

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.209 of 2011

Appellant : Civil Aviation Authority
Mr. Rajesh Kumar Khagaija, Advocate

Respondents : M/s. Blazon Advertising and other
Nemo.

Date of Hearing : 17.09.2026

Date of Judgment: 17.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant High Court Appeal, the Appellant has called in question the short order dated 15.11.2011, followed by the detailed order dated 18.11.2011, passed by the learned Single Judge of this Court in Suit No.1008 of 2002, whereby the application filed by Respondent No.2 under Order VII Rule 11 CPC was allowed and the plaint of the Appellant was rejected on the ground of limitation.

2. Briefly stated, the Appellant/Civil Aviation Authority is an authority established under the Pakistan Civil Aviation Ordinance, 1982, inter alia, for the promotion and regulation of civil aviation activities and for the development of infrastructure necessary for safe, efficient, adequate, economical and coordinated civil air transport services in Pakistan. The Appellant granted a licence to M/s. Blazon (Pvt.) Ltd. for the installation and operation of Tri-vision Displays pursuant to a licence agreement dated 31.12.1993 for a period of five years. Subsequently, another agreement dated 28.05.1994 was entered into between the Appellant and M/s. Blazon (Pvt.) Ltd., which was executed by Respondent No.2, namely, Asif Raza Mir, who, at the relevant time, represented himself as the Managing Director of M/s. Blazon (Pvt.) Ltd./Respondent No.1.

3. According to the Appellant, a sum of Rs.49,14,959/- became outstanding towards licence fee. The Appellant, from time to time, issued various notices and letters calling upon the concerned party to clear the outstanding liability. The record placed before us contains correspondence exchanged between the parties during the years 1995 and 1996, wherein reconciliation of accounts and payment of the outstanding licence fee were discussed. The Appellant ultimately issued a legal notice dated 05.06.2002 and thereafter instituted Suit No.1008 of 2002 for recovery of Rs.49,14,959/-, along with markup and other consequential reliefs.

4. During the pendency of the suit, proceedings also continued in respect of Respondent No.2. The Appellant initially withdrew the suit against certain defendants, whereafter Respondent No.2 was impleaded as Defendant No.2. The suit was subsequently decreed ex-parte. However, upon an application filed by Respondent No.2 under Order IX Rule 13 CPC, the ex-parte decree was set aside vide order dated 03.02.2009, inter alia, on the ground that Respondent No.2 had not been duly served in his personal capacity. The plaint was accordingly amended.

5. Thereafter, Respondent No.2 filed an application under Order VII Rule 11 CPC, seeking rejection of the plaint, principally on the grounds that the suit was hopelessly barred by limitation and that the plaint did not disclose any cause of action against him. The learned Single Judge, after hearing the learned counsel for the parties and examining the licence agreement as well as the relevant correspondence, concluded that the suit was barred by limitation and, accordingly, rejected the plaint vide impugned detailed order dated 18.11.2011. Aggrieved thereof, the Appellant has preferred the instant High Court Appeal.

6. Learned counsel for the Appellant has assailed the impugned order primarily on the ground that the learned Single Judge erred in treating the claim as one relating to arrears of rent and in applying the corresponding period of limitation. It is contended that the suit was instituted for recovery of licence fee

and that no specific Article of the Limitation Act was identified which would render the claim barred within the period of limitation determined by the learned Single Judge. Learned counsel submits that, in the absence of any specific provision prescribing a period of limitation for the claim in question, Article 120 of the Limitation Act, providing a period of six years, would be attracted. It is further contended that the question of limitation could not have been conclusively determined at the stage of consideration of an application under Order VII Rule 11 CPC without recording evidence, particularly when the Appellant had placed on record correspondence evidencing acknowledgment, negotiations and continued dealings between the parties.

7. Learned counsel further submits that the correspondence exchanged between the parties, particularly the letters of the years 1995 and 1996 and the subsequent communications, demonstrated that the Appellant had been continuously pursuing recovery of the outstanding amount and that the Respondents had not disputed their liability in a manner warranting rejection of the plaint at the threshold. It is contended that the learned Single Judge failed to appreciate the legal and factual effect of the second licence agreement dated 28.05.1994 and the subsequent correspondence, which, according to learned counsel, furnished a continuing cause of action in favour of the Appellant. Learned counsel, therefore, seeks allowing of the instant appeal and setting aside of the impugned order. In support of his submissions, learned counsel has relied upon the cases reported as *Muhammad Aslam Chattha v. Shehnaz Akhtar Zahoor Ahmed and another* (PLD 2026 Supreme Court 308) and the judgment of a Division Bench of this Court rendered in *Mst. Mohsina Saeed Tauni v. Habib Bank Limited*, in First Appeal No.56 of 1998 and High Court Appeal No.221 of 2004.

8. No one appeared on behalf of the Respondents to assist this Court. The position remained the same on the preceding several dates of hearing. Nevertheless, in the interest of justice and with

a view to avoiding any further delay in the adjudication of the matter, we proceeded to hear the appeal in the absence of the Respondents, with the assistance of learned counsel for the Appellant.

9. We have heard learned counsel for the Appellant and have carefully examined the material available on record.

10. The controversy requiring determination is whether, on the basis of the averments contained in the plaint and the documents relied upon by the Appellant itself, the learned Single Judge was justified in holding the suit to be barred by limitation and, consequently, in rejecting the plaint under Order VII Rule 11 CPC. We have considered the submissions advanced by learned counsel in the light of the record. It is not in dispute that the claim arises out of the licence arrangement under which the licence fee was payable in accordance with the stipulated schedule. The learned Single Judge examined the relevant terms of the licence agreement and found that the licence fee was payable by instalments, the last of which fell due on 28.02.1999, whereas the suit was instituted on 19.09.2002. The correspondence relied upon by the Appellant was also taken into consideration, but was found insufficient to save a claim which had already become barred by limitation.

11. The principal thrust of the Appellant's case is that the correspondence and negotiations exchanged between the parties constituted a continuing cause of action and consequently preserved the right to sue. We are unable to accept this proposition in the facts of the present case. Once a particular amount becomes due and payable under the terms of a contract, the right to recover such amount accrues accordingly. Mere issuance of demands, reminders or continuation of correspondence in respect of an already accrued liability does not, in the absence of a legally recognizable acknowledgment or a fresh enforceable promise, result in a fresh accrual of the cause of action or extend the period prescribed by law.

12. The correspondence placed on record, including the letter dated 08.05.1996, establishes no more than that the parties were

engaged in correspondence concerning the outstanding dues, reconciliation of accounts and payment thereof. Such communications do not alter the dates on which the contractual liability became due, nor do they disclose the creation of a fresh and independent liability upon each exchange of correspondence. The mere pursuit of an outstanding claim cannot, therefore, be treated as keeping the original cause of action alive indefinitely.

13. The submission that the question of limitation necessarily required recording of evidence is equally without force in the circumstances of the present case. It is correct that disputed questions of fact ordinarily ought not to be conclusively determined while considering an application under Order VII Rule 11 CPC. However, where the bar created by law is apparent from the plaint itself or from the documents relied upon by the plaintiff, and determination of the issue does not require any further factual inquiry, the Court is competent to examine such objection at the threshold. The mere possibility of evidence being required in a suit does not preclude rejection of the plaint where its own averments disclose a statutory bar.

14. Here, the relevant dates are ascertainable from the Appellant's own case and the documents relied upon by it. The contractual arrangement, together with the schedule governing payment of the licence fee, constitutes the foundation of the claim. A plain reading of Clause-2 of the agreement shows that the licence was granted for a period of five years, commencing from 01.03.1994 and remaining operative up to 28.02.1999. The last stipulated date for payment under the said arrangement was, therefore, 28.02.1999, whereas the suit was instituted on 19.09.2002. The Appellant has not been able to point out any subsequent event recognized in law which could have extended, renewed or recommenced the period of limitation. The correspondence relied upon by the Appellant, in the absence of any legally cognizable acknowledgment or other intervening circumstance, cannot by itself have such legal effect.

15. We are conscious of the settled principle that a plaint should not ordinarily be rejected at the threshold merely because

the defendant may have a defence of limitation. That principle, however, has no application where the bar is apparent from the plaintiff's own pleadings and documents and does not depend upon resolution of a disputed question of fact. In the present case, the dates relevant to the accrual of the claim and institution of the suit are borne out from the record relied upon by the Appellant itself. The learned Single Judge, therefore, was justified in examining the question at the stage of Order VII Rule 11 CPC.

16. The legal notice dated 05.06.2002 likewise does not assist the Appellant. A notice demanding payment of an already accrued liability cannot, by its unilateral issuance, postpone the commencement of limitation or confer a fresh cause of action where the original claim has already become barred. The relief sought in the suit was recovery of a specified sum of Rs.49,14,959/- arising out of the licence arrangement; it was not founded upon any new transaction or liability arising in the year 2002.

17. We have also considered the submission that the learned Single Judge proceeded on an erroneous premise by treating the claim as one relating to arrears of rent. Even if the nature of the contractual payment is described as licence fee rather than rent, the decisive question remains whether the claim for recovery was instituted within the period prescribed by law. Having regard to the contractual dates, the date of institution of the suit and the absence of any legally sufficient intervening event extending or reviving limitation, the conclusion reached by the learned Single Judge does not call for interference merely on account of the terminology employed in determining the applicable period.

18. The prayer for remand of the matter for trial on merits also cannot be accepted. Remand would serve no useful purpose where the suit itself is found to be barred by limitation on the basis of the material relied upon by the plaintiff. The entitlement to adjudication on merits necessarily presupposes a subsisting and legally enforceable cause of action. A procedural challenge raised under Order VII Rule 11 CPC does not become ineffective

merely because it is raised before commencement of evidence, where the statutory bar is otherwise apparent from the record.

19. For the foregoing reasons, we find no illegality, irregularity or jurisdictional defect in the impugned short order dated 15.11.2011 and the subsequent detailed order dated 18.11.2011 passed by the learned Single Judge in Suit No.1008 of 2002. The learned Single Judge, upon consideration of the contractual terms, the dates on which the licence fee became payable and the correspondence relied upon by the Appellant, rightly concluded that the claim was barred by limitation and that the plaint was liable to be rejected under Order VII Rule 11 CPC. Consequently, the instant High Court Appeal is **dismissed**. The impugned short order dated 15.11.2011 and detailed order dated 18.11.2011 are **maintained**.

JUDGE

JUDGE

KAMRAN/PS