

IN THE HIGH COURT OF SINDH AT KARACHI

CP D - 8661 of 2018

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Mst. Rubina Hussain
vs.
Mst. Fareeda Begum & Others

For the Petitioner: Mr. Mubashir Ahmed Qureshi, advocate

For the Respondents: Nemo

Date of Hearing: 21.12.2018

Date of Announcement: 21.12.2018

ORDER

Agha Faisal, J : Through this petition the order in revision dated 01.10.2018 (*mistyped as 18.07.2018*) delivered by learned VII-Additional District Judge, Karachi-East in Civil Revision Application No. 129/2016 ("**Impugned Order**") has been assailed. It may be pertinent to reproduce the operative part of the Impugned Order herein below:

"6. It appears from the impugned order that it has been passed on second application of the applicant counsel under order VII rule 11 of CPC. In said application, applicant preferred the ground of pecuniary jurisdiction. Learned trial Court rejected the said application by holding that it was not maintainable and the suit is very well within the pecuniary jurisdiction of trial Court. Apparently, there is no illegality in the order passed by learned trial Court on the ground that learned trial Court has referred the valuation certificate provided by the applicant in Court by mentioning that the same were not valid for Court purpose. This reflects that some material was available before the trial Court for forming such opinion. It further appears that maintainability of applicant's application remained under consideration of trial Court as learned trial Court has referred in ingredients of order VII rule 11 of CPC in the impugned order. All this reveals that matter of pecuniary jurisdiction requires proper adjudication by settling the proper issue in this regard and allowing

the parties to lead evidence. On this score, order passed by learned trial Court is based on sound reason.

7. Pertinent to mention here that first application under order VII rule 11 of CPC was filed by the appellant and the same was dismissed. The order of trial Court was impugned in Civil Revision No. 129/2016. Learned Additional District & Sessions Judge-IX, Karachi-East passed the judgment dated 22.04.2016 whereby impugned order was set aside and trial Court was required to decide one preliminary issue, framed by appellate Court with consent of parties, within six months. At present, matter is pending in trial Court for evidence of the applicant on said preliminary issue. This disclosed position reveals that applicant is required to lead evidence for decision on preliminary issue but she preferred an application under order VII rule 11 CPC in trial Court for second time. This conduct of the applicant reveals that she has many piecemeal objections in her mind. However keeping in view the judgment dated 22.04.2016 of first revisional Court, applicant is supposed to lead evidence on preliminary issue for decision on merits. Question of pecuniary jurisdiction, in the disclosed circumstances, could only be resolved through course of recording evidence.

8. For the foregoing reasons, this Court is of the opinion that instant civil revision merits no consideration. The same is dismissed. However, trial Court would be at liberty to frame issue of pecuniary jurisdiction, allowing the parties to lead evidence on merits. There is no order as to cost.”

2. The Impugned Order was result of proceedings in an application under order VII rule 11, C.P.C., the content whereof is reproduced herein below:

“For the reasons and circumstances disclosed in the accompanying affidavit, it is respectfully prayed for and on behalf of the defendants above named that this Hon. Court may be pleased to dismiss the plaint on the specific grounds that the said matter is not maintainable and the same is liable to be dismissed as such the suit value is more than Rs.150,000,000/= (one crore fifty lac only) and this Hon. Court has no jurisdiction to entertain the said matter accordingly.”

3. Prior to proceeding any further, it may be pertinent to reproduce the operative part of the order under revision, being the order dated 29.10.2016 passed by learned VII-Senior Civil Judge, East at Karachi in Civil Suit No. 1490/2014 (“**7-11 Order**”):

“The upshot of the discussion above is that instant application under the provisions of order VII rule 11 CPC is not maintainable in as much as that plaint cannot be rejected on score of pecuniary jurisdiction but can only be returned, whereas otherwise the suit is very well within the pecuniary jurisdiction of this Court. The valuation as provided by the defendants from the private architects, perusal of such valuation certificate shows that the same is not valid for Court purposes yet the defendant have relied on the same. The pecuniary jurisdiction is very well within jurisdiction of this Court as drawn by the plaintiff under the existing rules and official rates. The element of pecuniary jurisdiction is governed at the value at the time of admission and is not affected by subsequent inflation otherwise the share of the plaintiff is under the domain of this Court. Thus if the Court suffers ouster of jurisdiction, the plaint can only be returned but cannot be rejected and defendants have failed to show as to how the plaint on such score can be rejected. Further the question of limitation is mixed bag of facts and law which requires evidence and where with consent issue is framed and directions been procured while before the revisional forum, instant application by defendant is nothing but wastage of time of the Court and would amount to overriding the order of the revisional forum accordingly I have no hesitation in dismissing the inhand application, therefore the 2nd application under the provisions of Order VII Rule 11 CPC is hereby dismissed with no order as to cost.”

4. Learned counsel for the petitioner was confronted with the prescriptions of Order VII Rule 11, CPC and asked to demonstrate if the 7-11 Order was in infraction thereof. Learned counsel failed to give any satisfactory reply to the query of the Court. Learned counsel for the petitioner was then confronted with the Impugned Order and asked to demonstrate if the same was violative of the prescriptions of Section 115 of CPC, however, learned counsel remained unable to provide any satisfactory reply to this query as well.
5. We have observed that the ambit of Order VII Rule 11 CPC has been correctly appreciated by the learned Judge as the same is diligently reflected in the 7-11 Order. We have also noted that the Impugned Order has been rendered in due consonance with the four corners of the law as prescribed by Section 115, CPC and the learned counsel for the petitioner

remained unable to demonstrate any failure of the learned Revisional Court to correctly exercise its jurisdiction under Section 115 CPC.

6. In view of foregoing, it is considered view of the Court that the present petition is misconceived and devoid of merit, hence, this Court was pleased to dismiss the same in limine vide short order dated 21.12.2018. These are the reasons for our aforesaid short order.

J U D G E

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Karachi.

Dated 08th February 2019.