

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-855 of 2020

[*Waheed Ali & Others versus Ghulam Nabi & Others*]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:-

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

Petitioners: Through Mr. Gulzar. A Soomro advocate
Private Respondents: Through Mr. Wazir H. Chandio advocate
Official Respondents: Through Mr. Allah Bachayo Soomro,
Additional A.G Sindh
Date of hearing: 24.09.2020
Date of Decision: 24.09.2020

ORDER

ABDUL MAALIK GADDI, J:- Through this constitutional petition the petitioners have challenged the order dated 05.08.2020, passed by the learned District Judge/M.C.A.C, Dadu in Civil Revision Application No.14 of 2020, whereby, he maintained the order dated 03.03.2020, passed by learned IInd Senior Civil Judge, Mehar @ Dadu, dismissing the application of petitioners herein filed under Order 7 Rule 11 CPC in F.C Suit No.19 of 2018 (Old) [New numbered as C.S No.108 of 2019] (*Re: Ghulam Nabi & Others versus Arbab Khan & Others*), (**herein after referred to as subject Suit**).

2. Facts of the matter are that private respondents herein had filed the subject suit for declaration, cancellation, possession, mesne profit and permanent injunction in respect of the suit property. After service the defendants/petitioners herein filed their joint written statement; however, during pendency of suit they had moved an application under Order 7 Rule 11 CPC for rejection of the plaint, which was dismissed by the Trial Court on merits, vide order 02.10.2019; that order was challenged by the petitioners herein in Civil Revision Application No.29 of 2019, which also met with same fate, vide order dated 15.11.2019, which remained unchallenged and attained finality; however, the petitioners herein again

repeated the same application before the Trial Court, which, as mentioned supra, was dismissed upto the level of Revisional Court, hence this petition.

3. Learned counsel for the petitioners submits that after rejection of their earlier application, petitioners came to know regarding fraud committed by the private respondents/plaintiffs by tracing out the documents of criminal litigation between the parties, therefore, they repeated the application under Order 7 Rule 11 CPC, however, the same was dismissed by both Courts below without assigning valid reasons. He further submits that both Courts below have not applied their judicious mind while deciding the application of petitioners, therefore, both impugned orders are liable to be set aside. While concluding his arguments he submitted that plaintiffs/private respondents have no case at all before the Trial Court, therefore, plaint may be rejected to save the precious time of Trial Court. In support of his arguments he has relied upon the cases of (i) MUHAMMAD IQBAL vs. RENT CONTROLLER/CIVIL JUDGE, 1ST CLASS, MULTAN and another (2010 YLR 509), (ii) GULISTAN TEXTILE MILLS LTD and another vs. SONERI BANK LTD and another (PLD 2018 SC 322) & (iii) Khalifa Haji MUHAMMAD HANIF and 3 others vs. CHIEF ADMINISTRATOR AUQAF SIND (1985 MLD 221).

4. On the other hand Mr. Wazir Hussain Chandio advocate while filing power on behalf of private respondents supports the impugned orders and submits that earlier application of the petitioners was dismissed upto the level of Revisional Court and the same order has attained finality, therefore, second application is not maintainable under the law and the same has rightly been dismissed by both Courts below. He prayed that this petition may be dismissed.

5. Learned Additional A.G Sindh also supports the impugned orders and prayed for dismissal of this petition.

6. We have heard the learned counsel for parties at a considerable length and have also gone through the case papers so made available before us.

7. Perusal of record shows that earlier application of petitioners under Order 7 Rule 11 CPC in subject suit was rejected upto the level of Revisional Court and the same orders have attained finality, therefore, repetition of same application in same proceedings without any fresh ground is not maintainable under the.

8. We have gone through the contents of the plaint with the able assistance of learned counsel for the parties and came to the conclusion that in order to reject a plaint, same must be shown to be barred under some law on the basis of averments made in the plaint, Court at that stage would be neither entitled to look into the pleas raised by defendant nor could examine the merits of allegations made in the plaint. It is settled position of law that every allegation made in the plaint has to be accepted as correct while rejecting the plaint under Order 7 Rule 11 CPC, fact that plaintiff might not ultimately succeed in establishing the allegations in the plaint could not be a ground for rejecting the plaint under Order 7 Rule 11 CPC. It is mentioned that written statement of defendants/petitioners herein is already on record and the matter involves serious disputed questions of facts and law, which can only be decided after recording of evidence and the same cannot be looked into by this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

9. Further in a writ jurisdiction High Court has to see as to whether the subordinate Courts have committed any jurisdictional error, un-condonable in nature or in the exercise of jurisdiction committed legal error causing miscarriage of justice, as Hon'ble Superior Court has consistently held that High Court in its constitutional jurisdiction is not supposed to decide such matter as Court of appeal by making reappraisal of evidence and to form a different opinion from one concurrently held by the Courts below.

10. We have also perused the impugned orders and came to the conclusion that both Courts below have rightly dismissed the application of petitioners under Order 7 Rule 11 and have not committed any irregularity or illegality, which may call interference by this Court. Accordingly, instant petition stands dismissed alongwith listed

application. The case laws cited by the learned counsel for the petitioners have been perused and considered by us, but did not find applicable to the facts and circumstances of the present case.

11. Before parting with the order, it is ordered that Trial Court shall frame the issues in the subject suit, including the issue of maintainability of the suit, within seven days from the date of receipt of this order and then shall decide the suit within 90 days strictly in accordance with law, without being influenced by the findings, if any, contained in this order. It is also ordered that no unnecessary adjournment shall be granted by the Trial Court to either party.

JUDGE

JUDGE

Sajjad Ali Jessar