

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Abdul Mobeen Lakho.

Const. Petition No. D – 457 of 2021

[Allied Bank Ltd., v. Nasir Khan and another]

Petitioner : Allied Bank Limited through Mr. Israr
Ahmed Kalhoro, Advocate.

Respondent 1 : Nemo.

Respondent 2 : Mr. Kafeel Ahmed Abbasi, Additional
Advocate General Sindh.

Date of hearing : 14-11-2024

Date of order : 14-11-2024

ORDER

Adnan Iqbal Chaudhry J. - Despite repeated notices the Respondent No.1 has not appeared. The Petitioner is Defendant in Suit No. 1080/2018 filed by the Respondent No.1 and pending before the Senior Civil Judge. The Petitioner had moved an application for rejection of the plaint *inter alia* on the ground that the suit was time-barred. Though that application was dismissed by the trial Court, it was allowed by the learned Additional District Judge on Civil Revision Application No. 69/2019 and the plaint was rejected on the ground that suit was for compensation for which limitation was one year from the date of dismissal of service. The Respondent No.1 filed an application to review, which was allowed by the learned Additional District Judge by the impugned order dated 21-11-2020 and the order of rejection of plaint was re-called.

2. The observations made by both the Courts below, first by the trial Court that the suit was for damages, and then by the revisional Court that the suit was for compensation, both appear to be a misreading of the prayer clause. The suit is essentially for declaration

that the dismissal order is unlawful and as a consequence the Plaintiff continues to be entitled to salary and all employment benefits etc. Be that as it may, the order dated 20-02-2019 passed by the trial Court reflects that the application under Order VII Rule 11 CPC was dismissed on the ground that in the facts of the case the question of limitation was a mixed question of law in fact. In other words, the trial Court has not rejected the Petitioner's argument that the suit is time-barred, but that such argument can be taken at the final arguments. When confronted with that, and since the suit is under trial, learned counsel for the Petitioner states that he will be satisfied if the aforesaid clarification is made. Therefore, this petition is disposed of with the observation that at the stage of final arguments of Suit No. 1080/2018, the trial Court shall first decide the point of limitation raised by the Appellant/Defendant.

JUDGE

JUDGE

*SHABAN**