

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Suit No.239 of 2010**

DATE	ORDER WITH SIGNATURE OF JUDGE
	<ol style="list-style-type: none"><li>1. For hearing of CMA No.5061 of 2010</li><li>2. For hearing of CMA No.1610 of 2010</li><li>3. For Examination of parties.</li></ol>

**Dated 19.01.2018.**

Ms. Razia M. Abbasi, Advocate for the plaintiff.  
Mr. Mirza Sarfraz Ahmed, Advocate for the Defendant No.1.

MUHAMMAD JUNAID GHAFAR J.- This is an application under Order 7 Rule 11 CPC filed by the defendant No.1 seeking rejection of the plaint. Learned counsel for defendant No.1 submits that instant Suit is barred in law including but not limited to under Order 2 Rule 2 CPC and under Order 9 Rule 9 CPC and so also under the provisions of Limitation Act. According to the learned counsel, in para 5 of the plaint, the plaintiff has himself stated that Suit bearing No.494 of 2003 was filed before Senior Civil Judge, Malir, Karachi and the same was dismissed for non-prosecution on 24.09.2008 and instead of seeking restoration of the same present Suit has been filed. He further submits that even otherwise the cause of action as stated in the plaint before the Malir Court accrued in November, 1995 and under Article 120 of the Limitation Act, 1908, Suit for declaration could only be filed within six years and admittedly even the Suit before the lower Court was time barred. Per learned counsel, the appropriate remedy for the plaintiff was to seek recall of the order of dismissal under Order 9 Rule 9 CPC and therefore Suit is barred in law and plaint be rejected.

2. On the other hand, learned counsel for the plaintiff submits that though earlier a Suit was filed as stated in para 5 of the plaint; but the counsel then representing, did not inform the plaintiff regarding its

dismissal and due to misunderstanding the plaintiff could not seek appropriate remedy and filed instant Suit. Per learned counsel, a new cause of action has accrued as now the plaintiff has issued a proper notice under Section 70 and 70-A of the Cooperative Societies Act, 1925 and therefore the Suit is competent. She further submits that neither Order 2 Rule 2 nor Order 9 Rule 9 CPC would apply. In support he has relied upon the cases reported as *Province of Punjab v Muhammad Hussain (PLD 1993 SC 147)* and *Ilyas Ahmed v Muhammad Munir (SBLR 2012 Sindh 742)*.

3. I have heard both learned counsel and perused the record. Admittedly, as per contents of Para 5 of the plaint earlier, Suit No.494 of 2003 was filed before the Senior Civil Judge at Malir and the same was in respect of the same property which is now subject matter of this Suit. It is not denied that the Suit was dismissed for non-prosecution and instead of filing an application for recalling and/or restoration of the Suit, instant Suit has been filed. The plaintiff's counsel argued that since a notice has been issued under the Cooperative Society Act to the Societies a new cause of action has accrued, however, in my view, such contention is misconceived. Order 9 Rule 9 CPC places a bar in instituting a fresh Suit which is wholly or partly dismissed under Rule 8 in respect of the same cause of action, however, the plaintiff can always apply for an order to set-aside such dismissal of the Suit if otherwise sufficient cause is shown. Merely for the fact that a notice has now been issued to the Society, the same would not entitle the plaintiff to file a fresh Suit. Any subsequent event, during pendency of a Suit can always be taken care of, if needed, under Order 6 Rule 17 CPC seeking amendment in the plaint, but in no manner this justifies filing of fresh Suit. I have also gone through the plaint in the earlier Suit and apparently the cause of action is the same and in respect of the same property. Now if the cause of action as stated in the earlier Suit is taken

as a cause of action in this Suit, then apparently it is time barred inasmuch as the earlier cause of action accrued in 1995, therefore, even otherwise the Suit would be barred under the limitation Act. It is settled law that a plaint shall be rejected under Order 7 Rule 11 CPC, if the Suit is barred in law. Admittedly, the discussion hereinabove amply reflects that the present Suit is barred in terms of Order 9 Rule 9 CPC, including Order 2 Rule 2 as well as under the Limitation Act, 1908 and the plaint is to be rejected.

4. In view of hereinabove facts and circumstances of this case, I am of the view that the plaint in this matter ought to be rejected and therefore by means of a short order in the earlier part of the day, listed application was allowed while rejecting the plaint. Plaint stands rejected.

J U D G E

Farooq