

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

High Court Appeal No. 377 of 2023

Syed Raza Ali Zaidi and Another v. Syed Ziauddin and 4 Others

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| Appellants: | Syed Raza Ali Zaidi and Syed Haider Ali Zaidi, through Mr. Syed Rashid Rizvi, Advocate |
| Respondent No.1: | Syed Ziauddin, Nemo |
| Respondent No.2: | Meezan Bank Ltd., Nemo |
| Respondent No.3: | Bank Al-Habib Ltd., Nemo |
| Respondent No.4: | Sindhi Building Control Authority, Nemo |
| Respondent No.5: | Province of Sindh, Nemo |
| Date of hearing: | 01.11.2023 |
| Date of short order: | 01.11.2023 |
| Date of Reasons signed: | 03.11.2023 |

J U D G M E N T

Jawad A. Sarwana, J.: Respondent No.1, Syed Ziauddin (Plaintiff) was a resident of Allah Noor Apartments in Gulshan-e-Iqbal, Karachi. Appellant brothers, Syed Raza Ali Zaidi and Syed Haider Ali Zaidi, Appellants (Defendant Nos.1 and 2) were lessors of Shop Nos.25, 26, 27 and 28 and Flat No.11 on the first floor of the building. Respondent No.1/Syed Ziauddin alleges that the Appellant brothers made certain structural changes to the building on their own for their tenants and residents in the said Apartment building, i.e. Meezan Bank (Respondent No.2) and Bank Al-Habib (Respondent No.3), which weakened the structural integrity of the building. Consequently, on 21.10.2020, when there was an explosion on the first floor of Flat

No.41 of the building, the entire building was severely damaged, and the residents had to shift to another location. Subsequently, on the orders of Respondent No.4, Sindh Building Control Authority, the building was demolished, and Respondent No.1/Syed Ziauddin lost his home and suffered damages and losses. He sued the Appellant brothers and Respondent Nos.2 to 5 for damages and compensation in High Court Suit No.2170/2022.

2. During the trial proceedings, the Appellant brothers moved an application under Order 7 Rule 11 CPC read with Section 151 CPC (CMA No.6113/2022) seeking dismissal of the suit/rejection of plaint alleging that no cause of action had accrued against them and the Appellant brothers were neither proper nor necessary parties and should not have been impleaded in the Suit. On 19.09.2023, the learned Single Judge dismissed the aforesaid application because the Appellant brothers could not make out a case for rejection of the Plaint. Additionally, the learning Single Judge observed in the impugned Order that Respondent No.1/Syed Ziauddin's claim for compensation and damages was based on alleged negligence, which required evidence and could not be dismissed. The Appellant brothers have impugned the Order dated 19.09.2023 in this appeal filed on 21.10.2023.

3. At the outset, this Appeal is barred by limitation. The Appellant brothers have filed an application under Section 5 of the Limitation Act, 1908 (CMA No.4563/2023), praying that the Court condone the delay. The First Appellant, Syed Raza Ali Zaidi, has attached a photocopy of the front cover of the SIUT, Kidney Transplant Patient Unit card and submitted that he could not come to Court to swear the affidavit due to kidney problems, hence the delay in filing of the Appeal. While this may be true for Syed Raza Ali Zaidi, no reason for not swearing an affidavit of the Second Appellant, his brother, Syed Haider Ali Zaidi has been given by him. Be that as it may, this Court

takes a lenient view and condones the delay for both Appellant brothers.

4. We have heard the learned Advocate for the Appellant brothers and considered the reasoning of the learned Single Judge, and we are of the opinion that no case is made out to set aside the impugned Order dated 19.09.2023. Respondent No.1/Syed Ziauddin's civil suit for compensation and damages has alleged negligence and breach of law by the Appellant brothers and Respondent Nos.2 to 5. Respondent No.1/Syed Ziauddin has identified and set out valid causes of action in support of his claim. The onus is on Syed Ziauddin (the Plaintiff) to show that he is entitled to the relief as prayed. The issues raised by him are mixed questions of law and fact. The claim is not based on purely legal grounds, which can be decided at the initial stage without recording evidence. No case is made out for rejection of the Plaint and/or dismissal of the suit.

5. In view of the reasons discussed herein above, the present appeal was dismissed in limine vide our short order dated 01.11.2023. These are the reasons for our above-mentioned short order.

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