

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2811 of 2021

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

1. For hearing of CMA No.20779/2021.
2. For hearing of CMA No.12738/2021.
3. For hearing of CMA No.1416/2023.

10.01.2024

Mr. Imran Ahmed, advocate for the plaintiff.
Mr. Saad Fayaz, advocate for the defendant No.2

This order determines CMA 1416/2023, filed for rejection of plaint under order VII Rule 11 CPC, on the ground that the present suit is barred by law; law of limitation in the present context. It is demonstrated that arguments on this application were concluded and order reserved on 24.05.2023, however, on 02.06.2023¹ the matter was resurrected and fixed for *re-hearing* after summer vacations; as per roster.

Per applicant/defendant No.2's learned counsel, the present suit was filed for specific performance of an agreement dated 29.01.2016. It is demonstrated from page 63 of the court file, being the relevant page of the sale agreement, that performance was to take place within 09 months, therefore, by 29.10.2016. Learned counsel submits that the present suit was filed on 29.11.2021, hence, patently time barred per Article 113 of the Limitation Act, 1908. Learned counsel concludes that the judicial notice of this matter has already been taken in this suit as is apparent from the order dated 10.01.2022, reproduced herein below:

“There are questions regarding maintainability of suit since the suit has been filed after delay of more than five years and this being suit for specific performance is required to be filed with specific statement as to when performance was refused by the defendant. That has not been explained in the plaint though suit has been filed after more than five years have lapsed. Counsel to assist regarding maintainability of the suit on the next date...”

Learned counsel for the plaintiff controverts the arguments articulated and submits that the suit ought not to be considered barred by limitation and that even otherwise since valuable rights are asserted a plaintiff may not be non-suited on the technicality of limitation.

Heard and perused. The narrative / dateline articulated by the applicant / defendant's counsel has not been controverted by the learned counsel for the plaintiff. The issue of limitation is already under judicial notice from the inception of this suit, as denoted vide the order dated 10.01.2022.

The issue to determine by this Court is that of rejection of plaint under Order VII rule 11 CPC. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*² wherein the Supreme Court demarcated the anvil upon which the

¹ Absence of learned counsel demonstrated from the relevant order sheet.

² Per *Saqib Nisar J in Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

decisions in such matters ought to be rested. The guidelines distilled by the Court in such regard are reproduced below:

“Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”

It was never the plaintiff’s case that rejection of a plaint could not have been actuated on the legal principles cited supra; the case was that such principles were not attracted in the relevant circumstances. Therefore, while appreciating that a rejection could take place on the cited provisions of law, it is for this court to deliberate whether the same were attracted in the circumstances.

The crucial matter to consider is the import of the law of limitation. The law requires Courts to first determine whether the proceedings filed there before are within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard³. The Superior Courts have held that proceedings barred by even a day could be dismissed⁴; once time begins to run, it runs

³ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁴ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

continuously⁵; a bar of limitation creates vested rights in favour of the other party⁶; if a matter was time barred then it is to be dismissed without touching upon merits⁷; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁸. It is settled law that provisions of Order VII rule 13 CPC do not merit relief in the presence of a bar of limitation⁹.

Admittedly, the underlying agreement is dated 26.01.2016 and it was to be acted upon / performed in nine months. The suit alleges nonperformance of the agreement, however, is instituted belatedly on 29.11.2021.

Adnan Iqbal Chaudhry J has exhaustively deliberated *pari materia* facts and circumstances on the anvil of the law in *Zain Khan*¹⁰ and concluded, post sieving the law¹¹, that a suit for specific performance of a contract could only be instituted within three years from the date fixed for performance and in such regard the authority¹² cited by the plaintiff's counsel was specifically distinguished¹³. It was further maintained that where consequential relief was dependent upon the claim for specific performance, the entire suit would be barred by limitation since the claim for specific performance was time barred. Learned counsel for the plaintiff made no endeavor to distinguish or even dwell upon *Zain Khan*, despite the said authority having been specifically relied upon by the applicant / defendant's counsel.

In view hereof and in *mutandis mutandis* application of the reasoning and rationale articulated in *Zain Khan*, the present suit appears to be barred by law, being the Limitation Act 1908, therefore, this application is allowed, the plaint is hereby rejected.

Judge

⁵ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁶ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁷ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁸ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁹ 2006 CLC 303; PLD 1980 Peshawar 87; PLD 1973 Lahore 495.

¹⁰ *Zain Khan & Others vs. Taj Roshan & Others* reported as 2018 CLC Note 116.

¹¹ *Maulana Nur ul Haq vs. Ibrahim Khalil* reported as 20000 SCMR 1305; *Muhammad Ramzan vs. Muhammad Qasim* reported as 2011 SCMR 249; *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

¹² *Inam Naqshbandi vs. Haji Sheikh Ijaz Ahmed* reported as NLR 1995 Civil 500 / PLD 1995 Supreme Court 314.

¹³ As denoted from paragraphs 32 onwards in *Zain Khan & Others vs. Taj Roshan & Others* reported as 2018 CLC Note 116.