

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

C.P. No 298 of 2020

Present:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Ali Gohar and another

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Petitioners

VERSUS

Abdullah Mallah & others

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Respondents

Date of hearing & Decision:

18.08.2020

Mr. Muhammad Arshad S. Pathan, advocate petitioners.

Mr. Allah Bachayo Soomro Additional Advocate Sindh

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Petitioners, namely Ali Gohar and Nadir Ali have filed the instant constitutional petition challenging the decisions of learned Additional District Judge, Dadu dated 18.2.2020 passed in Civil Revision Application No.04 of 2020 and Senior Civil Judge, Dadu dated 14.1.2020, passed in F.C Suit No. 245 of 2018 respectively. The courts below have held that the suit is not barred under any provision of law and required recording of evidence to determine, the validity of Iqrar-nama / Agreement dated 30.6.2015. Petitioners being aggrieved by and dissatisfied with the aforesaid decisions have filled the present petition.

2. Brief and essential facts leading to the present petition are that the private respondent on 1.12.2018 instituted Suit No. 245 of 2018, against the petitioners, for Specific Performance of Contract, Cancellation, Declaration and Permanent Injunction with the assertion that he obtained loan from petitioner No.1 with certain conditions. Such agreement dated 30.06.2015

was reduced into writing between them, in presence of witnesses. It is averred in the plaint that in the month of October 2018 private respondent attempted to return the aforesaid loan amount to the petitioner No.1, but he refused to receive the same, compelling him to institute the aforesaid Suit. For convenience sake an excerpt of the Iqrar-nama / Agreement dated 30.6.2015 is reproduced as under:

Iqrar Nama / Anjam Nama

We the undersigned party No.1 Ali Gohar S/O Ali Sher by caste Jamali, r/o Phulji Village, Taluka Johi, District Dadu and Party No.2 Abdullah S/o Nabi Bux by caste Mallah, r/o Bahadurabad Colony, Taluka and District Dadu.

Seal of Oath Commissioner  
30.06.2015

We in our own sense without any intoxication, without any pressure admit and execute Iqrar Name / Anjam Nama that we in presence of witnesses and upon following condition that I party No.1 Ali Gohar Jamali give to party No.2 Abdullah Mallah an amount of Rs.30,00,000/- for business purpose and upon per one lac there will be Rs.2,000/- interest and by such means for one month there will be Rs.60,000/- per month interest which will be accumulated as Rs.7,20,000/- per year interest and for three years i.e. from 28.11.2015 to 28.11.2018 same will be Rs.21,60,000/- (Rupees twenty one lac sixty thousand) and total amount will be Rs.51,60,000/- (Rupees fifty one lac sixty thousand) up to 28.11.2018 will be paid and in lieu of the said amount Abdullah Mallah as a surety one shop situated at New Chowk, Old Taj Hotel bearing City Survey No. 1047/1-B area 692 square feet Ward-B, transferred through registered Sale Deed and if upon time Abdullah Mallah failed to return the amount then shop will be of Ali Gohar Jamali and within three years period the shop will be with Abdullah Mallah who will run the shop up to 28.11.2018 and at the time of re-payment Ali Gohar Jamali will return the Registry and execute the Registry in the name of Abdullah Mallah upon receipt of entire amount.

3. The suit was resisted by the petitioners by filing written statement. The petitioners instituted an application under Order VII Rule 11 CPC for rejection of plaint which was dismissed vide order dated 14.1.2020 by learned Trial Court. For the sake of convenience the operative part of the order is reproduced as under:

“ From the above discussion it appears that the counsel for the Defendant No.1 has failed to prove that the plaint does not disclose any cause of action, the plaint is written upon paper insufficient

stamped, or suit appear from the statement in the plaint to be barred by any law.

The result of above discussion in my humble view that the present suit is not barred by any clause of Rule 11 order VII CPC, accordingly the instant application being not maintainable is hereby dismissed. There will be no order as to costs.

4. Petitioners being aggrieved by and dissatisfied with the aforesaid order preferred Civil Revision Application No.04 of 2020 before learned District Judge Dadu, which too was dismissed vide order dated 14.1.2020.

An excerpt of the order is as under:

“I have considered the arguments advanced by learned counsel for parties and perused the material available on record. The perusal of record reflects the Plaintiff / opponent No.1 filed suit for specific performance of contract cancellation and permanent injunction. I have also perused the contents of application under Order VII Rule 11 CPC which reflects the applicants / Defendants have taken plea that after execution of sale agreement the Plaintiff never remained in possession of the suit property. In this respect the learned counsel for Plaintiff / opponent argued that the litigation regarding the suit property are already going on between the parties as the proceedings under section 145 Cr.P.C. were initiated regarding same property which were decided by learned Civil Judge & J.M.-I, Dadu and against such order the criminal Revision Application is filed which is still pending adjudication. He further argued that not only this but also for same property rent matter was also filed and adjudicated between the parties and there is no controversy of facts and circumstances in the matter which can only be resolved after recording evidence in the matter.

It is settled principle of law for the purpose of clause (d) of Rule 11 order VII, the court should examine the entire plaint and prayer clause should not be read in isolation, if necessary the court can also seek elaboration of the plaint or required the evidence. In case in hand the learned Trial Court also settled issues from the pleadings of the parties including the issues of law. It is settled principle of law that where issues have been framed including on the question of rejection of parties must be allowed to led evidence and plaint cannot be summarily rejected. The perusal of record reflects the bone of contention between the parties recounted in the plaint and written statement showed substantial dispute with mix question of law and facts which required evidence and unless evidence was recorded, the dispute between the parties could not be resolved. Plaintiff had properly pleaded the cause of action in the plaint and if the cause of action described in the plaint was taken to be true and correct, the suit was not barred by law. In case of controversial question of facts or law provision of O.VII Rule 11 CPC could not be invoked rather proper course for the court in such cases was to frame issues on such questions and decide the same on merits in the light of evidence,

therefore, in my humble view the impugned Order passed by learned Trial Court is not suffered from legal flaws and it is not liable to be interfered, therefore Civil Revision filed by applicant is hereby dismissed and impugned Order is maintained. Parties to bear their costs.

The case law relied upon by the learned counsel for applicants is distinguishable from the facts and circumstances of the instant matter.

5. Mr. Muhammad Arshad S. Pathan, learned counsel for the Petitioners, submitted that the Impugned Orders were not sustainable in law and his arguments in such regard are that the courts below ought to have considered the application under Order VII Rule 11 C.P.C. on merits instead of exercising the jurisdiction not vested in the court; that the impugned Order passed by learned trial Court is based upon mis-appreciation of law and against the provisions of Order VII, Rule 11 CPC. It is further contended that the revisional court also did not appreciate that the plaint of the respondent No.1 did not disclose any cause of action and that the plaint ought to have been rejected as the suit is / was barred by Section 42 of Specific Relief Act. It is contended that when no cause of action is disclosed in plaint, the Court will not unnecessarily protract the hearing of the suit and that a party should not be unnecessarily harassed in a suit. It is next contended that Order VII Rule 11(a) CPC although authorizes the court to reject plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining relief(s) claimed in the suit. He further argued that the approach adopted by both the courts below in this regard is not correct; that the findings of learned courts below are arbitrary and perverse; therefore, both the orders are nullity in the eyes of law; that both the courts below have failed to appreciate the legal aspects of the case;

therefore, the impugned Orders are illegal and against the law and are thus liable to be set aside. Learned counsel emphasized that the private respondent after executing the sale deed dated 30.11.2015 never remained in possession of the subject property; that Petitioner No.1 being father of Petitioner No.2 (who was minor) at the time of subject sale and purchase of the property i.e. Shop on the ground floor and residential portion at the first floor C.S. No. 1047 / 1 Ward-B, situated at New Chowk / Cinema Chowk Dadu through registered sale deed dated 30.11.2015. He next submitted that the documents relied upon by the private respondent in the suit proceedings were not worth consideration but wrongly relied upon; per learned counsel there is no legal agreement executed between the parties as such suit was not maintainable and the plaint was liable to be rejected under the law. He lastly contended that the purported Iqarnama dated 30.6.2015 cannot be termed as sale agreement under the law.

6. It may be stated that in view of urgency shown by learned counsel for the Petitioners this petition was fixed today for hearing of stay application as well as main case. Today learned counsel for the Petitioners has argued the entire case on merits.

7. Having discussed the scope of claim and counter claim between the parties, this Court has to determine whether the two Courts below were correct in dismissing the application of the present petitioners for rejection of plaint of the present private respondent under Order VII, Rule 11 of C.P.C.

8. In order to initiate discussion it may be appropriate to reproduce the contents of prayer clause of the plaint filed in the Suit:

#### PRAYER

In the circumstances, the Plaintiff most respectfully prays for Judgment and Decree as under:-

- a) That this Honorable court may kindly be pleased to pass judgment and decree in favour of Plaintiff and against the defendants, directing the defendant No.1, to perform the remaining part of contract / agreement dated 30.11.2015, and direct the defendant No.2, to register the shop bearing survey No. 1047/1-B, situated at Old Taj Hotel New Chowk Dadu in the name of the plaintiff for that the plaintiff is ready to pay the remaining entire amount to defendant No.1 and 2.
- b) Cancel the registered sale deed dated 30.11.2015, executed in the name of minor Nadir Ali, Defendant No.2,
- c) That this Honorable court may kindly be pleased to issue permanent injunction in favour of the plaintiff, against the defendants.
- d) Cost of suit be awarded to the plaintiff, against the private defendants.
- e) Any other relief, which this Honourable court may deem fit and proper under the circumstances of the case, be granted to the Plaintiff.

9. To appreciate the scope of Order VII, Rule 11 of C.P.C let us have a glance on the said provision, which reads as: ---

"Rejection of the plaint" --- The plaint shall be rejected in the following cases: ---

- (a) Where it does not disclose a cause of action.
- (b) Where the relief claimed is undervalued and the plaintiff on being required by the court to correct the valuation within time to be fixed by the court fails to do so;
- (c) Where the relief claimed is properly valued but the same is written upon paper insufficiently stamped and the plaintiff on being required by the court to supply by the requisite stamp paper within time to be fixed by the court, fails to do so;
- (d) Where the suit appears from the statement of the plaint to be barred by any law.

10. We have noted that the above provision of law is mandatory in nature as the word "shall" has been used; meaning thereby that a Court is bound to reject a plaint if it "appears" from the statement in the plaint to be barred by any law.

11. We have examined the plaint and noted that the Iqarnama / Anjamnama was reduced into writing on 30.6.2015 and F.C. Suit No. 245 of

2018 was filed on 1.12.2018 for Specific Performance of Contract, Cancellation of Registered Sale Deed dated 30.11.2015 executed in the name of Petitioner No.2 namely Nadir Ali. Petitioner rebutted the allegations of the private respondent by filing Written Statement. Petitioners in the meanwhile filed an Application under Order VII Rule 11 CPC which was dismissed vide order dated 14.1.2020. Revision Application was preferred by the Petitioner which was also dismissed on 18.2.2020, thereafter the petitioners filed the instant Petition on 2.3.2020. Now the only question arises in the present proceedings whether the matter requires evidence or otherwise.

12. Addressing the aforesaid proposition, we observe that learned trial court dismissed the application of the petitioners with the observation that at present suit is not barred by any clause of Order VII, Rule 11 of C.P.C.

13. From perusal of above, it is clear that the court must examine the statement in the plaint prior to taking a decision; however the contents of written statement are not to be examined in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not obliged to decide whether the plaint is right or the written statement is right. Under Order VII Rule 11 CPC, the court has to see whether the plaint appears to be barred by any law or otherwise, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of denials contained in the written statement which are not relevant. On the aforesaid proposition we are fortified with the decision rendered by Honorable Supreme Court in the case of *Haji Abdul Karim & Others vs. Messrs Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247* (“*Haji Abdul Karim*”),

14. It is apparent from the foregoing discussion that for consideration of an application under Order VII Rule 11 CPC it is the contents of plaint that are to be given primacy. The determination required to be undertaken is to fall squarely within the parameters of whether the suit appears from the statement in the plaint to be barred by any law. In the present case, learned trial court dismissed the application under Order VII Rule 11 CPC filed on behalf of the petitioners with certain reasoning in the presence of grounds and prayers contained in the plaint, exclusive to the issue whereupon findings were rendered, on the sustainable grounds. Therefore, in presence of independent grounds and prayer clauses, prima-facie not found to be barred by any law, in view of the circumstances, the rejection of plaint was not required under the law, for the simple reason that the plaint cannot be rejected in part. 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 primary cause of action. It is also well-accepted principle for deciding an application under Order VII Rule 11; CPC that plaint in a suit cannot be rejected in piecemeal.

15. The judgment of the Honorable Supreme Court in the case of *Haji Abdul Karim*, supra articulated the principle that when hearing an interim application all material available on record may be evaluated but in determination of whether a plaint was liable to be rejected, only the plaint and its accompaniments were required to be examined. Applying the ratio of the judgment cited supra, application of the petitioners for rejection of the plaint under Order VII Rule 11, CPC, was not warranted and was rightly dismissed through the Impugned Order dated 14.1.2020, passed in F.C Suit No. 245 of 2018 and correctly concurred by the revisional court vide order dated 18.2.2020 passed in Civil Revision No.04 of 2020.



16. For the reasons stated hereinabove, this Court finds that the two Courts below have rightly dismissed the application of the petitioners. Accordingly, this Court rejects the contentions of the petitioners made in the present petition and maintains the impugned orders of two Courts below.

17. Thus, considering the above facts and the law laid down by the Hon'ble Supreme Court in the aforementioned decision, it is held that on perusal of the plaint in question, it does disclose a cause of action and none of the conditions required to be fulfilled under Rule 11 of Order 7 CPC having been satisfied, the trial Court was fully justified in rejecting the application filed by the petitioners/ defendants for rejection of plaint. Accordingly, the instant Petition fails and it is dismissed with no order as to costs. The trial Court is directed to proceed with the trial by framing proper issues and conclude the same within a reasonable time in accordance with law. However, the parties shall be at liberty to lead evidence in support of their contentions.

18. These are the reasons of our short order dated 18.8.2020 whereby we have dismissed the instant petition.

JUDGE

JUDGE

Irfan Ali\*