

IN THE HIGH COURT OF SINDH, KARACHI
IInd APPEAL No. 46 of 2022

Date

Order with signature of Judge

Appellant: **Fazlur Rehman,
Through Mr. Shaheryar Ali Tak,
Advocate.**

Respondent **M/s Pakistan Mobile
Communication Ltd.,
Through Mr. Imdad Ali Sahito,
Advocate.**

Date of hearing: **16.10.2023.**

Date of Order: **16.10.2023.**

ORDER

Muhammad Junaid Ghaffar, J: Through this 2nd Appeal, the Appellant has impugned Judgment dated 10.11.2021 passed by Additional District Judge-V, Karachi West, in Civil Appeal No. 596 of 2018 whereby, the Appeal has been dismissed and Judgment dated 10.11.2018 passed by Senior Civil Judge, Karachi West in Civil Suit No. 822 of 2017 has been maintained through which the Suit filed by the Appellant was dismissed.

2. Heard both the learned Counsel and perused the record. Insofar as both the Courts below are concerned, they have dismissed the Suit and Appeal only on one point i.e. limitation and have held that the Suit was time barred in terms of Article 110 of the Limitation Act, 1908. It appears that the Appellant had filed a Suit for Recovery of Arrears of Rent against the Respondent in respect of a mobile phone tower installed at the premises owned by the present Appellant. The Suit was filed on 17.07.2017 in respect of arrears of rent pertaining to September, 2012 to September 2016. Both the Courts below have come to the conclusion that in view of the Article 110 of the Limitation Act, the claim for recovery which became due in September, 2012, was time barred.

3. Though to that there cannot be any cavil that for a suit of recovery, the limitation is 3 years under Article 110 of the Limitation Act; however, even if the claim was time barred, it could only be to the extent of the claim pertaining to September 2012 to 16.07.2014 (as the Suit was filed on 17.7.2017); but would not be so, for the period from 17.07.2014 onwards till September, 2016. It seems that both the Courts below have erred in law while dismissing the claim of the Appellant in respect of the arrears of rent for this period even. This could not have been so done, as the claim from 17.07.2014 onwards was within limitation.

4. In view of the above, both impugned Judgments i.e. of the trial Court dated 10.11.2018 and Appellate Court dated 10.11.2021 are hereby set aside to the extent that the Suit of the Plaintiff shall remain pending for recovery of the amount from 17.07.2014 till September 2016. Since evidence has already been recorded, the trial Court shall afford opportunity of making final arguments once again and decide Issue Nos.2 to 6 on merits in accordance with law. Let copy of this order be sent to the trial Court for compliance.

5. Appeal is allowed in the above terms.

Arshad/

J U D G E