

Judgment Sheet

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,
RAWALPINDI

JUDICIAL DEPARTMENT

R.F.A No.77 of 2008.

Shahid Mahmood. Versus Mehtab Khan.

JUDGMENT

Date of hearing	21.11.2013.
Petitioner by:	Qazi Waqar Hussain, Advocate.
Respondent by:	Mr. Zulfiqar Abbasi, Advocate.

Nasir Saeed Sheikh, J. This appeal is directed against the order dated 24.7.2008 passed by the learned Civil Judge, Rawalpindi whereby the plaint of the suit instituted by the appellant for specific performance of agreements to sell dated 26.12.1996 and 05.7.1997 was rejected by the learned Civil Judge on the ground that it is barred by time.

2. Brief facts of the case are that the appellant claimed execution of agreements to sell dated 26.12.1996 and 05.07.1997 in his favour regarding subject property from the respondent. A date was fixed in the agreements to sell for the completion of the contract

proceedings. A legal notice was served on 29.10.1999 calling upon the defendant of the suit to execute the sale deed pursuant to the agreements to sell in his favour. The respondent/defendant served a notice dated 16.11.1999 upon the appellant whereby he intimated the appellant/plaintiff that he has cancelled the agreements to sell and forfeited the earnest money. Upon this, admittedly, the present appellant instituted a civil suit for specific performance of the agreements to sell in the court of learned Civil Judge, Islamabad on 20.4.2000. The objection was raised before the learned Civil Judge, Islamabad by the respondent/defendant that the subject property had then become part of the District Rawalpindi, therefore, the suit instituted by the respondent in Islamabad was not competent. The learned Civil Judge, Islamabad vide order dated 30.01.2002 returned the plaint to the appellant for presentation before the proper court. The appellant then moved an application for review of the said order, which review application remained pending and was ultimately dismissed

on 26.5.2003. The appellant thereafter instituted a suit on 18.6.2003 before the learned Senior Civil Judge, Rawalpindi for specific performance of the contracts in question. The present respondent appeared as a defendant in the suit and submitted his written statement. The institution of the suit at Islamabad earlier by the plaintiff/appellant was admitted by the respondent in his written statement. The respondent moved an application under Order VII rule 11 CPC for the rejection of the plaint of the appellant on the ground that the suit instituted at Rawalpindi is barred by time. The learned Civil Judge, Rawalpindi through the impugned order and decree rejected the plaint of the suit of the appellant on the ground that it is barred by time keeping in view the principles of Section 113 of the Limitation Act 1908, therefore, through the instant R.F.A. the impugned order and decree passed by the learned Civil Judge has been assailed.

3. It has been argued by the learned counsel for the appellant that in Para-1-A of the plaint instituted by the appellant before the

learned Senior Civil Judge, Rawalpindi it was specifically mentioned that the suit was first filed within period of limitation before the learned Senior Civil Judge, Islamabad and there an objection was raised by the present respondent/defendant that the subject property had become part of the District Rawalpindi, therefore, the plaint be returned for presentation before the proper court. The learned counsel for the appellant has further contended that not only these facts were specifically stated by the appellant in his plaint but were also admitted by the respondent and the appellant had also moved an application under Section 14 of the Limitation Act 1908 for condonation of delay, if any, in presenting the plaint on the ground that he first instituted the suit in the court of learned Senior Civil Judge, Islamabad and then before the learned Civil Judge, Rawalpindi. Learned counsel for the appellant further contends that the plaint as a whole is to be read by the courts for the purpose of applying the principles of Order VII rule 11 CPC and the learned Civil Judge, Rawalpindi without adverting to this

principle of law rejected the plaint of the suit illegally.

4. Learned counsel for the respondent has vehemently contested the instant R.F.A. by arguing that in the agreements to sell in question, a specific date for completion of the transaction was mentioned. Learned counsel for the respondent has further contended that in the first agreement dated 26.12.1996 a specific date i.e 31.1.1997 was fixed for completion of the agreement and thereafter, through second agreement this period for completion of the agreement to sell was extended up-till 15.10.1999. Learned counsel for the respondent contends that keeping in view the contents of Para-14 of the plaint the suit instituted by the appellant in Rawalpindi was barred by time as according to the learned counsel for the respondent the plaint was returned by the learned Civil Judge, Islamabad vide order dated 30.1.2002 and then the appellant filed an application for review of the said order which application for review was dismissed on 26.5.2003. Learned counsel for the respondent

has further contended that the institution of the suit at Rawalpindi on 18.6.2003 was clearly barred by time from the date mentioned in the agreements to sell. Learned counsel relies upon the judgment reported as Haji Abdul Karim and others versus Messrs Florida Builders (Pvt) Limited (PLD 2012 Supreme Court 247).

5. We have heard the arguments of the learned counsels for the parties and have perused the record with their able assistance.

6. The learned Civil Judge in the impugned order of rejection of plaint has completely overlooked the facts mentioned in Para-1-A of the plaint that the present appellant first instituted the suit for specific performance of agreements to sell in the Court of learned Senior Civil Judge, Islamabad on 20.4.2000 within the period of limitation prescribed for the suits for specific performance of contracts and after about two years i.e. 30.01.2002 the learned Civil Judge, Islamabad was persuaded by the objections raised by the present respondent/defendant in the said suit that the suit be instituted at a proper place as it was not

competent before the civil courts at Islamabad. It has also been observed that a review application was moved by the appellant which review application also remained pending before the learned Civil Judge, Islamabad and was ultimately dismissed on 26.5.2003. The appellant filed an application under section 14 of the Limitation Act 1908 for condonation of delay. The learned Civil Judge did not even attend to this application of the appellant filed alongwith the plaint. The order for rejection of plaint was passed by the learned Civil Judge keeping in view the only facts stated in Para-14 of the plaint.

7. The plaint in a civil suit cannot be considered in piecemeal for deciding an application under Order VII rule 11 CPC. This illegality of the learned Civil Judge is apparent on the record and cannot be approved by this Court. An application under Section 14 of the Limitation Act 1908 was moved by the appellant and this fact was clearly overlooked by the learned Civil Judge in rejecting the instant suit. The Hon'ble Supreme Court of Pakistan in a

case reported as Sherin and 4 others versus Fazal Muhammad and 4 others (1995 SCMR 584) has laid down the law that when proceedings although before a wrong forum have been instituted by the litigants and have been entertained then the act of the court is also involved in entertaining the said proceedings. It is also settled proposition of law that no one should be prejudiced by the act of the Court.

8. The case law cited by the learned counsel for the respondent reported as Haji Abdul Karim and others versus Messrs Florida Builders (Pvt) Limited (PLD 2012 Supreme Court 247) is distinguishable in the facts that no suit was first instituted before a wrong Court in the reported judgment which remained pending for a long period and thereafter the plaint was returned by the courts below which is the factual position in the present case.

9. In view of the above facts, the question of bar of limitation has become a mixed question of law and fact which can only be decided by framing an issue and recording of evidence,

therefore, the rejection of plaint by the learned Civil Judge through the impugned order dated 24.07.2008 in the instant R.F.A is not sustainable in the eyes of law and is set aside. The suit instituted by the appellant shall be deemed to be pending before the learned Senior Civil Judge, Rawalpindi who is directed to frame the issues in the matter including the issue of bar of limitation and decide the case in accordance with law after recording the evidence of the parties.

10. For what has been discussed above, the R.F.A. is allowed with costs.

(M. Sohail Iqbal Bhatti)
Judge

(Nasir Saeed Sheikh)
Judge

*A.S.Nizami**

APPROVED FOR REPORTING