

# IN THE HIGH COURT OF SINDH AT KARACHI

HCA NO. 140 of 2017

**Present: Munib Akhtar & Yousuf Ali Sayeed, JJ**

Appellants: Muhammad Rasheed Siddiqui, through, Mr. Muhammad Nazir Tanoli, Advocate.

Respondents: Rana Muhammad Nadeem, Nemo.

Date of hearing 30-03-2017

Date of Judgment

## JUDGMENT

**YOUSUF ALI SAYEED, J.** This High Court Appeal arises from an Order made on 24.01.2017 in Suit Number 1671 of 2016 (the “**Impugned Order**”) whereby the Application of the Appellant under Order VII, Rule 11 CPC, bearing CMA Number 17320/2016 (the “**Subject Application**”) was dismissed.

2. The basic facts as relevant for the purpose of proper determination of the matter at hand are that the Suit was filed by the present Respondent seeking specific performance of an oral agreement said to have been entered into between him and the Appellant for purchase of an immovable property. It was alleged inter alia that consequent to such oral agreement a sum of Rs.500,000/- had been paid by him to the Appellant vide cross-cheque drawn on an account maintained with a scheduled bank, and the title documents of the property in question had been handed over to him by the Appellant in furtherance of the transaction.

3. It is in this context (i.e. the case as set up by the Respondent in terms of the plaint) that the Subject Application was filed by the Appellant in his capacity as the defendant, whereby rejection of the plaint was sought on the following grounds, reproduced verbatim as follows:
  - a. That the instant suit of plaintiff is not maintainable under the law and facts and is liable to be dismissed.
  - b. That the plaintiff has approached this Hon'ble Court with totally unclean hands, evil designs and malafide intention in order to get affluence and monetary gain.
  - c. That no cause of action accrued to the plaintiff against the answering defendant for filing this suit; hence the suit of plaintiff is not maintainable under the law and liable to be dismissed with special compensatory cost.
  - d. That there is no privity of contract between the parties and hence the plaintiff has no cause of action for filing the instant suit.
  - e. That neither there is any agreement between the parties nor the plaintiff agreed to sell the property in question and the plaintiff has not paid any amount to the plaintiff hence the suit of the plaintiff for specific performance is not maintainable.”
4. In support of the Appeal, learned counsel for the Appellant has broadly contended that the learned single Judge has erred in dismissing the Subject Application as he failed to appreciate that the case set up by the Respondent in terms of the plaint was false, as no oral agreement for sale was entered into by the Appellant, whether as stated or otherwise.

5. From a reading of the Impugned Order it is apparent that whilst deciding the Subject Application, the learned single Judge has quite correctly appreciated the scope of Order VII, Rule 11 in as much as it has been held that the factual contents of the plaint have to be deemed to be true and matched against the permissible grounds for rejection. When confronted with this well settled proposition, learned counsel was unable to demonstrate as to how the plea raised in the Subject Application were in consonance with the dictates of this provision.
6. Having considered the Plaint in juxtaposition with the Subject Application and the arguments advanced at the bar, we concur with the learned single Judge that the matter does not fall within the ambit and purview of Order VII, Rule 11, and, instead, gives rise to disputed questions of fact that must be dealt with in accordance with applicable law and procedure.
7. In view of what has been discussed herein above, we are of the view that the learned single Judge has correctly assessed the subject matter and the law, and no case for interference is made out. Accordingly, this Appeal is dismissed.
8. These are the reasons for our short Order dictated in open Court on 30.03.2017.

JUDGE

JUDGE

Karachi  
Dated \_\_\_\_\_