

ORDER SHEET

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

R.A. No. 244 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>09.05.2022.</u>	

FOR HEARING OF MAIN CASE.

Mr. Tahir Nisar Rajput Advocate for applicant.
Mr. Muhammad Humayoon Khan D.A.G. for respondent No.1.
Mr. Naseem-ul-Haq Legal Assistant Cantonment Board.

MUHAMMAD SHAFI SIDDIQUI, J.- I have heard the learned counsel for the applicant as well as Mr. Muhammad Humayoon Khan learned D.A.G. appearing for respondent No.1 on Court notice whereas, Mr. Rafique Ahmed learned counsel appearing for respondent No.2 is called absent. He also did not appear on the last few dates of hearing i.e. 25.4.2022 and 15.03.2021. Since the short controversy is involved, I intend to decide the controversy.

2. It appears that applicant filed suit for declaration and permanent injunction for his tenancy rights. It is claimed in the suit that his co-partner was enjoying tenancy rights which was part of partnership deed between them. The tenancy rights were transferred in favour of the applicant / plaintiff. Such rights vide declaration were surrendered by the lessee of the premises being Mst. Rehmat Bibi widow of Lal Muhammad (who was the soldier). Applicant / plaintiff further asked respondent No.2 to issue rent slips in the name of the plaintiff.

3. Notices and summons were issued and on considering the contents of the plaint, the trial court was pleased to reject the plaint on considering an application under order VII rule 11 CPC preferred by defendant No.2. The Senior Civil Judge Hyderabad, on 30.7.2017 was pleased to observe that the whole claim of the plaintiff regarding his status as a tenant (transferee of tenancy rights) is based upon assumption that Mst. Rehmat Bibi, original tenant (as observed in the order para-4 of order) has surrendered all her tenancy rights of the suit shop in favour of the plaintiff and there is no such evidence

except a declaration / affidavit dated 5.7.2012. The trial court observed that the tenancy rights were transferred in favour of Mst. Rehmat Bibi but there was nothing which could reflect that the tenancy rights were transferable or were transferred by Cantonment Board. In the absence of such evidence the trial court was of the view that the plaintiff / applicant has no locus standi.

4. On the strength of such understanding the plaint was rejected under order VII rule 11 which order was maintained by the appellate court.

5. I am of the view that such consideration could play a decisive role, as far as the injunction application is concerned but such consideration i.e. lack of evidence has nothing to do for applying the principles of order VII rule 11 for rejecting a plaint. The subject issue i.e. insufficient evidence could lead to an ultimate dismissal of the suit but it cannot be invoked for applying principles of order VII rule 11 for rejecting a plaint. No doubt the applicant at that tentative stage when an application under VII rule 11 was considered by the trial court and in appeal before the appellate court has failed to demonstrate as to how such rights were transferred by the Cantonment Board on an affidavit of surrender of Mst. Rehmat Bibi, however, this would require a trial and without it the principle of order VII rule 11 cannot be invoked. As far as the locus standi of the applicant / plaintiff is concerned, a preliminary issue could have been framed for maintainability of suit as claimed to have been filed by a stranger, which could end up in dismissal of suit but not in the way as done by the trial court and appellate court. The difference between rejecting a plaint and dismissal has not been appreciated by two courts below.

6. This being a situation I allow this revision application and remand the case back to the trial court to decide the suit of the plaintiff / applicant after recording evidence if so desire by the applicant in two [02] months' time.

JUDGE

A.

