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JUDGMENT SHEET

LAHORE HIGH COURT

BAHAWALPUR BENCH BAHAWALPUR

JUDICIAL DEPARTMENT

C.R. No.415 of 2018

Ahmad Nasrullah, etc. vs. Shahadat Ali, etc.

J U D G M E N T

Date of Hearing:	03.12.2025
Petitioner by:	Mr. Irfan Karim ud Din, Advocate.
Respondents No.1 to 4 by:	Mr. Murad Ali Malik, Advocate.
Respondents No.5 to 9:	Nemo.

Anwaar Hussain, J. The findings of the Courts below are at variance. Through judgment and decree dated 23.11.2013, the Trial Court dismissed the suit instituted by respondents No.1 to 4 (“**the respondents**”) against the petitioners and *proforma* respondents No.5 to 9. The dismissal followed a full trial, including framing of issues and recording of evidence. However, upon appeal preferred by the respondents, the Appellate Court below, *vide* judgment dated 15.03.2018, remanded the matter to the Trial Court for a fresh decision solely on the ground that no specific issue had been framed on the question of limitation.

2. Learned counsel for the petitioners contends that no such arguments, as attributed to the petitioners, in paragraph 6 of the impugned judgment, were ever advanced that the Trial Court did not frame issue on limitation and matter should be remanded. It is submitted that the respondents were not non-suited by the Trial Court on the ground of limitation but on merits with a clear finding that the execution of the

alleged affidavit dated 08.06.2005 had not been proved. It is urged that the Appellate Court below, therefore, fell into error in remanding the matter merely for framing of an issue on limitation, despite the existence of complete and reasoned findings on merits in favour of the petitioners.

3. Conversely, learned counsel for the respondents supported the impugned judgment.

4. Arguments heard. Record perused.

5. Before addressing the legality of the impugned judgment, it would be appropriate to briefly recapitulate the factual background and the reasoning recorded by the Appellate Court below, particularly in paragraph 6 of the impugned judgment, which forms the foundation of the impugned decision.

6. The respondents instituted a suit for specific performance of contract on the basis of an affidavit dated 08.06.2005 against the petitioners and *proforma* respondents No.5 and 6. The suit was contested. Issues were framed and evidence was recorded. The Trial Court dismissed the suit with the categorical finding that the respondents had failed to prove the execution of the alleged affidavit. Aggrieved thereof, the respondents preferred an appeal, which culminated into the impugned judgment. In doing so, the Appellate Court below recorded the respective submissions of the parties in paragraphs 6 and 7 of its judgment. Paragraph 6 reads as under:

“Today the appeal in hand was fixed for final arguments. During course of arguments, the learned counsel for respondents pointed out that the learned trial court has not framed any issue on point of limitation whereas respondents specifically raised the objection on limitation and he requested that case be remanded for framing of issue on point of limitation and deciding the case while keeping in view the point of limitation as well.”

Paragraph 7 reads as follows:

“Whereas on the other hand learned counsel for appellants argued that there arises no need to frame issue upon the point of limitation as the suit of the appellants is within limitation according to “Affidavit/agreement to sell”. Therefore, case be decided on merits without taking into account the point of limitation.”

7. A careful examination of the record, when juxtaposed with the findings returned by the Trial Court, makes it abundantly clear that there was no rational basis for the petitioners—who had succeeded on merits before the Trial Court—to seek a remand on the question of limitation. More importantly, the record unmistakably reflects that it was the respondents themselves, being the plaintiffs before the Trial Court, who were pressing for a decision on merits by the Appellate Court below rather than a remand of the matter for decision on question of limitation. In fact, the respondents insisted that their suit was not time barred. The impugned findings of the Appellate Court below, therefore, suffer from internal inconsistency, are not borne out from the record, and stand in direct contradiction to the respondents’ stated position. Upon a specific query by this Court, learned counsel for the respondents was unable to controvert the factual position emerging from the record.

8. This Court is of the opinion that an order of remand is not to be passed as a matter of course. An Appellate Court is duty-bound to examine whether such a course would meaningfully advance the cause of justice or merely prolong the litigation. In the present case, findings on merits already stand recorded against the respondents after a full trial. A remand, in such circumstances, would only subject the parties to another round of avoidable proceedings. Even if the issue of limitation was to be decided in favour of the respondents, their suit would nonetheless require adjudication on merits on the basis of evidence—an exercise already

undertaken by the Trial Court. The appropriate course, therefore, was reappraisal of the evidence by the Appellate Court below itself rather than a remand. The Appellate Court below failed to appreciate that the remand ordered by it would serve no useful purpose and would, instead, defeat the objective of expeditious justice.

9. In view of the foregoing discussion, this petition is **allowed**. The impugned judgment dated 15.03.2018 is set aside. Resultantly, the appeal preferred by the respondents shall be deemed to be pending before the Appellate Court below, which shall summon the parties, afford them an opportunity of hearing, and decide the same afresh, in accordance with law.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood