

jurisdiction as the cause of action has not accrued within the territorial limits of this Court and in view of section 20 CPC, this Suit is not competent as admittedly the defendants do not reside within the territorial jurisdiction of this Court. Hence learned Counsel submits that the plaint be rejected against present defendants, or in the alternative, be returned under Order 7 Rule 10 CPC.

2. On the other hand, learned Counsel for the plaintiff submits that fraud was committed by these defendants in connivance with defendant No.1 and has referred to the pay orders issued, and submits that there were issued within the territorial jurisdiction of this Court; and have been en-cashed fraudulently, therefore part of cause of action has accrued in the jurisdiction of this Court. Per learned Counsel Suit 862 of 2011 is on a separate and independent cause against Defendant No.1 only, and therefore, this Suit is competent and not barred. He further submits that the defendants acted hands in gloves with defendant No.1 in committing the fraud; therefore cause of action has accrued, hence these applications are liable to be dismissed.

3. I have heard both the learned Counsel and perused the record.

4. Insofar as the ground that no cause of action has accrued it may be observed that plaintiff's case is that alleged fraud resulted in losses and therefore all defendants are liable jointly and severally. It has been alleged that the pay orders prepared by the plaintiff for onward payments to defendant No.1 in the name of 'M/s Pak Arab Refinery Company Limited' (PARCO) were fraudulently credited in the fake account opened by the defendants in connivance

with each other. This is the main cause of action accrued to the plaintiff and for that this Suit for damages has been filed. It is settled law that while deciding an application under order 7 rule 11 CPC the contents of the plaint are to be accepted as true and correct, whereas, on perusal of the plaint and its annexures it has come on record that the plaintiff has shown accrual of cause of action against the present defendants. It is also noteworthy that it is not the case of the present defendants that there is no cause of action against defendant No.1 at least, nor it could be their case, and therefore, even otherwise the plaint cannot be rejected in piecemeal. It therefore, follows that while deciding an application under Order 7 Rule 11 CPC, plaint is to be considered in its entirety and totality and not in piecemeal. It is settled law that plaint cannot be rejected in part(s) and if one cause of action or a claim / prayer in that regard is not maintainable, the plaint cannot be rejected. Therefore, even if the main or primary cause of action is barred, and it is only a secondary (and clearly less important) cause of action that is not, the plaint cannot be rejected in respect of that part which relates to the primary cause of action.¹ Moreover, it is also to be noted that there may be a case that ultimately the Suit at the trial is dismissed as not maintainable, but on the same issue it is not necessary that the plaint may also be rejected under Order 7 Rule 11 C.P.C. Suffice it to say that the question of whether a suit is maintainable or not is moot with respect to whether or not a plaint is to be rejected as being barred by law. Both are a different species altogether and it may well be that a plaint is not rejected in terms of Order 7 Rule 11 CPC but the suit is dismissed eventually as not maintainable for a possible

¹ Muhammad Amin Lasania Vs. M/s Ilyas Marine & Associates (Private) Limited (SBLR 2011 Sindh 989),

host of reasons.² Therefore this objection being misconceived is overruled.

5. In so far as the second objection regarding filing of separate Suit is concerned, it may be observed that the said Suit bearing No.862 of 2011, is based on dishonored cheques and has been filed under Order 37 CPC, as a summary Suit, wherein, no relief could have been sought against the present answering defendants, and therefore, instant Suit has been separately filed under section 9 CPC seeking declaration and damages for the alleged fraud committed by the present defendants; hence this objection is also fallacious and untenable.

6. Lastly in respect of the objection with regard to territorial jurisdiction of this Court, it may be observed that firstly the defendants have by themselves filed Order 7 rule 11 applications and such applications for rejection of a plaint can only be entertained by Court which has jurisdiction to decide such applications. The defendants have by themselves surrendered to the jurisdiction of this Court for rejection of plaint on merits, therefore, in these circumstances; the defendants are precluded from raising any such objection that this Court has no territorial jurisdiction. Notwithstanding this, even otherwise the plaintiff has placed on record various documents including the pay orders issued by the banks at Karachi which have been en-cashed allegedly in fake accounts, and therefore, if not the entire cause of action, at least a part of cause of action has accrued within the territorial jurisdiction of this Court, hence this Court can exercise jurisdiction. Moreover, in today's Banking world after introduction of online Banking System,

² Al-Meezan Investment Management Company Ltd & Others V. WAPDA First Sukuk Company Limited, Lahore, etc (PLD 2017 SC 1)

all Banks and their branches are one Bank for all intents and purposes. A payment or cheque / pay order deposited in Karachi can be en-cashed or paid at Islamabad and vice versa. Therefore, the question of territorial jurisdiction in such matters is to be appreciated keeping in view this material changes in the very Banking Transactions. In the circumstances, this objection is also misconceived and is hereby repelled.

7. Finally, before passing of the short order, learned Counsel for the defendants was given an option not to press these applications as they appear to be misconceived and a tool to drag and delay these proceedings, and objection, if any, can be raised at the time of settlement of issues, to which learned Counsel did not agreed and insisted on a decision on merits, which is not appreciated, as nowadays, frivolous and misconceived applications are filed, and for one reason or the other, they are entertained and notices are issued, and thereafter, the parties seek decision of these applications on merits, without realizing that such decisions would not serve their purpose, and would in fact engage the already burdened Courts in wastage of precious time. This practice has to be deprecated and put to a halt. These applications are pending since 2011, and no serious effort has been made to have it decided, whereas, this is a Suit primarily for damages, pertaining to the year 2011, and since precious time of this Court was wasted in hearing and deciding these applications for no proper justification, the same were dismissed in the earlier part of the day by means of a short order with imposition of cost of Rs.5,000/- each to be deposited in the account of Sindh High Court Clinic and these are the reasons thereof.

J U D G E