ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI H.C.A. No.55 of 2023

Date	Order With Signature Of Judge
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For order as to maintainability of appeal in view of order dt 9.4.2024 06.03.2025.

M/s. Sathi M. Ishaque and S.K. Lodhi, advocates for appellant. Respondent No. 2 Mr. Muhammad Zahid Khan, advocate in person.

MUHAMMAD IQBAL KALHORO, J:- This appeal calls into question an order dated 31.01.2023, passed by learned single Judge in exercise of original jurisdiction, whereby CMA No.5620/2014 was allowed and plaint of Suit No.1256 of 2013 was rejected. While passing the impugned order, the learned single Judge has referred to some application filed by appellant, defendant No. 2 in Suit No.1256/2013, whereby she had raised a counter-claim seeking cancellation of sale agreement and mutation entry. However, learned single Judge has simply observed, since he was about to reject the plaint in the very suit, that such request regarding counter-claim cannot be accepted at that stage; and put defendant No. 2/appellant at liberty to seek appropriate remedy, if it is permissible under the law.

2. The case of appellant before us is that since the plaint in Suit No.1256/2013 has been rejected through the impugned order, her counter-claim taken in the same suit has washed away leaving her remediless, as meanwhile the limitation period has expired. Since the suit was pending for ten years and only after that period, the impugned order was passed, hence, if appellant files a fresh suit, it would be barred by limitation. He further submits that if limitation is condoned as it did not happen due to any fault of defendant/appellant, he would be satisfied.

3. However, respondent No. 2, who is an advocate, has opposed this request and has submitted that due to limitation certain rights have accrued in his favour which cannot be taken away summarily. Notwithstanding, we are of the view that the limitation to seek a remedy by appellant has expired due to pendency of the suit before the learned single Judge in which the appellant had raised a counter-claim. The suit was filed in 2013 and the plaint was rejected in the year 2023 after ten years. For ten years, the counter-claim of appellant in the shape of written statement was pending with the Court without any material progress. Respondent No. 2 has taken the plea that written statement was filed, after four years, in 2017, therefore, the observation of ten years is not right. However, we feel that this was the issue between the learned single Judge and the appellant. Under the law, written statement has to be filed within a certain period but the Court allowed the appellant to file the written statement after that period and meanwhile took no action against her, even the respondent did not resist delay in filing of the written statement. The time elapsed, therefore, cannot be considered to have any adverse effect over the right of the appellant. Hence, such period cannot be considered to come in the way of the appellant to seek remedy in law gua her rights. We, therefore, infer that appellant has a right to raise her counter claim in an independent proceeding. The limitation for filing such claim would be counted from the date of impugned order viz.31.01.2023 when CMA No.5620/2014 was allowed and the plaint was rejected.

With above observations, the appeal is disposed of.

JUDGE