

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

Civil Appeal No.S-02 of 2022

*'Dr. Bhagwandas S/o Menghraj vs. Mashooque Ali S/o Haji Gahno Khan Jatoi'*

Appellant	:	through Mr. Muneer Ahmed Khokhar, Advocate
Respondent	:	through Mr. Shafqat Ali Jatoi, Advocate Mr. Mohsin Ali Khan, Assistant Advocate General, Sindh. Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Date of Hearing & decision	:	14.05.2026

**J U D G M E N T**

**MUHAMMAD HASAN (AKBER), J.-** The Order dated 01.09.2022 [**impugned Order**] passed by the learned IV-Additional District Judge Larkana in Suit No.07 of 2019 has been assailed in this Appeal under section 96 CPC., wherein the question for consideration is that whether, in the facts of the present case and considering the law of Defamation, the plaint of the appellant's suit was rightly rejected under Order VII Rule 11 CPC?

2. Heard the learned counsels for the parties, learned Assistant Advocate General and the officers present in Court and have gone through the record. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

3. Briefly, appellant filed a suit for recovery of damages and compensation against the respondent on the ground that the respondent, being the Chief Editor, Publisher and Printer of Daily Newspaper "Fast Times" Larkana, edited, published and printed four defamatory articles and four photographs on the front page of the said newspaper in its issue dated 08.04.2019, which as per the appellant contained wholly false and baseless allegations against him, being an experienced doctor and a respectable citizen. The suit was contested in the written statement along with an application under Order VII Rule 11 CPC, which was allowed and the plaint was rejected, which is assailed herein.

4. Before examining the specific findings of the learned trial Judge, it is necessary to understand the scope and true spirit of Order VII Rule 11 CPC, through the following guidelines recorded by the superior Courts of Pakistan, wherein it has been held that while dealing with an application under the said provision:

- (i) the Court has to presume the facts stated in the plaint as correct.
- (ii) that the plaint is not to be read in fragments but must be read as a whole.
- (iii) that the dearth or weakness of proof would not be a justification for concluding that there is no cause of action disclosed in the plaint.
- (iv) that nothing more than the averment of the plaint has to be seen for adjudicating

whether the plaint reveals a cause of action.

- (v) that even where there is a joinder of multiple causes of action, and at least some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted for rejecting the plaint.
- (vi) that if there are several parties and the plaint discloses a cause of action against one or more of them, then too, the plaint cannot be rejected; and (vii) that in most of the cases, the Court cannot take into consideration pleas raised by the defendants in the written statement suit, as at that stage, such pleas are only contentions in the proceedings, unsupported by any evidence on record; and that only in rare and exceptional cases, the Court can consider the legal objections in the light of averments of the written statement, but the pleading as a whole cannot be taken into consideration for rejection of a plaint. The above guidelines have been provided in '*Rehmat Begum v. Mehfooz Ahmed and others*' (2024 CLD 1254), '*Media Max (Pvt) Ltd. through Chief Executive v. ARY Communication Pvt. Ltd. through Chief Executive and another*' (PLD 2013 Sindh 555) and '*Jehangir Akhter v. Inayat Ahmed*' (1990 CLC 1053).
- (viii) In '*President, Zarai Taraqati Bank Limited, Head Office, Islamabad V. Kishwar Khan and others*' (2022 SCMR 1598), it was held by the Honourable Supreme Court that in case of mixed questions of law and facts, the correct approach would be to allow the suit to proceed to the written statement and discovery phases and to determine the matter, either by framing preliminary issues, or through a regular trial.
- (ix) that factual inquiry regarding averments in the plaint is not permissible, as held in '*Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi*' (1993 CLC 2523) '*Messrs Bengal Corporation V. D.D.G. Hansa and 3 others*' (PLD 1992 Karachi 75) '*Hyderabad Municipal Corporation V. Messrs Fateh Jeans Ltd.*' (1991 MLD 284) '*Dost Muhammad V. Ghulam Nabi*' (1990 MLD 164) and '*Karachi Development Authority V. Evacuee Trust Board through Administrator*' (PLD 1984 Karachi 34).
- (x) That where a cause of action is disclosed in the plaint, the plaintiff has a right to a fair trial and to produce evidence and a judicial decision on the merits of his cause; and
- (xi) that even in a case of vague pleadings and lack of proper particulars and details, the Court shall ask for better particulars and the proper course is to order the party to remove the vagueness and not to reject the plaint, as enunciated in the cases of '*Dost Muhammad V. Ghulam Nabi*' (1990 MLD 164), '*N. A, Shah Riyar V. Messrs Conforce Ltd., Lahore and another*' (1981 CLC 1009), and '*Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi*' (PLD 1976 Karachi 21).
- (xii) The Honourable Supreme Court in the case of '*Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others*' (1994 SCMR 826) held that the Court cannot take into consideration pleas raised by the defendant in his defense, as at that stage the pleas raised by the defendants

are only contentions in the proceedings unsupported by any evidence on record. However, if there is some other material before the Court apart from the plaint at that stage which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court. Beyond that, the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence.

- (xiii) In '*Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others*' (PLD 2008 Supreme Court 650) the Hon'ble Supreme Court expressed, that the scope of Order VII Rule 11, CPC. is confined only to the extent of averments of the plaint and in addition, at the most, uncontroversial material available on record can be considered for determination of the question whether plaint is liable to be rejected or not but the scope of Order VII Rule 11, CPC. cannot be enlarged to consider the pleading of the other side in the written statement or defence plea raised therein for the purpose of rejection of the plaint.
- (xiv) The Hon'ble Supreme Court, in '*Haji Mitha Khan V. Muhammad Younus and 2 Others*' (1991 SCMR 2030) has taken the view that the test of cause of action is, that where the plaintiff claims that he had entered into a valid compromise, and the respondents were party to it or bound by it, and that the rights of the applicant under the compromise were being violated, this was enough to afford a cause of action to the plaintiff and it would only be on merits that he could be defeated. It was further observed that if it is held that the claim is not within time, or that the parties were not parties to the compromise, or the compromise is not in accordance with the law applicable to the parties, then it would be a decision on merits which must take place in proper form. If any defect was found in the frame of the suit or a deficiency in the court fee, then an opportunity is to be allowed to the Plaintiff to correct such defect and to remove the deficiency.
- (xv) '*Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another*' (PLD 1989 Lahore 320) was the case wherein it was held that to enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should travel within the four corners of the plaint and nothing else. Neither the defence set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose the cause of action, the plaint can be rejected only if the allegations given in the plaint, the plaintiff could not be entitled to any relief whatsoever, even if it is taken to be true in the manner and form. If the contents of the plaint read as a whole disclosed triable issues, then the dispute between the parties should not be resolved without proper trial, i.e. settlement of proper issues and recording of evidence.

5. What appears to have been settled in the above-discussed citations is that in case of controversial questions of fact or law, the provision of Order VII Rule 11, CPC. cannot be invoked. Rather, the proper course for the Court would be to frame an issue on such a question and decide the same on the merits in the light of evidence in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person

from his legitimate right of availing the legal remedy for undoing the wrong done in respect of his legitimate right, therefore, the Court may in exceptional cases, consider the legal objection in the light of averment of the written statement; but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII Rule 11 CPC. The same view was also taken in the case of *Saleem Malik supra*. A plain reading of the provision shows that, subject to certain exceptions to clause (d) as a general principle, the plaint in a suit cannot be rejected based upon a defence plea or on disputed material supplied by the opposite party with the written statement. In the instant case, since the question of lack of cause of action was involved, hence the above principles have been applied, whereas the situation may differ in cases where a plaint is rejected being 'barred by law', under clause (d) of Rule 11 of Order VII, for instance, barred under the principles of *Res judicata*; or *estoppel*; or under Order II Rule 2; or barred under any other law.

6. Considering the above principles, the first ground for rejection of the plaint by the learned trial Judge was that Appellant/ Plaintiff No.1 was not duly authorised under the Power of Attorney executed by Plaintiff No.2 to institute a suit for damages on her behalf. Without touching the merits of the case, lest it may prejudice either party, the learned Judge failed to realise that even if such a ground was valid (which though was not the case), the plaintiff No.1 had also sought the same prayers for himself in the same suit and therefore merely for alleged lack of authorization on behalf of plaintiff No.2, plaintiff No.1 could not have been non-suited. Needless to tentatively observe that the said document is a General Power of Attorney and not a Special Power of Attorney, and in terms whereof, Plaintiff No.2 was duly authorized to file any case or suit against any person arising in respect of the disputed land. The alleged defamatory publications related to the said disputed land and the housing scheme situated thereon. Even otherwise, the learned trial court could have framed an issue with respect to the alleged lack of authorisation, instead summarily rejecting the plaint.

7. Likewise, the learned Court could also have framed issue with respect to the allegation of delay in serving notice under section 8 of the Defamation Ordinance 2002 [**Ordinance**] instead of outrightly rejecting the plaint, although a plain reading of the said provision reflects that the period of two months does not run from the date of publication of the defamatory material, but from the date on which the publication has come to the notice or knowledge of the plaintiff. The two dates are not necessarily the same. The plaintiffs specifically stated in their plaint that they came to know of the said defamatory publications sometime after their publication and that within two months of acquiring such knowledge they sent the legal notice on 03.07.2019. Whether the plaintiffs indeed came to know of the publication after some time, and whether the notice was sent within two months of such knowledge, are questions of fact that could easily be discovered in evidence. The learned trial Judge bypassed this factual inquiry entirely and mechanically counted the days from the date of publication to the date of the legal notice.

8. Lack of cause of action was the third ground for rejection, which was based on the view formed by the learned Judge on a bare reading of the alleged defamatory publications that the publications amounted to fair comment made in the public interest and they did not contain scandalous material capable of injuring the reputation of the Plaintiffs. Considering the Judgments referred above, such an approach was wholly impermissible at the stage of deciding an application under Order VII Rule 11. I am deliberately not entering into details of this ground, lest it may prejudice either party during trial, however suffice it to say that the learned trial Judge in effect decided the entire suit on merits at the stage of hearing of application under Order VII Rule 11, which is not permissible and is against the principles settled by the apex Court in the cases of Saleem Malik, Mushtaq Ahmad Khan, Jewan and many other cases discussed above. In the present case, instead of applying the above principles, the learned trial Judge practically adjudicated upon the fate of the alleged publications at this stage of hearing of the application under Order VII rule 11 CPC., without allowing an opportunity to the parties to lead evidence. The plaint on its face discloses a complete and cognizable cause of action, and the suit ought to have been proceeded with on its merits, but the same was wrongly rejected.

10. I am therefore completely satisfied that the impugned Order, being in excess of jurisdiction, is unsustainable in law, considering the principles settled by the Honourable Supreme Court *supra*. The impugned Order dated 01.09.2022 passed by the learned IV-Additional District Judge Larkana in Suit No. 07 of 2019 is therefore set aside; the application filed by the respondent under Order VII Rule 11 CPC is dismissed; and the plaint of the suit is restored to its original position. The record and proceedings of Suit No.07 of 2019 shall be returned to the learned trial Court, which shall proceed to decide the suit on its own merits strictly in accordance with law based upon the evidence of the parties.

This Civil Appeal was allowed by my short Order dated 14.05.2026, and these are the reasons for the same.

**JUDGE**