

ORDER SHEET
IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.

R.A. No. 84 of 2011.

DATE	ORDERS WITH SIGNATURE OF JUDGE
28.08.2017.	

FOR KATCHA PESHI.

Mr. Jagdish R. Mullani, Advocate for the appellant.

This appeal is arising out of an order dated 12.01.2011. Brief facts of the case are that the respondent filed a suit bearing No.110 of 2009, for specific performance. The plaint was rejected in terms of Order VII Rule 11 being barred by time. The sale agreement was executed in August 2002, for it to be performed finally in January 2005 as a cut off date. The suit was, however, filed on 15th October 2009, by disclosing a cause of action of 1st October 2009. The trial court being convinced of the fact that the suit was barred by time has rejected the plaint under Order VII Rule 11. Aggrieved of the decision the respondent filed an appeal bearing No.157 of 2009 and the Appellate Court was pleased to decide the appeal on 12.01.2011. During the pendency of the appeal the respondent moved an application for the return of the original stamp papers/court fee affixed on /with plaint however, it was never disclosed to appellate court which amounts to concealing the fact. The said application for withdrawal of court fee was allowed on 20.01.2010. Though the appeal was filed on 20th October 2009, prior to the passing of the order of the return of the stamp papers/court fee, yet it is to be seen by the Appellate Court that by moving an application for the return of the stamp papers and on account of the fact that the application for the return of stamp papers/court fee was allowed and court fee was returned through a certificate issued, the appeal has virtually become infructuous. There was no necessity of remanding it back to the trial court had the factum of return of court fee



was brought to the knowledge of court. The order of the trial court may or may not have been sustainable on the reasoning as mentioned by the trial court or limitation being a mixed question of law and fact however, this aspect should not have been escaped from the consideration of the Appellate Court that on account of withdrawal of court fee the suit cannot be deemed to be filed on the day it was presented. It would be deemed to have been filed on the day when court fee would have been filed and by that time i.e. after remand the suit had become time barred on the cause of action mentioned in the plaint. By now even if the respondent is allowed to present/deposit the court fee the suit would now be considered as being time barred as it should be considered to have been filed on the day the court fee would be presented or represented after its withdrawal. Hence I am of the view that the order of the Appellate Court as far as the remand is concerned is not sustainable in view of the fact that the fee has already been withdrawn in January 2010 and it is almost 07 years since then. Hence this revision application is allowed, the order of appellate court is set-aside and the revision is allowed and suit is dismissed as barred by time.

Sd- Muhammad Shafi Siddiqui
Judge.