

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**High Court Appeal No.158 of 2021**

Zahid Ali Khan  
Versus  
Mrs. Fauzia Aqeel Lari

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial.

Hearing (priority) case

1. For orders on CMA No.98/2021 (Fast Track).
2. For orders on CMA No.2478/2023 (151 CPC).
3. For order on office objection.
4. For hearing of main case.
5. For hearing of CMA No.2096/2021 (stay).

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**Dated 09.02.2024**

Mr. Mustafa Lakhani, Advocate for the appellant.

None present for the respondent.

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This appeal is filed against a judgment and decree in suit No.1417/2017 whereby the suit for performance of the contract was dismissed primarily as being barred by time. The respondent has been served but she chose not to appear.

The suit for performance was based on a sale agreement dated 29.05.1995. Learned single Judge in para-9 of the judgment gave his mind that the agreement was executed in the year 1995, whereas, the suit was filed in the year 2017 after a delay of 22 years.

We have heard learned counsel for the appellant in this regard and perused the record.

In terms of Article-113 of the Limitation Act, 1908 a suit for performance could be filed in three years (a) from the date fixed for the performance and (b) if no such date is fixed, when the plaintiff has the notice that the performance is refused.

With the assistance of the counsel, we have perused the agreement. It does not provide a specific date for performance, hence first limb of Article-113 is out of its application. The agreement disclosed that the principal has executed an irrevocable general power of attorney in favour of nominee, however, the attorney, being nominee of the plaintiff, expired; hence the suit for performance was filed. There is no reason apparently in terms of Article-113 of the Limitation Act, 1908 to dismiss the suit as being barred by time on the count that there was no date fixed for performance. It could only be triggered on the refusal to perform and there is no refusal until filing of the suit. There is no substance/ material available to suggest that it was ever refused, even within last three years of the date of filing of the suit, hence, in view of the above analysis of Article-113 of Limitation Act, learned single Judge erred in dismissing the suit as being barred by time.

We, therefore, deem it appropriate to set aside the impugned judgment and decree passed in the aforesaid suit and remand the case to the learned single Judge to decide the suit strictly in terms of the material/evidence available on record, in about four months' time.

The instant High Court Appeal is allowed in the above terms.

JUDGE

JUDGE

Ayaz Gul