JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

REGULAR FIRST APPEAL NO. 12 OF 2015

ASGHAR JAVED ETC.

VS

NAWAZISH ALI ETC.

Appellants by : Ms. Rakhshanda Azhar, Advocate for the Appellants.

Respondents by : Raja Mazhar Hussain Bhatti Advocate for the Respondents.

Date of hearing : 18.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, the Appellants have assailed the ex-parte Judgment and Decree dated 20.11.2014 **("Impugned Judgment and Decree")** passed by the learned Civil Judge 1st Class-East, Islamabad **("Trial Court")** whereby the suit for Recovery of Damages worth Rs. 8.25 Crore and Recovery of Possession and Permanent Injunction **("Suit")**, filed by the Appellants/Plaintiffs, has been dismissed.

2. The brief facts of the case in hand as per the Memo of Appeal are that the Respondents/Defendants entered into a Lease Agreement with the Appellants' firm namely Ghousia Enterprises on 18.03.2009 regarding land bearing Khasra Nos. 1513, 1511, Khatooni Nos. 1379, 1380, Khewat No. 1072, Mouza Tarlai Kalan, main Lehtrar Road, Tehsil & District Islamabad **("Suit Property")** for a period of 30 years with a further extension of 30 years. The monthly rent was fixed as Rs. 45,000/- and it was also agreed that the C.N.G Machinery and erected fixtures, petrol/diesel station shall remain property of the Appellants/Plaintiffs. The Appellants/Plaintiffs after incurring all the expenses on erecting the fixtures, importing the machinery, laying down the foundation, kept guards over the property, remained unable to start their work as Respondents/Defendants obtained stay order from the Court through their relatives being joint owners. The Respondents/Defendants rented out the suit property to some other persons and obtained rent from the other party in violation of the terms and conditions of the agreement executed with the Appellants/Plaintiffs. The Appellants/Plaintiffs

suffered a great loss in business amounting Rs.8.25 Crore. The Respondents/Defendants were repeatedly reminded of the fact that they were violating the terms and conditions of the agreement but they never paid any heed. A legal notice was sent to the Respondents/Defendants in this regard but they did not pay the damages to the Appellants/Plaintiffs. The Appellants/Plaintiffs filed the Suit before the learned Trial Court and after issuance of notices to the Respondents/Defendants however on account of their failure to appear in court ex-parte proceedings were initiated against them on 22.07.2014. After recording of ex-parte evidence of the Appellants/Plaintiffs and hearing arguments of learned counsel for the Appellants/Plaintiffs, the Appellants/Plaintiffs' Suit was dismissed vide the Impugned Judgment and Decree. Being aggrieved of the Impugned Judgment, the Appellants/Plaintiffs have filed the instant Appeal.

3. The learned counsel for the Appellants/Plaintiffs argued that the learned Trial Court passed the Impugned Judgment and Decree in a whimsical and arbitrary manner without proper application of judicial mind; that the Impugned Judgment and Decree suffered from misreading and non-reading of evidence; that the learned Trial Court in the Impugned Judgment and Decree stated that the Partnership Deed was signed on 27.02.2006, and the rental agreement was signed on 18.03.2009. However, the learned Trial Court overlooked the fact that the rental agreement was intended to be effective from 2006; that the learned Trial Court ignored the fact that sufficient evidence was adduced by the Appellants/Plaintiffs to show that how much loss and damage has been incurred to them; that the Lease Agreement is still in force and it is not expired yet and the damage is incurring day by day; that the dismissal of an ex-parte suit means that the learned Trial Court is totally denying the fact that any loss has occurred or the Appellants/Plaintiffs have suffered any damage; that the learned Civil Judge has passed the Impugned Judgment and Decree in a hasty manner ignoring all the evidence which was brought on record; that an ex-parte suit cannot be dismissed when sufficient evidence is available on record. In the last, learned counsel prayed that the instant appeal may kindly be allowed, Impugned Judgment and Decree may be set-aside and the Appellants/ Plaintiffs be awarded the damages as prayed for in the Suit .

4. On the other hand, the learned counsel on behalf of the Respondents/Defendants argued that the Appellants/Plaintiffs' counsel has failed to point out any illegality in the Impugned Judgment and Decree and the learned

Trial Court has rightly dismissed the Appellants/Plaintiffs' Suit based on the correct appreciation of the facts and the evidence by applying proper judicial mind. He further argued that the Suit was also time-barred, and the period of limitation for filing such suit is one year from the date when loss or injury occurred. The predecessor of the Respondents Nos. 1(a) to 1(d)/Defendant No. 1 [Nawazish Ali] was partner with the Appellants/Plaintiffs and he also suffered loss due to the stay order issued by the Court in a suit filed by the co-sharer of the land. The learned counsel lastly prayed for dismissal of the instant Appeal.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. A Partnership Deed was entered on 27.02.2006 between Asghar Javed (Late), Muhammad Zubair (Respondent No.2), Chaudhry Khalid Mehmood (Respondent No. 3), Sheikh Tahir Javed (Appellant No.2) and Pervaiz Iftikhar (Appellant No. 3), for carrying business in the name and style of M/S GHOSIYA ENTERPRISES with effect from 22.02.2006, and the nature of the business of the Firm was settled to sell compressed gas (CNG) and petrol. After that, M/S GHOUSIYA ENTERPRISES entered into a Lease Agreement on 18.3.2009 with the predecessor of Respondents Nos.1(a) to 1(d)/Defendant No. 1 [Nawazish Ali] for a term of 30 years which was intended to be effective from November, 2006. It is an astonishing fact that the said Rental Agreement is silent about the rental premises/land, which is leased/rented out to M/S GHOUSIYA ENTERPRISES.

7. The Appellants/Plaintiffs assert that, after incurring expenses for installing fixtures, importing machinery, laying the foundation, and hiring security guards for the property, the CNG business could not be realized due to a stay order from the Civil Court.. The Respondents leased the Suit Property to third party and are receiving rent, which constitutes a violation of the terms and conditions of the Lease Agreement. As a result, the Appellants/Plaintiffs have suffered significant business losses amounting to Rs. 8.25 Crore.

8. The Appellants/Plaintiffs filed the Suit against the Respondents/Defendants, which was dismissed by the learned Trial Court vide the Impugned Judgment and Decree. The Appellants/Plaintiffs claim that they credited the rent into the Respondents/Defendants' account; however, they failed to present any

documentary evidence before the learned Trial Court to substantiate that the rent was paid to the predecessor of the Respondents No. 1(a) to (d)/Defendant No. 1 [Nawazish Ali]. The business of operation of CNG Station on the rented land could not be materialized due to a stay order issued by the Court of competent jurisdiction, which was filed by the co-sharers/co-owners of the said land and not by the predecessor of the Respondents Nos. 1(a) to 1(d)/Defendant No. 1 [Nawazish Ali], hence, they have failed to prove malice on his part. The Respondents Nos. 2 & 3 were also partners in the business and they are equally affected (if any) in case of failure of operation of business agreed upon vide Partnership Deed dated 27.02.2006, and a claim against them cannot be justifiable in these circumstances. The *status quo* was ordered on 12.07.2010, whereas the Appellants/Plaintiffs instituted the Suit on 17.05.2014 i.e. after a period of approximately three years and ten months. The limitation period for filing a suit for damages is one year from the date the loss or injury occurred. However, the Appellants/Plaintiffs filed the suit after this period, making it badly time-barred.

9. The Appellants/Plaintiffs failed to prove any malice on the part of the predecessor of the Respondents Nos. 1(a) to 1(d)/Defendant No. 1 [Nawazish Ali] or the other Respondents. Additionally, they failed to highlight any illegality or irregularity committed by the learned Trial Court in dismissing their suit. Furthermore, the Appellants/Plaintiffs filed their Suit after the expiry of the limitation period, making it severely time-barred. Therefore, I am of the considered view that the learned Trial Court rightly non-suited the Appellants/Plaintiffs after considering the ex-parte evidence, and dismissed the Suit accordingly.

10. For the foregoing reasons, no case of interference has been made out by the Appellants/Plaintiffs. Resultantly the instant Regular First Appeal, being devoid of any merit, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

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