

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
IInd Appeal No.32 of 2005

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DATE                      ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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1.     For hearing of CMA No.2870/2005

2.     For Regular hearing

12.10.2015

Mr. Zayyad Khan Abbasi, advocate for the Appellant.  
None present for the Respondent.

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**NAZAR AKBER J:**        This second appeal was filed on 23.07.2005 against concurrent findings whereby Civil Suit No.127/2002 was dismissed on 14.10.2004 by Sr. Civil Judge, Malir, and the appeal preferred bearing Civil Appeal No.49/2004 was also dismissed on 19.04.2005 by IInd Additional District Judge, Malir.

Briefly stated the facts of the case are that as per plaint, the Respondent as owner of shop No.G-26/A-B-2 Al-Asif Square Scheme No.33, Karachi, (hereinafter the demised shop) agreed to sale the demised shop to the Appellant in consideration of Rs.500,000/-. It was also averred that the Appellant paid a sum of Rs.4,00,000/- to the Respondent at the time of agreement to sell on 26.12.1998 and the balance amount of sale consideration was agreed to be paid at the time of registration of sale of the shop. The possession was also denied to have been handed over to him by the respondent but thereafter the respondent refused to register the sale deed of the demised shop in favour of the appellant.

The Respondent Kanya Lal Gauba filed written statement denying the claim of Appellant stating that he has not entered into any sale transaction with appellant, sale agreement and receipt of payment produced by the appellant are forged and fabricated and do not bear his signature. Respondent stated that the fact is that the demised shop

was rented to one Zahid Burki who defaulted in payment of rent for a long time and the respondent filed the rent case against the said tenant and in order to save and help the said tenant, the appellant filed the civil suit.

The Trial Court from the pleadings of the parties framed the following issues:-

- i. Whether the suit is time barred?
- ii. Whether the sale agreement & receipt are fabricated and do not bear the signature of the Defendant?
- iii. Whether the suit is filed malafidely in order to save Zahid Burki?
- iv. Whether the Plaintiff is entitled to any relief?
- v. What should the decree be?

The parties led evidence in support of their claim. The suit was dismissed as the same was found not maintainable, therefore, issue No.1 was decided in the affirmative. The appellant preferred Civil Appeal which also met the same fate.

3. I have heard learned counsel for the appellant and perused the record.

The suit has been dismissed by the learned trial court on the ground that the suit was not maintainable as barred by limitation. Learned counsel for the appellants has failed to point out any illegality in coming to the conclusion on law points decided against the appellants by two courts below.

The burden of proof of issue No.1 was on the appellant on the question of limitation. Admittedly the sale agreement was executed on 25.12.1998 and the suit for specific performance was presented on

14.11.2002 and it should have been filed on or before 25.12.2001. since there was not specific refusal by the respondents to execute the sale in favour of the appellant. The trial has referred to para-10 of the plaint wherein the applicant has stated that respondent has declined execution of sale deed on 01.01.2002. The appellant has neither sent legal notice prior to the said date nor explain before whom such refusal was made by the respondent. Even in evidence none has come forward to say that the respondent has refused execution of sale in his favour. The bald statement of appellant without corroborative evidence has no sanctity of law and therefore, rightly held by the trial Court that the suit was time barred.

On issue No.2, again the burden was on the applicant and he failed to establish execution of sale agreement by producing evidence in terms of Section 79 of the Qanoon-e-Shahadat, Order, 1984. Similarly applicant he has not even produced proof of payment of Rs.400,000/- by producing receipt and witness of receipt were also not produced.

This second appeal under the foregoing circumstances merits no consideration; therefore, same is dismissed with no order as to costs.

J U D G E