ORDER SHEET

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.240 of 2017

(Sarwar Ali versus Province of Sindh & Others)

DATE	ORDER WITH SIGNATURE OF JUDGE

Applicant : Through Mr. Ashfaque Nabi Qazi advocate

Respondents 6 to10 : Through Mr. Pirbhulal-U-Lal Goklani advocate

Respondents 11to14 : Nemo

Mr. Allah Bachayo Soomro Addl: A.G

Date of hearing : 08.11.2021
Date of decision : 22.11.2021

O R D E R

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ADNAN-UL-KARIM MEMON, J: Through this revision application applicant has impugned the order and decree dated 19.07.2017, passed by learned Additional District Judge, Tando Allahyar in Civil Appeal No.18 of 2016 [*Re: Sarwar Ali versus Senior Civil Judge-I Tando Allahyar & Others*], whereby, learned appellate Court has maintained the order and decree dated 09.09.2016 passed by learned Ist Senior Civil Judge, Tando Allahyar in F.C Suit No.250 of 2016 [*Re: Sarwar Ali versus Province of Sindh & Others*], rejecting the plaint under Order VII Rule 11 CPC.

2. Background of the case is that applicant had filed the aforementioned Suit for declaration and permanent injunction in respect of land bearing Survey Nos.78, 141/A & B, 115, 116, 236, 110/A & B and 111 admeasuring 41 acres and 22 ghuntaz in Deh Kapaho, Tapo Additional Thul, Taluka Chambar District Tando Allahyar (*Suit Land Henceforth*) while claiming that suit land originally belonged to (i) Muqarab (*father of applicant and respondents 6 to 10*), (ii) Rahim Khan, (iii) Saeedullah & (iv) Karamat Khan. It is further averred in the plaint that after the death of Muqarab in the year 2006, he inherited his due share and also purchased the share of Rahim Khan and Karamat Khan from their legal heirs, hence he

became owner up to 50 paisa share in the suit land, which was duly mutated in his favor in the record of rights. So far as the share of Saeedullah is concerned, it has been averred in the plaint that said Saeedullah was issueless and he handed over his share of 25% in suit land to father of respondents 11 to 14 through the registered power of attorney in the year 1964. It is further averred in the plaint that the father of respondents 11 to 14 in his lifetime gave his share on maqatta to the father of the plaintiff and respondents 6 to 10 and after the death of his father, the plaintiff continued the said lease agreement (maqatta) with Azeemuddin Khan/father of respondents 11 to 14 and subsequently after the death of Azeemuddin Khan in the year 2010, he continued lease agreement (maqatta) with his legal heirs/ respondents 11 to 14, who, as alleged, though received the advance lease amount for the year 2016-17, but at the instance of respondents 6 to 10, are not ready to enforce the said lease agreement, hence he filed the aforesaid suit, but the plaint whereof was rejected by the learned trial Court summarily under Order VII Rule 11 CPC while hearing the application under Order 39 Rule 1 & 2 CPC, he preferred appeal but the same was also dismissed by the impugned order.

3. Mr. Ashfaque Nabi Qazi learned counsel for the applicant, *inter-alia*, contended that the orders passed by the learned appellate Court as well as trial Court are opposed to the law, facts, equity, and principles of natural justice. He next contended that there is no cavil to the proposition that plaint cannot be rejected suo moto under Order VII Rule 11, however subject to all just exceptions as provided under the law. He further contended that the learned trial Court has not mentioned that under which sub-rule of Order VII CPC, the plaint is rejected, instead the learned trial Court adjudicated the case of applicant/plaintiff at length, which is not the mandate of Order VII Rule 11 CPC. He while adopting the grounds, advanced by him in this revision application, argued that the issue involved in the matter carries factual controversy, which cannot be decided summarily without recording of evidence. He emphasized that in the light of the judgment of the honorable Supreme Court, it is well settled that when hearing an interim application under Order 39 Rule 1 & 2 CPC, the plaint cannot be rejected. He prayed that this revision may be

allowed and learned trial Court may be directed to decide the matter after recording evidence of all parties.

4. On the other hand learned counsel for respondents 6 to 10 while supporting the impugned orders, contended that applicant/ plaintiff has no case at all, as such both Courts below have rightly rejected the plaint. He next contended that concurrent findings are present in the matter, which requires no interference by this Court; hence instant revision may be dismissed.

5. None present for respondents 11 to 14; whereas, learned AAG adopted the arguments of counsel for respondents 6 to 10.

6. Heard learned counsel for the parties and perused the material available on record and case-law cited at the bar.

7. The important question involved in the present revision application is whether the learned trial Court while hearing an application filed by the applicant under Order 39 Rule 1 & 2 CPC can exercise suo moto powers to reject the plaint under Order 7 Rule 11 CPC.

8. It is well-settled law that plaint can be rejected at any stage of the proceedings. The development of the contemporary law concerning Order VII Rule 11 CPC has been deliberated upon in progressive detail by the honorable Supreme Court of Pakistan, in the case of Haji Abdul Karim & Others vs. Messrs Florida Builders (Private) Limited reported as *PLD 2012 Supreme Court 247* ("***Haji Abdul Karim***"), and the guiding principles determined therein have been illumined as follows:

> "12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.
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> Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only

requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, 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 the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint."

9. It is apparent from the foregoing that for consideration of an application under Order VII Rule 11 CPC; and that if no cause of action is disclosed in the plaint or if the suit is barred by limitation, the court would not permit protraction of the proceedings. In such a case, it would be necessary to put an end to the sham litigation, so further judicial time is not wasted; that the entire purpose of conferment of such powers under Order VII Rule 11 CPC is to ensure that litigation, which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the courts.

10. Now moving on to what the trial Court can consider, while deciding the issue of rejection of the plaint, the Honorable Supreme Court has dilated upon this matter in the judgment rendered in the case titled Jewan v. Federation of Pakistan (1994 SCMR 826). The august Supreme Court very clearly laid down that:---

"…. the reason for this different approach while rejecting a plaint under Order VII, Rule 11, C.P.C. is quite obvious. In the former proceedings (under Order XXXIX, Rules 1 and 2, C.P.C.) even if the court reaches the conclusion that the plaintiff has

> failed to make out a prima .facie case, it can only refuse to grant temporary injunction and reject the application under Order XXXIX, Rules 1 and 2, C.P.C. but this rejection cannot result in the dismissal of the suit which proceeds to trial notwithstanding a finding by the court that the plaintiff has failed to make out a prima facie case for grant of temporary injunction. On the contrary if the court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred by law the proceedings came to an end immediately and the plaintiff is non-suited before he is allowed an opportunity to lead evidence and substantiate his allegation made in the plaint. We are, therefore, of the view that the rejection of the plaint at a preliminary stage when the plaintiff has not led any evidence in support of his case is possible only if the court reaches the conclusion on consideration of the statements contained in the plaint and other material available on record before the court which plaintiff admits as correct."

11. In the aforesaid judgment the Honorable Supreme Court commenting on Muhammad Akhtar v. Abdul Hadi (1981 SCMR 878) and Nazir Ahmad v. Ghulam Mehdi (1988 SCMR 824) contended that:- --

> "We have carefully examined the above cited cases, which were the basis of the impugned decision of the High Court and .... We are, therefore, of the view that in the above referred cases though the observation was made by the court that Order VII, Rule 11, C.P.C. is not exhaustive of all situation but it did not lay down the rule that the court while rejecting the plaint under Order VII, Rule 11 C.P.C. could take into consideration the plea of the defendants though disputed and denied by the plaintiff"

12. In the present case, the learned trial Judge has rejected the plaint on the sustainable grounds; that the applicant sought enforcement of Maqatta (lease agreement), which was for three years; and, the period stood expired in the year 2020, thus to keep the suit alive is of no consequence. Even otherwise, the applicant has no cause of action to enforce a Maqatta contract under the Contract Act.

13. The judgment of the honorable Supreme Court in *Jewan's case* articulated the principle that when hearing an interim application all material available on record may be evaluated but in the determination of whether a plaint was liable to be rejected only the plaint and its accompaniments were required to be examined.

14. So far as the challenge to the concurrent findings of the courts below in the revisional jurisdiction of this Court, the Honourable Supreme Court has held in the case of Ahmad Nawaz Khan Vs. Muhammad Jaffar Khan and others (2010 SCMR 984), that High

Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. A similar view was taken in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others. (2010 SCMR 1630) that the concurrent findings of the courts below are not opened to question at the revisional stage.

15. In my considerate view, the order passed by the learned trial court rejecting the plaint of the applicant; and, concurred by the learned appellate court does not suffer from massive illegality, perversity which could be interfered under revisional jurisdiction. This Civil Revision Application being meritless is accordingly dismissed.

JUDGE

Sajjad Ali Jessar