

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.31 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 663/2020
2. For hearing of main case

01.11.2024

Mr. Faheem Ahmed Ghaloo Advocate for Appellant.

1. Granted subject to all just exceptions.
2. This Second Appeal under Section 100 CPC has been filed by the Appellant, impugning the rejection of the plaint in F.C. Suit No.144/2019 (Old No.134/2018) filed by him before the Senior Civil Judge-II Mehar at Dadu vide Order dated 19.10.2019 and the subsequent dismissal on 11.12.2019 of Civil Appeal No.133/2019 preferred in the matter before the District Judge/M.C.A.C, Dadu. A perusal of the Appellate Order reflects that the Suit had been filed seeking recovery of a sum of Rs.600,000/- in pursuance of a transaction stated to have taken place on 04.04.2013 for the sale of wheat on credit, with the claim being found to be barred by limitation. The relevant paragraph of the plaint narrating the terms of the transaction reads as follows:

“3. That on 04.04.2013 the defendant had purchased from the Plaintiff 700 sacks of wheat, each sack containing 100 KG of wheat, at the rate of Rs.3000/- per sack. The total amount of the money in this transaction payable to the Plaintiff by the Defendant stood to be 21 lac, which amount the Defendant promised to pay to the Plaintiff, within a month in three installments, from the date of the above transaction, and out of which amount the Defendant paid to the plaintiff Rs.5 lacs on 04.04.2013 and Rs.10 lacs on 11.04.2013, but for the payment of remaining Rs.6 lacs, the defendant requested the Plaintiff to grant him time of further two months, which the Plaintiff granted. Therefore, the Plaintiff, due to hot weather of Dadu Town, left for the city Quetta from Dadu Town on 3<sup>rd</sup> May 2013 and returned back to Dadu from Quetta from 9<sup>th</sup> September 2013. During his stay in the Quetta City, on 11.06.2013, the Plaintiff through telephonic call demanded from Defendant, the above said amount Rs.6 lacs, the defendant ensured the Plaintiff that he will pay the same amount to the Plaintiff, on plaintiff's return from the Quetta city. Therefore due to his stay in the city of Quetta, from the period of 3<sup>rd</sup> May 2013 to 9<sup>th</sup> September 2013, the Plaintiff did not put further demand on the defendant for payment of the required amount of Rs.6 lac.”

As it transpires, the Plaintiff had earlier filed F.C. Suit No.25/2015 for advancing the same claim with the plaint in that matter having been rejected on 06.10.2016 due to deficiency of Court Fee and the subsequent Suit having then been filed in the year 2019, after expiry of the period of limitation, when reckoned with reference to Para 3 of the Plaint. Learned Counsel for the Appellant sought to argue that a fresh cause of action had arisen in favour of the Appellant on 24.04.2018, as the Plaintiff along with certain relatives had gone to Defendant's residence on that date demanding payment of the sum in question, which had been refused. However, such a plea is of no avail as the period of limitation prescribed under Article 53 of the Limitation Act had already expired by that date and the events cited even otherwise do not serve to extend the same or give rise to a fresh period of limitation. The Appeal accordingly stands dismissed *in limine*.

JUDGE