

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1162 OF 2025

Date	Order with signature(s) of Judge(s)
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Hg:/Priority

1. For orders on office objections.
2. For hearing of Misc. No.38904/15
3. For hearing of main case.

08.09.2026.

Syed Fazal ur Rehman, Advocate for the Petitioner.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the order dated 16.08.2014 and 01.10.2015 in Suit No.47 of 2013 and in Civil Revision No.30/20214 passed by the learned Sr. Civil Judge-I Malir Karachi and Additional District & Sessions Judge-I Karachi respectively, whereby an application filed by the Petitioner for rejection of plaint by invoking the provisions of Order VII Rule 11 C.P.C. was declined.

2. It is the case of the Petitioner that on the same subject matter with same prayer Suit No.448 of 2003 was filed by the Petitioner which was dismissed and second appeal is pending adjudication before this Court. Suit No.299 of 2006 was also filed by the Respondent Ali Akbar for the same relief which was dismissed for non-prosecution. An application under IX Rule 9 CPC was also dismissed vide order dated 03.02.2011 and the civil revision application preferred against the said order was also dismissed as such proceeding in the matter attained finality. Respondent Ali Akbar preferred fresh suit in the year 2013 which in terms of Order IX Rule 9 CPC was not maintainable therefore, application under Order VII Rule 11 CPC was preferred which too was dismissed.

3. Counsel for the Petitioner submits that it was a fit case for rejection of plaint in terms of Order VII Rule 11 CPC as the suit was hopelessly time barred, Respondent Ali Akbar precluded for filing fresh suit.

4. Heard arguments and perused the material available on record.

5. Petitioner seeks rejection of the plaint on the ground that dismissal of suit under default precluded a fresh suit in terms of Order IX Rule 9 CPC which reads as under:-

9. Decree against plaintiff by default bars fresh suit.--(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to

costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.1

(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1).”

6. From the perusal of above provisions of law, it is crystal clear that fresh suit is not allow maintainable once the suit is dismissed in default. Perusal of impugned order reveals that while deciding the application under Order VII Rule 11 CPC both the courts below have not considered this aspect of the case and dismissed the suit by assigning reason that the matter should proceed on merits instead of on technicalities.

7. In view of above, both the orders dated 16.08.2014 and 01.10.2015 passed by the learned courts below are hereby set aside matter is remanded back to the learned trial Court for a decision afresh on merits on application under Order VII Rule 11 CPC which shall be deemed to be pending after giving an opportunity of hearing to all concerned.

8. Office to transmit the copy of this order to the learned trial Court for compliance.

JUDGE