

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 338 of 2013

Plaintiffs: Muhammad Saleem & others
Through Mr. Abdullah Munshi, Advocate.

Defendant No.1: American Life Insurance Company (Pakistan)
Limited Through Mr. Shah Bukht Pirzada,
Advocate.

For hearing of CMA No.8861/2013.

Suit No. 687 of 2013

Plaintiffs: Pervaiz Hashmi & others
Through Mr. Abdullah Munshi, Advocate.

Defendant No.1: American Life Insurance Company (Pakistan)
Limited Through Mr. Shah Bukht Pirzada,
Advocate.

Defendant No.18: IGI Insurance Limited Through Mr. Shahan
Karimi, Advocate.

For hearing of CMA No.8858/2013.

Date of hearing/Order: 22.01.2020.

ORDER

Muhammad Junaid Ghaffar J. Through both these applications, the Defendant No.1 seeks rejection of the Plaint in these Suits on the ground that the Plaintiffs have no cause of action to maintain these Suits. Learned Counsel for the said Defendant No.1 has argued that the Plaintiffs in question have no privity of Contract in respect of the Share Purchase Agreement, whereby, the shares of Defendant No.1 have been sold by its owners to another Company as neither they are parties to such contract nor can they raise any grievance to that effect. According to him, this is a case of having no cause of action and falls within

Order VII Rule 11 CPC and Plaint must be rejected. He has also relied upon certain orders passed by this Court in support of his contention that the Plaintiffs have no case and may be directed to approach SECP for any grievance, if any. According to him no attempts were made to terminate the Plaintiffs; hence on this account also they cannot maintain instant Suit.

2. Learned Counsel for the Plaintiffs submits that the relationship as employees of Defendant No.1 is not denied, whereas, material rights of the Plaintiffs were affected with such sale of shares, and the Plaintiffs have also been discriminated as against various other employees, who were given golden handshake at the time of sale of shares. According to him there is a cause of action and bar contained in Order VII Rule 11 CPC does not apply.

3. I have heard both learned Counsel and perused the record. Though in the listed applications very detailed and extensive arguments and grounds have been taken; however, apparently the only ground urged on behalf of the said Defendants to maintain the applications under Order VII Rule 11 CPC is that no cause of action has accrued to the Plaintiffs. With utmost respect, I am not inclined to accept the said argument inasmuch as it has not been denied that the Plaintiffs were *or* are employees of Defendant No.1, shares of which have been sold by the holding Companies, stationed outside Pakistan to another Insurance Company in Pakistan. The Plaintiffs have though made various prayers but one such prayer is to the effect that they be compensated due to the share purchase transaction as it has adversely affected their interests. They have also pleaded discrimination at the hands of

the Defendant No.1. The argument that since the Plaintiffs are neither signatories nor they have any concern to agitate against the Sale Purchase Agreement and seeking support from Orders dated 22.3.2013 and 5.7.2013 is also not convincing for the simple reason that the Plaintiffs are admittedly the employees of the Company in question and need not always be signatories or parties to such contract. The observations of the Court in the said orders are, needless to say, always tentative and in respect of the injunction applications of the Plaintiffs. They cannot be made basis to reject the plaint, at least. The Plaintiffs case is that the Agreement in question has affected them and they have been discriminated as well. It is for them to prove such allegations at the trial of the Suit. At this stage of the proceedings, I am of the view that they cannot be non-suited on this feeble argument that no cause of action has arisen to the Plaintiff.

4. 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 VII Rule 11 C.P.C. The Hon'ble Supreme Court in the case of ***Al-Meezan Investment Management Company Ltd & others V. WAPDA First Sukuk Company Limited, Lahore, etc (PLD 2017 SC 1)*** has observed that*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 host of reasons.*

5. The Plaintiffs have quantified their claim of compensation and damages, and 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. Reference can be made to a judgment of Division Bench Judgment of this Court in the case of ***Muhammad Amin Lasania Vs. M/s Ilyas Marine & Associates (Private) Limited (SBLR 2011 Sindh 989)***, wherein at Para 11, the Court has been pleased to observe that, a 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 the primary cause of action.

6. In view of hereinabove facts and circumstances of this case, today in the earlier part of the day, through a short order, both these applications under Order VII Rule 11 CPC in both Suits were dismissed and these are the reasons thereof.

Judge