

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 316 of 2003

[Messrs General Sales (Pvt.) Ltd. v. Mrs. Daulat wife of Mahboob Rahimtoola]

Plaintiff : Messrs General Sales (Pvt.) Ltd.  
through Mr. Abdul Qadir Khan,  
Advocate.

Defendant : Mrs. Daulat wife of Mahboob  
Rahimtoola through M/s. Badar  
Alam, Farzana Yasmeen and Kashif  
Badar, Advocates.

Date of hearing : 12-01-2024

Date of decision : 12-01-2024

## JUDGMENT

**Adnan Iqbal Chaudhry J.** - The suit is for recovery of money and damages. Arguments of counsel are heard and the record is perused with their assistance.

2. The plaintiff pleads as follows:

*"1. That the plaintiff filed Suit No. 52/1992 in this Hon'ble Court for recovery of Rs.10,71,000/- on the facts and grounds stated in the plaint.*

*A copy of the above suit is filed herewith, its contents are hereby reiterated and reaffirmed and the same may be read as a part of this plaint, as Annexure A.*

*2. That the above said suit was decreed ex-parte for a sum of Rs.7,65,000/- with interest thereon at 10% per annum from the date of the suit till payment. Copy of the judgment is submitted herewith as Annexure B.*

*The decree was also drawn and signed, copy of which is also submitted as Annexure C.*

*3. That however the Decree was not executed and has ceased to be inexistence. This suit is filed on the basis of Judgment Annexure B to the plaint as the consequent decree has ceased to be operative and is not legally in existence. The suit is therefore, filed to enforce the judgment.*

*4. That the Defendant has willfully and deliberately failed to pay the amount due to the plaintiff. This has caused loss of business and damages to the Plaintiff which are tentatively estimated at Rs. 3 million.*

5. That the amount due from the Defendant to the Plaintiff is as per the judgment Annexure B. The Plaintiff is entitled to recover the following amounts from the Defendant:

Rs.15,30,000/- as per the judgement  
Rs.30,00,000/- on account of damages.  
**Total: Rs.45,30,000/-**

6. That the cause of action accrued to the Plaintiff finally on 25-6-1997 when the Defendant finally refused/failed/neglected to pay the amount to the Plaintiff.  
(underlining supplied for emphasis)

3. Admittedly, this suit is for enforcing a money decree dated 25-11-1992 passed in favour of the Plaintiff and against the Defendant in the earlier Suit No. 52/1992. Admittedly, the Plaintiff did not file an execution application to enforce such decree. The written statement of the Defendant had at the outset raised an objection to the maintainability of such a suit. Hence, Issue No.1 settled in this suit on 29-11-2008 was "whether the suit is not maintainable".

4. The objection to the maintainability of the suit is of course *res judicata*. Section 11 of the CPC stipulates that:

*"11. No Court shall try and suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*

5. Confronted with section 11 CPC, the submission put forth by learned counsel for the Plaintiff is that since the decree passed in Suit No. 52/1992 provides for interest "till payment", until that payment is received the Plaintiff has a recurring cause of action. *Ex facie* the argument is absurd as the cause of action had already culminated in a decree. To enforce such decree, including the interest awarded thereby, the remedy of the Plaintiff was an execution application under Order XXI CPC which it never filed. Learned counsel then argued that the suit is maintainable for damages for the loss suffered due to non-payment of the amount decreed. That argument is even

more absurd as it was the Plaintiff who never filed an execution application to recover the amount decreed. The suit is clearly barred by section 11 CPC and Issue No.1 is answered accordingly. Consequently, the other Issues become redundant.

6. Even though the suit was manifestly barred, yet the Plaintiff managed to drag it on for 20 years. Not only was it vexatious against the Defendant, it was also not worthy of the Court's precious time. The Supreme Court has observed in *Zakir Mehmood v. Secretary Ministry of Defence* (2023 SCMR 960) that: "Courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants, which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system." It was further held by the Supreme Court that apart from actual costs and compensatory costs under sections 35 and 35-A CPC respectively, a civil court may also impose 'special costs' in the exercise of powers under section 151 CPC on a party who initiates proceedings in complete disregard of the obvious factual or legal position, and thereby wastes precious court time and abuses the process of the court. For the stated reasons, this is a fit case for imposing special costs as well.

7. Therefore, the suit is dismissed while awarding costs to the Defendant against the Plaintiff as follows:

- (a) under section 35 CPC, being cost incurred in defending the suit;
- (b) compensatory cost of Rs. 25,000/- (Rupees Twenty Five Thousand only) allowable under section 35-A CPC;
- (c) special cost of Rs. 200,000/- (Rupees Two Hundred Thousand only) under section 151 CPC.

**JUDGE**

Karachi  
Dated: 12-01-2024