

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

High Court Appeal No.464 of 2024

Date	Order with signature of Judge
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1. For orders on office objection a/w reply at “A”.
2. For hearing of main case.
3. For hearing of CMA 2801/2024.

06.02.2025.

Mr. Muneer Ahmed, for appellants.
Messrs Yousuf Moulvi and Ms. Bisma Memon, for respondents Nos.1&2.
Mr. Khaleeq Ahmned, DAG.
Mr. Naeem Akhtar Talpur, AAG.

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We have heard learned counsel and perused the material available on record. A suit for Declaration, Permanent Injunction, Possession, Distribution and Partition including Damages was filed as Suit No.228/2022. Respondent No.1 / Defendant No.1 filed written statement on 25.08.2022 wherein a preliminary legal objection was raised that the suit was beyond the period of six (06) years under Article 120 of the Limitation Act, 1908. While the suit was pending on 06.09.2022, appellant / plaintiff filed an application under Order VI, Rule 17 read with Section 151, CPC (CMA No.12608/2024). At some point the Court listed the suit for orders as to maintainability of suit and the Plaint was rejected vide the impugned order dated 27.09.2024. The primary consideration should have been as to which Article of the Limitation Act, 1908 (“**Act, 1908**”) would apply. It was only argued in the initial paragraph of the order that the counsel for Respondent No.1 / Defendant No.1 had pointed out that Article 120 of the Schedule to the Act, 1908 will apply. Interestingly, the latter paragraphs of the order do not demonstrate the application of such Article of Act, 1908, on the part of the trial Court. The learned Single Judge ought to have reconciled the applicability of Article and only then could have demonstrated and given wisdom for the rejection of Plaint. The reasons provided in the latter paragraphs only suggest that “admittedly” it was barred by limitation. It was never admitted at least by the appellants by way of any application that it was barred by limitation. Had it been so, an Article must have been applied with definite mind which could have triggered the cause of action. The order is also silent about the applicability of

Article 91 of Act, 1908 which does not trigger from the date of the knowledge. It has its own mechanics for calculating the limitation and that does not demonstrate the knowledge at all.

Interestingly, on the same day an application under Order VI, Rule 17 read with Section 151, CPC, for some amendment in the memo of Plaint was also pending, which was not decided by the impugned order. Be that as it may, we are of the view, after hearing the learned counsel as well as perusing the record, that the reasons ought to have been provided for the applicability of any Article of Act, 1908 so as to decide whether the suit was within time or time barred. In the similar circumstances the application under Order VI, Rule 17 read with Section 151, CPC, which was listed on the same day, ought to have been decided first before reaching the conclusion that the suit was barred by time or otherwise. The trial Court after examining the application (CMA No.12608/2024) would then adjudicate the maintainability of the suit thereafter inspite of the order sheet listing maintainability at Sr. No.1 and the application for hearing at Sr. No.2 (CMA No.12608/2024). This would give a final opportunity to the plaintiff who filed this case to prove his bonafide before the Court decided the maintainability of the suit. Had the sequence been followed, the lis may not have been considered as time barred, however, there is no articulation / consideration by the learned single Judge on this count. CMA No.12608/2024 was not decided and the plaint was rejected before the application could be taken up. At this stage, we do not wish to prejudice the stance of any party, and have nothing further to say in this regard. The impugned order as such is set-aside with direction that all applications including under Order VII, Rule 11(d), CPC, shall be deemed to be pending and be decided at the earliest.

In the above terms, HCA No.464 of 2024 stands disposed of.

Chief Justice

Judge