

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitution Petition No.S-57 of 2026.
(Ghazan Shafique Khoso Vs. Tariq Khoso & Ors)

DATE	ORDER WITH SIGNATURE OF JUDGE
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01. For orders on office objections "A".
02. For orders on M.A.No.919/2023. (E/A)
03. For orders on M.A.No.920/2023. (S/A)
04. For hearing of the main case.

05.10.2026.

Mr. Ghulam Asghar Pathan, Advocate for the Petitioner.
Mr. Abdul Waris Bhutto, Assistant Advocate General,
Sindh.

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Ali Haider 'Ada' J:- The petitioner has assailed the order dated 18.03.2023 passed by the learned Additional District Judge-I, Jacobabad, in Civil Revision Application No.05/2022, whereby the order passed by the learned trial Court was set aside. Being aggrieved, the petitioner has challenged the said order through the instant Constitutional Petition.

2. The petitioner instituted a suit for specific performance before the learned Senior Civil Judge-II, Jacobabad, contending that he had purchased the property in question from respondent No.1 through an agreement to sell. In support of his claim, the petitioner placed on record a payment chart showing that substantial payments had allegedly been made through cheques. During the pendency of the suit, respondent No.1, being defendant, filed an application under Order VII, Rule 11, C.P.C., before the learned trial Court, which was dismissed. Feeling aggrieved, respondent No.1 challenged the said order before the learned Revisional Court and succeeded, resulting in the passing of the impugned order; hence, the present petition.

3. Learned counsel for the petitioner submits that the controversy involved disputed questions of fact which require recording of

evidence, particularly as the petitioner relies upon the agreement to sell allegedly executed between the parties for purchase of the property in question. He contends that the learned Revisional Court, without properly appreciating the relevant material and the limited scope of jurisdiction under Order VII, Rule 11, C.P.C., set aside the well-reasoned order of the learned trial Court, which had rightly held that the petitioner's claim required adjudication upon evidence. He, therefore, seeks setting aside of the impugned order.

4. After institution of the petition, this Court, vide order dated 24.05.2023, issued notices to the respondents. Mr. Saddam Hussain Kalhoro, learned Advocate, filed Vakalatnama on behalf of respondent No.1 through his attorney. Thereafter, however, no one appeared on behalf of respondent No.1. The record further reflects that notice was repeatedly issued to respondent No.1 through the S.S.P., Clifton, South Karachi, as he was residing at Karachi. The Bailiff also reported that an e-notice had been issued, while the S.S.P., South Karachi, had directed the S.H.O., Police Station Clifton, South Karachi, to effect service. Despite having engaged counsel after institution of the petition, it remained the responsibility of the parties to pursue the matter diligently. However, no one is present on behalf of respondent No.1 today. Consequently, there is no justification to defer the matter any further, and the same is being decided based on the available record.

5. On the other hand, learned Assistant Advocate General, Sindh, submits that the order passed by the learned trial Court was well-reasoned, whereas the learned Revisional Court has interfered with the same in a manner not permissible under law.

6. Heard and perused.

7. Perusal of the record shows that the petitioner has asserted a claim for specific performance on the basis of an agreement to sell and has relied upon documentary material, including a payment chart showing substantial transactions allegedly made through cheques. Whether such payments were in fact made pursuant to the alleged agreement, whether the agreement was duly executed, and

what legal effect is to be attached to the documents relied upon by the petitioner are matters requiring determination upon evidence. Such disputed questions of fact cannot appropriately be adjudicated at the threshold while considering an application under Order VII, Rule 11, C.P.C.

8. The jurisdiction under Order VII, Rule 11, C.P.C., is to be exercised strictly within the parameters of the said provision. At that stage, the Court is required to examine the averments contained in the plaint and the documents relied upon by the plaintiff, where applicable, to determine whether the plaint falls within any of the possibilities contemplated by the provision. The Court is not required to conduct a mini-trial or determine disputed questions of fact on the basis of contested material. Where the claim set up in the plaint requires evidence for its determination, rejection of the plaint at the threshold is not warranted.

9. It is further settled that the jurisdiction under Order VII, Rule 11, C.P.C., cannot be invoked to reject only a particular part or portion of the plaint, as partial or piecemeal rejection of a plaint is not contemplated by the scheme of the said provision. Reliance is placed upon **President, Zarai Taraqiati Bank Limited, Head Office, Islamabad v. Kishwar Khan (2022 SCMR 1598)**.

12. In view of the foregoing facts and circumstances, the instant Constitutional Petition is allowed. The impugned order dated 18.03.2023 passed by the learned Additional District Judge-I, Jacobabad, in Civil Revision Application No.05/2022 is hereby set aside. The order passed by the learned trial Court on the application under Order VII, Rule 11, C.P.C., is restored. The learned trial Court shall resume the proceedings from the stage at which the same were stayed/interrupted and shall make every endeavour to conclude the trial within a period of six months from receipt of this order, strictly in accordance with law.

JUDGE