

ORDER SHEET
HIGH COURT OF SINDH, KARACHI
CP D 4198 of 2023

Date: Order with signature(s) of Judge(s)

1. For hearing of CMA No. 19333/2023
2. For hearing of main case

30.11.2023

Mr. Hassan Arif, advocate for the petitioners
Mr. Musharaf Azhar, advocate for respondent
Mr. Abdul Jalil Zubedi, AAG

Against the two orders i.e. first of the trial court and the second of the Revisional court whereby an application under Order VII Rule 11 CPC was dismissed by the trial court and maintained by the revisional court respectively this petition has been filed. Learned counsel for the petitioner has argued the matter at length, however, the point that triggers us is the maintainability of this Petition since apparently the question of limitation was framed by the two courts below and the trial court was of the view that it is a mixed question of law and facts and after applying the relevant laws would require factual & legal analysis, however, revisional court has gone to the extent where some conclusiveness was attributed to the findings as to the suit not being barred by time.

We would thus in such situation agree with the counsel for the petitioner that there should not be any conclusiveness of the suit being not time barred and the order of the trial court which maintains that it is a triable issue and preliminary issue be framed, is to be maintained. Order accordingly.

Accordingly, with this understanding of law this Petition is disposed of to the extent that any observation which gives conclusiveness to the suit not being barred by time will not be taken in to consideration by the trial court which shall independently frame an issue of the suit being barred by time or otherwise apart from other issue that goes to the merits of the case.

JUDGE

JUDGE