

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.2624 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders as to maintainability of the Suit (in view of the Courts order dated 20.12.2016.
2. For hearing of CMA No.17545/16 (U/O 39 Rule 1 & 2 CPC.)

02.02.2017

Mr. Ashikue Raza, Advocate for the Plaintiff.
Mr. Malik Naeem, Advocate for Defendants No.1 to 13.
Mr. Khalid Javed Khan, Advocate for Defendant No.14.
Mr. Sharafuddin Mangi, State Counsel.

Muhammad Junaid Ghaffar J. On 30.12.2016 while

issuing notice to the defendants, the Court had raised an objection as to maintainability of instant Suit in the following terms:-

“Upon perusal of the Agreement dated 15.05.2003 available at pages 135 to 139 of the file, it appears that the validation of the same is for six years from the date of signing it which expired alongwith the General Power of Sub-Attorney dated 15.05.2003 in 2009. On account of this position, I have serious reservation with regard to the maintainability of the present suit and locus standi of the plaintiff to file the same. Learned Counsel is, therefore, directed to satisfy the Court on the maintainability of the suit on the next date. However, let notices be issued to the defendants for the next date of hearing.”

Learned Counsel for the Plaintiff submits that this is a Suit for Specific Performance of a Contract, Cancellation, Permanent Injunction and Damages. He submits that the Plaintiff entered into an Agreement dated 15.05.2003 with Defendants No.1 to 13 to perform certain acts for procurement of land pursuant to a judgment of Hon'ble Supreme Court in their favour in Civil Appeal No.16-K/1985. He further submits that on that very date a General Power of Sub-Attorney was also executed by Defendant No.1 on behalf of herself and defendant Nos. 2 to 13 in favour of Plaintiff as well as Defendant No.14. He submits that validity of the Power of

Attorney was for a period of 6 years, which could be extended for a further period of another 6 years subject to progress of work in procuring of land. He submits by virtue of such agreement between the parties, the plaintiff was entitled for 60% share in the claimed land. He further submits that pursuant to the Agreement and the Power of Attorney, the Plaintiff made several efforts and representations for procuring the land and due to his efforts, the Chief Minister on 26.05.2009 approved the Summary for allotment of such land. He submits that thereafter upon filing of C.P No.5299/2015 by the defendants, it transpired that the Defendants No.1 to 13 had already entered into an Agreement with Defendant No.14 on 30.11.2002 and per learned Counsel such Agreement is forged and is an attempt to frustrate the Agreement entered into with the Plaintiff and to deprive him of the 60% share so agreed. He submits that the Agreement in question stood extended verbally, whereas, the Plaintiff cannot be rejected in piecemeal as the Plaintiff also claims damages in this Suit. In support of his contention he has relied upon the cases reported as **PLD 1976 SC 785 (Muhammad Ilyas Hussain v. Cantonment Board, Rawalpindi)**, **2009 MLD 1378 (Izhar Muhammad v. Messrs Memon Housing Services through Partner and another)**, **2003 MLD 9 (Musarat Masood Lodhi and others v. Masood Hameed Lodhi and others)**, **PLD 1959 (W.P.) Lahore 932 (Nur Muhammad v. Mst. Karim Bibi)**, **1973 SCMR 248 (Fatahuddin v. Zarshad and another)**, **PLJ 2003 Lahore 593 (DB) (Mst. Ghulam Jannat (deceased) through her legal Representatives and another v. Allah Ditta)**, **2003 MLD 174 (Ghulam Mustafa and another v. Muhammad Khalid Chaudhry)**, **1992 CLC 1069 (Bashir Ahmad v. Abdul Majid and 7 others)** and **2013 SCMR 1493 (Haji Abdul Sattar and others v. Farooq Inayat and others)**.

On the other hand, Mr. Khalid Javed Khan, learned Counsel for the Defendant No.14 submits that this is an objection by the Court and not an objection under Order VII Rule 11 CPC by defendants for rejection of Plaintiff, and therefore, has a much wider scope. He submits that the Agreement in question stood expired after six years of its execution, whereas, there was no extension in the Power of Attorney, as claimed which per learned Counsel has been manipulated. Per Learned Counsel, the question of damages would only arise once the claim of the Plaintiff is found to be competent insofar as Specific Performance is concerned and since the Agreement stood expired much prior to the filing of this Suit, no claim for damages is maintainable. He further submits that even otherwise till date no land has been allotted pursuant to such Agreement and Power of Attorney, and therefore there could not be any Specific Performance of such an Agreement. Learned Counsel has referred to the prayer clauses and submits that instant Suit is not maintainable.

Mr. Malik Naeem Iqbal, learned Counsel for the Defendants No.1 to 13 in addition to adopting the arguments of Mr. Khalid Javed Khan, submits that insofar as the Agreement is concerned, it has no provisions for extension, and therefore admittedly same stood expired on 14.05.2009, therefore, instant Suit is not maintainable. He further submits that insofar as the extension in Power of Attorney is concerned, the same is handwritten and since it was not part of the Agreement between the parties, therefore, admittedly the same inserted in handwriting is a forgery. In support of his contention he has relied upon the cases reported as **2014 MLD 136**, (*Abdul Rehman through Legal heirs and 2 others v. Abdullah Sauleh Al Bassam*), **2016 MLD 333** (*First Women bank Ltd and 2 others v.*

Hakim Sons overseas Trading (Pvt.) LTD. and 4 others and **2016 MLD 1255** (***Muhammad Ramzan v. Muhammad Ali and 13 others***).

I have heard all the learned Counsel and perused the record. Insofar as objection raised by the Court as above is concerned, the same appears to be in respect of the Agreement dated 15.05.2003, of which the Plaintiff seeks Specific Performance. The Agreement itself does not have any extension clause, nor any such plea has been raised on behalf of the Plaintiff. Therefore, admittedly insofar as instant Suit is concerned, the Agreement stood expired on 14.05.2009, whereas, the Suit has been filed on 15.12.2016. Insofar as the Power of Attorney is concerned, it is the case of the Plaintiff that there is a handwritten endorsement that it can be extended for a further period of 6 years according to the progress of work assigned through the Sub Power of Attorney. Even if it is assumed that the Power of Attorney stood extended for a further period of 6 years, the said extended period also expired on 14.05.2015, then again the Suit has been filed much after expiry of such period.

Though the Plaintiff has claimed damages in this Suit, however, mere claim of any such damages does not extend the period of limitation. The claim of damages is consequential in nature and is dependent either on the Specific Performance of the Agreement in question or breach of the same, as the case may. The Agreement in question and so also the Power of Attorney stood expired before filing of this Suit and if the Suit is found to be incompetent in respect of these Agreements and Powers of Attorney, then no case for damages can be made out and sustained. The claim of damages flows from these two documents and if no relief can be granted on the basis of such documents on being barred in limitation, then there is no question of granting damages. It is for the reason that the claim of

damages is either in addition or in the alternate; but in both circumstances it is the outcome of the main issue that is either Specific Performance or breach of a contract, and has no standing on its own as an independent claim. Moreover, it is not a case wherein plaintiff may have sought recovery of an amount spent in any manner, rather he has only claimed damages. Reliance in this regard may be placed on the cases of ***Muhammad Ramzan (Supra)***.

In view of hereinabove facts and circumstances of the case, it appears that instant Suit is not maintainable inasmuch as it seeks Specific Performance of Agreement which stood expired on 14.05.2009, whereas, even the Sub-Power of Attorney also stood expired on 14.5.2015, (even if it assumed that it was extended for another 6 years). The Suit is hopelessly time barred. Moreover, it is also in relation of an act which has not been performed during subsistence of the Agreement, and therefore even if the Agreement was valid, no Specific Performance could have been granted by the Court. In view of such position, instant Suit is dismissed as not maintainable along with all pending applications.

J U D G E

Ayaz P.S.