned order does not show either any reasoning in respect of second limb of Article 113 of the Limitation Act, 1908 which says that if no date is fixed in the agreement for execution of Specific Performance, then the date for filing a Suit in the Court will start on refusal by the Defendants to perform their part in the agreement. It is an admitted fact that in all the agreements executed between the parties, the time of final execution or receiving the final payment has not been mentioned, nor it is stated that time is essence of the agreement. The memo of Plaint shows that there was certain dispute over payment of electricity bills etc. between the parties, which needed to be sorted out before the final settlement was to be struck. Hence, it took a long time for the parties to form a final opinion about going ahead with the sale agreements or not. These all facts are asserted on the one hand and denied on the other. Until and unless they are put in juxtaposition and appreciated, apparently no conclusion can be drawn. Therefore, we are of the view, that while rejecting the Plaint, the learned Single Judge has erred in concluding that the Suit is barred by Article 113 of the Limitation Act, 1908.

5. In view of above, we set aside the impugned order and remand the case to the learned Single Judge for proceedings on merit by framing the first issue on limitation. However, the Defendants would still be at liberty to maintain an application under Order VII Rule 11, CPC 1908, if it is filed on some other ground than the limitation.

This Appeal is disposed of accordingly.

JUDGE

JUDGE

M. Khan