

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

C.P. No.D-6939 of 2019

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Agha Faisal.

Askari Bank LimitedPetitioner

Versus

IX Additional District Judge,

South Karachi & othersRespondents

Mr. Mahmood Ali advocate for the petitioner.

Mr. Jawad Dero, A.A.G

None present for the respondents.

Muhammad Ali Mazhar, J: This petition has been preferred to challenge the order dated 30.09.2019 passed by IXth Additional District Judge, Karachi South in Civil Revision Application No.23 of 2019, whereby, the Revisional Court held that the suit was barred by Limitation Act as cause of action arose on 25.08.2014 and suit was filed on 31.08.2017, therefore, the learned Revisional Court set aside the order passed by the trial Court and dismissed the suit.

2. Learned counsel for the petitioner argued that the petitioner filed the suit No. 866 of 2017 in Civil Court at Karachi South for the recovery of some amount against the Respondent No.2 of 5. The defendant No.3 in suit filed an application under Order VII Rule 11 C.P.C. for the rejection of plaint on the ground that the suit is barred by Limitation but the application was dismissed by the Ist Senior Civil Judge,

Karachi South vide order dated 10.01.2019 against which the Respondent No.2 in this petition filed revisional application which was allowed by the Revisional Court and the suit was dismissed being time barred. Learned counsel argued that the Revisional Court failed to consider the averments made in the plaint. Certain observations were also given that the Petitioner has committed some crime in collusion of respondent No. 4 and 5. The cause of action was sufficiently disclosed in the suit despite that the Revisional Court failed to pass any speaking order. He further argued that no limitation is provided for suit for recovery of money. Hence he prayed that the impugned order may be set aside.

3. We have seen the paragraph-20 of the plaint in which the Petitioner as plaintiff in the trial court narrated the cause of action which is reproduced as under:-

“20. That the cause of action arose on 25.08.2014, when Defendant No.1 came at the Martson Road Branch and asked the staff to deposit a Pay Order. The cause of action arose to the Plaintiff when Defendant No.1 executed an undertaking dated 25.08.2014 whereby he stated that said Pay Order has been mistakenly issued in the name of Defendant No.3 and it may be deposited in his account mentioned above. He further undertook to indemnify the Plaintiff and his bank in case anything gone wrong the cause of action arose to the Plaintiff when Plaintiff verified the records which revealed that Defendant without lawful authority, deliberately, intentionally and knowingly committed fraud, forgery, embezzled and misappropriated the amounts for his personal gains by issuing Authority Letter, the cause of action also arise when demand notice issued to the defendant No.1. The cause of action will be continue till the recovery of Amount.”

4. It is an admitted position that in own showing cause of action accrued to the Petitioner on 25.08.2014 and suit was

filed on 31.08.2017 the learned counsel argued that though cause of action was accrued as mentioned in the aforesaid para on 25.08.2014 but further cause of action accrued when the demand notice was issued to the defendant No.1. Mere sending a demand/legal notice to any person does not extend a period of limitation. Nothing has been placed on record that after issuing the alleged demand notice any liability was admitted or acknowledged by the defendant No.1 in the suit. It is the responsibility of the court under Section 3 of the Limitation Act that subject to provisions contained in Section 4 & 25 of the Limitation Act, every suit instituted, appeal preferred, an application made after a period of Limitation prescribed in the first schedule shall be dismissed although Limitation has not been set up as defence. The petitioner has not claimed any extension of limitation on the ground and condition mentioned under Section 4 & 25 of the Limitation Act nor anything has been placed with regard to the effect of acknowledgment in writing as provided under Section 19 of the Limitation Act so that the fresh period of limitation may be computed from the time when the acknowledgment was so sent. The suit should have been filed within three years for recovery of money from the date of cause of action.

5. We have examined the order passed by the Revisional Court and do not find any illegibility or irregularity which may deserve any interference by this court in the Constructional jurisdiction. This petition was dismissed by our short order dated 13.11.2019 and above are the reasons.

JUDGE

JUDGE

Karachi.
Dated 19.11.2019.