

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2195 of 2017

[Sohrab Khan *versus* Allied Bank Limited]

Date of hearing : 10.02.2023.

Plaintiff : Sohrab Khan through Mr. Akhtar Hussain Sheikh, Advocate.

Defendant : Allied Bank Limited, through Mr. Shaukat Ali Chaudhry, Advocate.

ORDER

Muhammad Faisal Kamal Alam, J: Through this Order, an Application – C.M.A. No.4900 of 2019, filed under Order VII, Rule 11 of Civil Procedure Code, 1908 (“CPC”), requesting for rejection of the plaint, is to be decided.

2. Relevant facts, as averred in the Plaint, are that the Plaintiff was in the employment of Defendant Bank working in the Officer category. Plaintiff has an unblemished service record, but was implicated in FIR No.06 of 2002 along with other persons, including the Bank Manager. Simultaneously, Plaintiff was dismissed from service, vide Letter of dismissal dated 02.02.2002 (*Annexure ‘A/3’ with the plaint*). Record shows that a representation was made on behalf of Plaintiff through his counsel to the President of Defendant for restoring the Plaintiff in service as he was acquitted in the criminal case. This Notice / Representation is of 25.03.2015, followed by similar notices of different dates.

3. With the above background, Mr. Shaukat Ali Chaudhry, learned counsel for the Defendant, has filed the Application under consideration that no cause of action exists in favour of Plaintiff and the suit is bared by limitation, hence the plaint should be rejected. It is argued by Defendant’s

counsel that a remedy should have been sought when the Departmental Appeals preferred by the Plaintiff was also declined, vide Decision dated 09.07.2002 [appended with the C.M.A. No.4900 of 2019]; which fact, it is contended, is not disclosed in the plaint. In support of his arguments, learned counsel has relied upon the following case law_

1. **2021 P L C 191 [Supreme Court of Pakistan]**
[*Allied Bank Limited versus Zulfiqar Ali Shar and others*];
2. **2011 S C M R 8 [Supreme Court of Pakistan]**
[*Muhammad Islam versus Inspector-General of Police, Islamabad and others*]; and
3. **Unreported Order dated 09.03.2022 passed by learned Division Bench of this Court in High Court Appeal No.228 of 2020**
[*K-Electric Limited versus Muhammad Asif Javed Dogar and others*]
– **K-Electric Case.**

4. Mr. Akhtar Hussain Sheikh, learned counsel for the Plaintiff, has rebutted the above arguments and stated that firstly the Notice on behalf of counsel was sent on 05.11.2014, followed by the above mentioned notices / representation, for restoring the Plaintiff in the service of Defendant, as the principal accused in the above FIR was also restored in service. He states that it is a continuous cause of action and the present suit is within time and consequently the application should be dismissed. He further stated that plaint cannot be rejected as the Plaintiff has claimed damages of Rupees Five Hundred Million, besides, his back benefits and pension, which can only be decided after a proper trial. He has cited the following case law_

1. **P L D 2021 Peshawar 98**
[*Ismail versus Syed Zulfiqar Hussain Shah and others*]; and
2. **2006 S C M R 489**
[*Abdul Waheed versus Mst. Ramzanu and others*].

5. Gist of the case law cited by Plaintiff's counsel is that power to reject the plaint should not be exercised except in a clear case, when Court is of the view that no triable issue exists. In the first reported case, the order for rejection of plaint was set aside by the Hon'ble Supreme Court,

inter alia, considering the earlier protracted litigation between the parties in respect of land in question. The second judgment is also with regard to a proprietary dispute and the scope of Order VII Rule 11 of CPC is discussed in detail, while holding that, accrual of cause of action is different from disclosure of cause of action, as in the first case, it results in dismissal of suit after recording of evidence, *whereas*, non-disclosure would result in rejection of plaint; the order impugned in the proceeding about rejection of plaint was set aside and the suit was restored.

6. Précis of the case law relied upon by Defendant's counsel is that while interpreting provision of Industrial and Commercial Employment (Standing Orders) Ordinance, VI of 1968, about termination of employment simplicitor, it is held by the Honourable Supreme Court that Employer is not bound to wait indefinitely for the employee, who was implicated in a criminal case so that he can exhaust all remedies and then return to work; a reasonable timeframe of two months was given, enabling an employee to resume his job, who was terminated in exercise of powers under Order 12(3) of the above law [in this case an employee / respondent was earlier convicted and subsequently was acquitted by the Appellate Court, but in the intervening period, five years have passed]. Question of limitation cannot be considered a technicality simplicitor, as it has substantial bearing on merits of the case and must be followed strictly [in this case, Federal Service Tribunal dismissed the Appeal of petitioner, who was awarded major penalty of dismissal from service]. In K-Electric Case (*ibid*), learned Division Bench of this Court allowed the Appeal and the impugned order, which had dismissed the application under Order VII Rule 11 of CPC, filed by the appellant, was set aside. It is held that subsequent suit of employee was not maintainable although he has claimed damages of Rupees Hundred Million for his illegal termination.

7. Arguments heard and record perused.

8. The judgment of the learned Special Court (Offences in Banks) Sindh at Karachi in the above FIR was handed down on 30.11.2011 and is part of the record submitted with plaint, wherein, the Plaintiff was acquitted; *whereas*, present plaint is filed on 12.10.2017, that is, after five years, ten months. Plaintiff was dismissed from the service vide a Letter of dismissal dated 02.02.2002 (*supra*) against which he preferred Departmental Appeals, appended with the Application, which were turned down by the Defendant Bank vide its Decision of 09.07.2002 (Annexed with the Application), whereafter, the said Decision was not challenged. This fact is not mentioned in the plaint, neither it is denied by Plaintiff in his Counter Affidavit to the Application under consideration. Even if the averment of plaint is considered that before filing the present *Lis*, the Plaintiff approached the Defendant vide his Representation / Notice by his Counsel dated 05.11.2014, then, again this Notice is sent after almost three years from the above Judgment of the learned Trial Court and in the intervening period the record is completely silent that what steps the Plaintiff has taken against dismissal of his Departmental Appeal. Plaintiff's counsel has not justified that **what happened in between 09.07.2002**, when his Departmental Appeals were dismissed by the Defendant and filing of present *Lis* on 12.10.2017, that is, after fifteen years. The only ground pleaded is that Plaintiff has been discriminated against, because the other accused was reinstated in service with all back benefits, but to substantiate this, no record has been filed.

9. Article 19 of the First Schedule of the Limitation Act [1908], provides a time period of one year to seek compensation on false imprisonment, that is, malicious prosecution; *whereas*, Article 22 relates to compensation for any other injury within one year and Article 102 prescribes

three years' time to recover wages “*not otherwise specifically provided for by this Schedule*”.

10. The case law cited by the Plaintiff's Counsel is distinguishable and are not applicable to the facts of present case, as the reported Decisions relate to land disputes, as already discussed hereinabove. The relevant Decision to decide this Application is the Un-Reported Case of K-Electric [*supra*], relied upon by the Defendant's Counsel. In the cited Case, the respondent [who was in the Officer grade, like the present Plaintiff] sought the restoration of his service in K-Electric, besides claiming damages. Although he challenged his termination from service in a constitutional petition, but the same was subsequently withdrawn and the suit was filed, in which an application for rejection of plaint was preferred, but was disallowed by the learned Single Bench of this Court, which order was overturned by the learned Division Bench. It is held, that for claiming the relief of the nature and particularly monetary compensation, Articles 22, prescribing limitation of one year, or at the most 114 [of the Limitation Act], concerning the rescission of a contract, including a service contract, prescribing the limitation of three years, are applicable, *inter alia*, as the above respondent was an employee of a private entity, viz. K-Electric; similarly, in the present case, the Plaintiff was an employee of a private Bank. Even if the limitation is calculated from the date of the acquittal Judgement [*ibid*], the present Suit is time barred by more than two years, for which no justification is provided by the Plaintiff. These facts are floating on record and do not require any evidence. Consequently, subject Application is allowed and the plaint of this *Lis* is rejected.

Judge

Karachi.

Dated: 26.06.2023.

Riaz / P.S.