

THE HIGH COURT OF SINDH KARACHI

C.P. No. S-794 of 2025

[Abdullah Raja vs. Sultan Rehman & others]

Petitioner : Abdullah Raja
through Mr. Muhammad Bilal Qureshi,
Advocate.

Respondent No.1 : Sultan Rehman
through Mr. Imtiaz Ali Shah, Advocate.

Respondent Nos.2 & 3 : Mr. Muhammad Hisham Mahar, AAG

Date of hearing : 27.10.2026

Date of decision : 27.10.2026

ORDER

Zulfiqar Ali Sangi J.- Through the instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 17.02.2025 passed by the learned Vth Additional District and Sessions Judge, Karachi South, in Civil Revision No.146/2024, whereby the revision preferred by the petitioner against the order dated 03.10.2024 passed by the learned VIIIth Senior Civil Judge, Karachi South, dismissing his application under Order VII Rule 11, CPC, in Civil Suit No.842/2023, was dismissed.

2. The controversy arises out of a suit instituted by respondent No.1 for specific performance of an alleged sale agreement dated 15.09.1998, along with the reliefs of declaration and permanent injunction in respect of Bungalow No.65/11/I, Street No.15, Off Khayaban-e-Badban, Phase V, Defence Housing Authority, Karachi, measuring 484.37 square yards. The case of respondent No.1 is that the property was agreed to be sold to him for a consideration of Rs.70,00,000/-, possession thereof was delivered to him, and special and general powers of attorney were executed in his favour. According to him, despite repeated requests, the petitioner failed to execute the requisite B-lease, compelling him to institute the suit in the year 2023. The petitioner, arrayed as defendant No.1 in the suit, disputes the execution and genuineness of the alleged sale agreement and the accompanying documents. He asserts that he is the lawful owner of the subject property by virtue of title documents executed in his favour

by the Pakistan Defence Officers Housing Authority (PDOHA), and that no subsequent sale transaction was ever entered into with respondent No.1. The principal objection raised by the petitioner is that the alleged agreement dates back to 15.09.1998, whereas the suit was instituted in 2023, after an extraordinary lapse of approximately twenty-five years, and is, therefore, barred by limitation under Article 113 of the Limitation Act, 1908, warranting rejection of the plaint under Order VII Rule 11, CPC.

3. The record reflects that the petitioner moved an application under Order VII Rule 11, CPC, before the learned trial Court. The application was dismissed vide order dated 03.10.2024, principally on the ground that no specific date for performance had been stipulated in the alleged agreement and that, according to the plaint, refusal to perform the contract occurred in 2023. The learned revisional Court, vide impugned order dated 17.02.2025, maintained the said order, observing that the question of limitation involved disputed questions of law and fact requiring evidence.

4. Learned counsel for the petitioner contended that the learned Courts below failed to appreciate the scope and applicability of Article 113 of the Limitation Act, 1908. He argued that the absence of a date fixed for performance could not confer an indefinite period upon respondent No.1 to institute a suit for specific performance. He further submitted that the alleged agreement was executed in 1998, whereas the suit was instituted in 2023, without any legally sustainable explanation for the prolonged delay. He also referred to paragraph 12 of the plaint, wherein the cause of action was stated to have arisen, inter alia, upon execution of the alleged agreement, and maintained that the pleadings, read as a whole, disclosed a claim barred by limitation. He accordingly prayed for setting aside the impugned orders and rejection of the plaint. Learned counsel for the Petitioner has relied upon case law reported as PLD 2024 SC 1268 (Akhtar Nasir Ahmed vs. Province of Punjab), 2022 SCMR 1275 (Muhammad Afzal Khan vs. Muhammad Aslam, PLD 2019 SC 704 (Mst. KUBRA AMJAD vs. Mst. YASMEEN TARIQ and others, 2022 SCMR 1074 (MUHAMMAD IFTIKHAR ABBASI vs. Mst. NAHEED BEGUM and others, 2022 SCMR 933 (KHUDADAD vs. Syed GHAZANFAR ALI SHAH alias S. INAAM HUSSAIN and others, 2007 SCMR 1186 (ABDUL GHANI vs. MUHAMMAD SHAFI and 4 others), 2024 CLC 347 (Shaikh MUHAMMAD SABIR vs. Messrs K.K. BUILDERS (PVT.) LIMITED and

others), 2021 CLC 2031 (NAEEM AKHTAR KHOKHAR and 7 others vs. MOHAMMAD RAUF and 12 others), PLD 2025 Sindh 53 (MUMTAZ HUSSAIN SIDDIQUI vs. MUHAMMAD TAHIR), PLD 2025 SC 24 (MISREE KHAN and others vs. ABDUL GHAFOR and others), PLD 2024 SC 1108 (Mst. REHMAT BEGUM vs. MEHFOOZ AHMED and others), PLD 2008 SC 371 (PAKISTAN AGRICULTURAL STORAGE AND SERVICES CORPORATION vs Mian ABDUL LATIF and others, 2007 SCMR 741 (Raja ALI SHAN vs. Messrs ESSEM HOTEL LIMITED and others), 2017 CLC 40 (AHMED NAWAZ JAGIRANI vs. SINDH INDUSTRIAL TRADING ESTATE LTD.), and Suit No.1380 of 2007)

5. Conversely, learned counsel for respondent No.1 supported the impugned orders, contending that the alleged agreement did not prescribe any specific date for performance and that the cause of action arose when the petitioner allegedly refused to execute the requisite B-lease. According to him, the suit was instituted within three years of such refusal, and the question of limitation could not be determined conclusively without recording evidence. Learned AAG appearing for the official respondents also supported the impugned orders and submitted that the relevant record was available with their respective departments. Learned counsel for the Respondent No.1 has relied upon the case law reported as 2022 CLC 1740 (MUHAMMAD AYUB and 14 others vs. SALIM and 6 others) and 2024 MLD 1810 (MUHAMMAD AFZAL and others vs. ABDUL HAMEED and others).

6. I have heard learned counsel for the parties and examined the material available on record, including the plaint, the application under Order VII Rule 11, CPC, the orders passed by the learned Courts below, and the submissions advanced at the bar.

7. The controversy requiring determination is whether the plaint, when read as a whole and accepted on its own terms, discloses that the suit is barred by limitation so as to attract Order VII Rule 11(d), CPC, or whether the objection raised by the petitioner depends upon disputed questions requiring determination during trial. Article 113 of the Limitation Act, 1908, prescribes a period of three years for a suit for specific performance of a contract. The period commences from the date fixed for performance or, where no such date is fixed, from the date when the plaintiff has notice that performance is refused. Thus, where no date for performance is specified, the relevant starting point is the date on which the plaintiff has notice of refusal to perform the

contract. The application of this provision must be determined in accordance with the statutory language, the terms of the alleged agreement, and the material averments contained in the plaint.

8. It is settled that, while considering an application under Order VII Rule 11, CPC, the Court is ordinarily required to examine the plaint as a whole, together with the documents relied upon by the plaintiff, and cannot determine the matter by importing disputed defences or embarking upon an assessment of evidence. Nevertheless, where a suit appears from the statements contained in the plaint to be barred by law, the Court is competent, and indeed obliged, to examine such objection at the threshold. The mere assertion that a question of limitation involves mixed questions of law and fact does not, by itself, preclude rejection of a plaint where the statutory bar is apparent from the plaintiff's own pleadings. In the present case, the alleged agreement is stated to have been executed on 15.09.1998, whereas the suit was instituted in 2023. The plaint also contains assertions regarding repeated approaches for execution of the B-lease, alleged assurances of future performance, and eventual refusal attributed to the petitioner. The learned revisional Court placed reliance, *inter alia*, upon the petitioner's letter dated 11.09.2023 addressed to the PDOHA for freezing the plot file and treated the circumstances surrounding that letter as indicative of refusal in 2023. However, the date of the said letter, by itself, does not conclusively establish that the statutory period of limitation commenced only in 2023. The relevant inquiry is whether the plaint contains material averments demonstrating when respondent No.1 acquired notice of refusal to perform the alleged contract and whether, on the basis of the pleaded facts, the suit was instituted within the prescribed period. The alleged repeated demands, assurances, and circumstances of refusal must be considered in their proper legal context. Equally, the mere fact that the agreement is of 1998 cannot, in isolation, establish that the suit is barred, unless the applicable statutory requirements are satisfied.

9. It is also relevant that the petitioner disputes the execution and genuineness of the alleged sale agreement and the accompanying documents, while respondent No.1 asserts the validity of the transaction and claims entitlement to specific performance. These rival assertions concern matters which fall within the domain of the competent civil Court. The constitutional jurisdiction of this Court cannot be converted into a forum for conducting a factual inquiry into

the genuineness of the alleged transaction or for substituting its own assessment of disputed facts for that of the competent civil Court, particularly when the proceedings remain pending. The scope of constitutional jurisdiction under Article 199 is supervisory and is not intended to provide another tier of appeal against every interlocutory order passed by a competent civil Court. Interference is warranted where an order suffers from want or excess of jurisdiction, material illegality, patent misreading or non-reading of the record, or an arbitrary exercise of judicial discretion resulting in a failure of justice. A mere possibility of taking a different view on the material before the Court does not, by itself, justify interference in constitutional jurisdiction.

10. In the instant matter, the learned trial Court considered the objection regarding limitation and concluded that, in the absence of a date fixed for performance, the question required consideration with reference to the alleged refusal pleaded by respondent No.1. The learned revisional Court examined the matter and maintained the order of the trial Court, holding that the controversy could not appropriately be resolved at the preliminary stage without consideration of the relevant factual circumstances. The petitioner has not been able to demonstrate that the said approach is so arbitrary, perverse, or contrary to the governing law as to warrant interference by this Court in its constitutional jurisdiction.

11. The contention that the lapse of approximately twenty-five years between the execution of the alleged agreement and the institution of the suit necessarily renders the claim time-barred cannot be accepted as an independent ground for rejection of the plaint without examining the matter in the light of the statutory parameters prescribed under Article 113 of the Limitation Act, 1908. The question of limitation must be determined with reference to the date fixed for performance or, where no such date has been stipulated, the date on which the plaintiff had notice that performance was refused, as discernible from the pleadings and other material legally available for consideration at the relevant stage. Conversely, the mere assertion by respondent No.1 that the petitioner refused to perform the alleged agreement in the year 2023 does not, in itself, conclusively establish that the suit was instituted within the prescribed period of limitation, particularly where the circumstances preceding such alleged refusal and the conduct of the parties are also relevant to the controversy. The issue must,

therefore, be examined in the context of the pleadings as a whole, the applicable statutory provisions, and such evidence as may lawfully be required for its determination. It is, however, a significant circumstance that the possession of the disputed property is admittedly with respondent No.1 since the year 1998. This fact is further corroborated by the petitioner's own pleadings in a separate suit instituted by him for recovery of possession of the same property, wherein he acknowledged that possession had been handed over to respondent No.1 in the year 1998. Such an admission, being attributable to the petitioner himself, constitutes a relevant circumstance for consideration while examining the nature of the transaction between the parties, their respective claims, and the circumstances in which the alleged agreement was acted upon. Nevertheless, the factum of possession, even when considered alongside the petitioner's admission in the separate suit, cannot, by itself, conclusively determine either the genuineness of the alleged agreement or the question of limitation; rather, its legal effect must be assessed in conjunction with the remaining pleadings and the applicable law. In these circumstances, the mere passage of time, on the one hand, and the continued possession of respondent No.1 since 1998, on the other, cannot be considered in isolation so as to conclusively resolve the controversy at the present stage. The petitioner was required to demonstrate that the impugned orders suffered from such patent illegality, material irregularity, misapplication of law, or jurisdictional defect as would warrant interference by this Court in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Having regard to the material available on record, no such exceptional circumstance has been established. Consequently, the petitioner has failed to make out a sufficient ground for setting aside the concurrent orders passed by the learned Courts below, which do not warrant interference in the constitutional jurisdiction of this Court.

12. I am, therefore, of the considered view that no case has been made out for interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned order dated 17.02.2025 passed by the learned Vth Additional District and Sessions Judge, Karachi South, in Civil Revision No.146/2024, does not call for interference in the circumstances of the present case. Consequently, the order dated 03.10.2024 passed by the learned VIIIth Senior Civil

Judge, Karachi South, dismissing the petitioner's application under Order VII Rule 11, CPC, also remains undisturbed. Accordingly, the instant constitutional petition is **dismissed**. The orders passed by the learned Courts below are maintained.

13. It is, however, clarified that the observations made herein are confined to the controversy arising out of the present constitutional petition and shall not prejudice either party at the trial of Civil Suit No.842/2023. The learned trial Court shall proceed with the suit in accordance with law and determine all questions arising therein, including the issue of limitation, on the basis of the pleadings, applicable law, and evidence, wherever required, without being influenced by any observation herein beyond what is necessary for disposal of this petition.

14. There shall be no order as to costs.

JUDGE