

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 851 of 2013

Date	Order with Signature of Judge(s)
------	----------------------------------

1. For hearing of CMA No.11940/2013.
2. For hearing of CMA No.14749/2014.
3. For orders on CMA No.1895/2020.
4. For examination of parties/settlement of issues.

**25.02.2020**

Mr. Kashif Nazeer, advocate for the plaintiffs.  
Mr. Kamal Mahmood Khan, advocate for the defendant No.1.  
Mr. Ghulam Rasool Korai, advocate for the defendant No.2

1. This is an application under Order VII Rule 11 CPC. Learned counsel for the defendant No.1 submits that the plaint may be rejected as there is no cause of action disclosed therein and furthermore that the claim is predicated upon premature documents. It is contended that on 24.04.2013, when the cause of action stated to have been accrued to the plaintiff, the suit property was mortgaged with the defendant No.2. It is thus contended that under the said circumstances, no sale agreement could have been entered into in respect thereof.

Mr. Kashif Nazeer, advocate for the plaintiffs vehemently opposed the application under consideration and reiterated the contents of the counter affidavit filed.

It is settled law that the question of whether a suit was likely to succeed or not was irrespective of whether or not the plaint ought to have been rejected<sup>1</sup>. It is often seen that while a plaint could not have been rejected, however, a suit was dismissed eventually for a host of reasons. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*<sup>2</sup>, wherein the anvil for application of the said provision was delineated. A Division Bench of this court has held in the *Rana Imran case*<sup>3</sup> that in the instance of controversial questions of fact and / or law, the provisions of Order VII rule 11 CPC would not be attracted.

For Order VII rule 11 to be applied it must appear to a court that the plaint ought to be rejected. The import of the word *appear* has been considered in the *Florida Builders case*<sup>4</sup> and the Supreme Court has deciphered the legislative intent to mean that if *prima facie*

<sup>1</sup> *Al Meezan Investment Management Company Limited & Others vs. WAPDA First Sukuk Company Limited & Others* reported as PLD 2017 Supreme Court 1.

<sup>2</sup> *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

<sup>3</sup> Per Muhammad Ali Mazhar J. in *Rana Imran & Another vs. Fahad Noor Khan & Others* reported as 2011 YLR 1473.

<sup>4</sup> *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

the court considered that it *appears* from the statements in the plaint that the suit was barred, then it should be terminated forthwith.

In the present facts and circumstances it does not appear to this court, from a plain reading of the plaint, that the plaint merits rejection as none of the grounds for rejection of plaint, listed in Order VII rule 11 CPC, are attracted herein. A plain reading of the plaint discloses a cause of action and the averments regarding mortgage or otherwise are a matter for evidence. Therefore, the application under consideration is hereby dismissed.

2. This is an application for review of an earlier order, delivered by another learned Single Judge. Office is directed to place this application before the Honorable Chief Justice for guidance.

Adjourned to a date in office.

JUDGE