

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD**

R.A.No. 55 of 2011

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing of main case.

02.05.2023.

Mr. Gulab Khan Kaimkhani, Advocate for Appellant.  
Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan.

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This Revision is against the Conflicting Findings. Learned Appellate Court has over turned the earlier Judgment and Decree in favour of the present Appellant.

2. Basic facts are that present Appellant was successful in getting the Order for supply of material, viz. 1<sup>st</sup> Class Burned Bricks / Tiles of size 10 X 7 X 1 ½ inches; total quantity 301330, at the rate of Rs.6,35,203-00 and 1<sup>st</sup> Class Sundries Bricks / Tiles of size 10 X 7 X 1 ½ inches each; total quantity 148070, at the rate of Rs.350-00 per thousand, amounting to Rs.51,842.50; total contract value was Rs.6,87,028.14 [for both types of above Bricks / Tiles], as per Paragraph-2 of the Plaint.

3. It is stated that Plaintiff has received an amount of Rs.4,51,112/- from the above total amount and for remaining unpaid (allegedly) he filed F.C. Suit No.52 of 2003. His claim was contested by the Respondents, who maintained that the entire Payment to the Appellant was made against supply of the above material. Secondly, Appellant also received his Security Deposit, which shows that the Contract was concluded and completed way back on 16.08.1995.

4. Mr. Gulab Khan Kaimkhani, learned Advocate for the Appellant states that the learned Appellate Court has not considered the fact that Appeal was time barred and without giving sufficient opportunity to the Applicant has passed the Impugned Decision, even without evaluating the evidence, which an Appellate Court is bound to do, if disagreeing with the Decision of the learned Trial Court.

5. On the other hand learned Assistant Attorney General for Pakistan has supported the Judgment of the learned Appellate Court.

6. Arguments heard. Record perused.

7. Adverting to the argument of Applicant's counsel about the time barred Appeal preferred by the present Respondent. Record of present proceeding shows that an Application was filed by present Respondent before the Appellate Court under Section 5 of the Limitation Act (1908), for con donation of delay, which was opposed by the present Applicant. After hearing the learned Appellate Court vide its Order of 15-12-200, decided the issue of limitation in favour of Respondent and subsequently decided the Civil Appeal on merits.

8. Basic facts about award of the Contract for supply of Bricks/Tiles for the renovation of Umerkot Fort has not been disputed. The perusal of Deposition and Record shows that the First Running Bill of Rs.451112/- after deduction of Income Tax, as per the Measurement Book Calculation was paid to the Appellant. The relevant Page of Measurement Book has been produced by Respondents' Witness as Ex.64. Thereafter, vide an Application dated 16.08.1995 (Ex.67), the Applicant has stated that since work on the above Fort has been completed, therefore, amount deposit towards Call Deposit should be returned to him, which was returned, as acknowledged by the Applicant on the above Document. Similarly, the latter [the present Applicant] also received back the Security Deposit against the issuance of '**Receipt**' **dated 15.02.1995, Ex.66**. Thereafter, there is a silence on the part of present Appellant with regard to his alleged Unpaid Amount, till the correspondence dated 16.05.2000, exchanged between the Respondents *inter se*, which has been produced as Ex.54, wherein it is stated that the Applicant received part Payment and rest of the material is lying at the Site, while requesting the concerned Official to look into the matter. The Appellate Court has raised serious doubt on the authenticity of the above Correspondence and its evidentiary value, which finding cannot be dislodged by the Applicant, on the basis of the record and proceeding, including the evidence. The specific reply of Respondents' Representative in cross examination that Appellant provided 2 Lac 14 Thousand Burned Bricks for which he was paid the amount along-with Security Deposit, has not been disproved in the evidence. Admittedly after receiving the Security Deposit and Call Deposit by Applicant (on his request, as discussed above), the onus is on him to prove that his claim for the Unpaid Amount was within time. The Applicant in the evidence, is unable to justify his silence of about 06 years from the date of receiving the Call Deposit, Security Deposit and the above Correspondence of 16-5-2000,

which means that cause of action had ceased to exist after three years from the date of receipt of the Security Deposit on 15-2-995 [Exhibit 66], which cannot be revived through the above Correspondence. The Claim/Suit should have been filed within three years from the above date, *inter alia*, in terms of Article 52 of the Limitation Act; but, the same was filed on 11-9-2003, that is, after more than Eight Years. Nothing is brought on record to show that the Applicant was agitating his unpaid claim with the Officials/Respondents, in order to justify that the grievance was not timely addressed by the Respondents, and hence cause of action was continuously running in favour of present Applicant, for filing the above *Lis*.

No material irregularity can be pointed out in the findings of learned Appellate Court while hearing and deciding the Appeal. Accordingly, this Revision Application is Dismissed.

JUDGE

Tufail