

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

**Execution No. 81 of 2001**

**Suit No. 112 of 2006**

Pakistan Defence Officers Housing Authority.....Plaintiff.

*Versus*

Mst. Gul Rukh Samina Butt & others.....Defendants.

Date of Hearing : 24.05.2022, 03.11.2022 & 18.11.2022

Date of Order : 28<sup>th</sup> November, 2022

Mr. Abdul Haleem Siddiqui, Advocate for Plaintiff in Suit No. 112 of 2006.

Ms. Lubna Aman, Advocate for Decree Holder in Execution No. 81 of 2001 and for Defendant No. 4 in Suit No. 112 of 2006.

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**ORDER**

**Kausar Sultana Hussain, J.** :- By this order, I intend to dispose of an application under Order VII Rule 11 CPC being **CMA No. 2745 of 2009**, moved by the learned counsel for the Defendant No. 4/Askari Commercial Bank Limited, accompanied by an affidavit of its principal officer/attorney, namely, Anjum Majid Minhas son of Abdul Majid Minhas, whereby he prays to reject the plaint of suit No. 112 of 2006 filed by the Plaintiff/D.H.A.

2. Notice of this application was served to the Plaintiff, who resisted captioned application by filing Objections through its Secretary, namely, Lt. Col (Retd) Najam Ul Islam Rishi son of Nasir Ahmed Rishi, opposing therein the contention of the Defendant No.4 and reiterated the contents of the plaint altogether.

3. Brief facts leading to the filing of present Suit are that plot No. 4-C, 12th Commercial Street, Phase-II (Extn), Defence Housing Authority Karachi, measuring 600 square yards (**Suit plot**)

was allotted to S.A. Jalil the District Registrar (DR) of the dissolved Pakistan Defence Officers Co-operative Housing Society Limited in the year 1974 in contravention of its Bye Laws. Since the said S.A. Jalil was a District Registrar (DR) at the relevant time so he managed illegally to register "C" lease, on the basis of forged documents in respect of suit plot in favour of his two sons. The "C" lease documents reflect that Suit plot had been transferred on 31.05.1974 by said DR by way of oral gift in favour of his two sons/Defendants No.2&3 through transfer order (by way of Hiba) dated 01.06.1974, while the said transfer order was never approved by the dissolved Society, however, the said plot was later on cancelled by the Executive Board of the Defence Housing Authority (DHA/Plaintiff) in its meeting held on 17.03.1987. In response to the said cancellation, Defendants No.2&3 / sons of S.A. Jalil filed a Constitution Petition No.411 of 1987 against the Plaintiff / DHA, which was disposed of on 14.04.1992 in view of the statement of the representative of Defence Housing Authority/Plaintiff that they will issue a Show Cause Notice against the Defendants No. 2 & 3 in accordance with law before taking any action against them. Accordingly, a show Cause Notice was issued, which led to the Defendants No.2&3 for filing a fresh Constitution petition No.2180 of 1992. The said petition of the Defendants No. 2 & 3 was disposed of later as withdrawn vide order dated 01.04.1994. The case of illegal allotment of plot in question was again considered by the Executive Board of Plaintiff/DHA in compliance of the Judgment dated

14.4.1992 passed in C.P. No.411/1987 and after proper scrutiny of replies of Respondent No.2&3 to the Show Cause Notice of the Plaintiff (DHA), the illegal allotment of suit plot was again cancelled by the Board on 15.10.1994 through exercising authority delegated to the Board under Article 17 (h) of the President's Order No.7/80. The relevant provision of the President's Order No. 7/80 regarding powers of the Executive Board to cancel such allotments is reproduced hereunder: -

"17(h) All allotments and transfers of plots whether residential, Commercial or otherwise shall be deemed to be allotment and transfers made by the Authority. Provided that the Executive Board may (i) cancel such allotment, which were made or issued in contravention or Bye-Laws of the Society or the resolution of the Managing Committee of the Society."

The Defendant No. 1 (Mst. Gul Rukh) claims her right of title on the suit plot through a conveyance deed dated 22.09.1993, executed by the Defendants No.2&3/sons of original allottee S.A. Jalil in her favour on the basis of fraudulently executed "C" lease document. The transfer of suit plot in favour of Defendant No. 1/Mst. Gul Rukh by Defendants No.2&3 is not on the record of the Plaintiff/DHA. In fact S. A. Jalil was an employee of Sindh Government, working as registrar 'T' Division, therefore he was not eligible for allotment of Suit plot in D.H.A. The said plot was allotted to him without ballot and 'C' lease was executed in favour of his two sons/Defendants No.2&3 under his own signatures on 31.05.1974 on the basis of forged transfer order dated

01.06.1974. Therefore his case was referred to Executive Board of DHA, the allotment was cancelled and a letter of cancellation was issued on 06.04.1987. The said S.A. Jalil with malafide intention and with connivance of Defendant No. 1 during the period of 1993 sold out the Suit plot to her and on the basis of forged lease a sale deed in her favour was executed. After execution of said Sale Deed, this Suit plot was mortgaged by Defendant No. 1 to Defendant No. 4/Askari Bank Limited on the basis of N.O.C issued by M.E.O office, while Bank did not ask to Defendant No. 1 for producing N.O.C of DHA although D.H.A is a lessor and their N.O.C was necessary in 1993 for transfer of plot in favour of Defendant No.1, therefore, transfer order in favour of Defendant No. 1 is void and contemptuous. The Defendant No. 1/Gul Rukh had filed a Civil Suit No.1575 of 1997 before this Court for seeking Declaration in respect of cancellation of suit plot and Injunction against the Plaintiff/DHA and Defendants No.2&3 and obtained therein status quo order. The Defendant No. 1 / Mst. Gul Rukh after availing loan facility from Askari Bank/Defendant No. 4 and creating mortgage over the suit plot, did not pay the installments of Bank due against her, therefore, Askari Bank/Defendant No. 4 filed a Banking Suit No.B-137 of 2000 against Defendant No. 1 for recovery of loan amount before this Court, which was decreed on 07.02.2001. An Execution Application No.81 of 2001 has been filed by Askari Commercial Bank Limited/Defendant No. 4, while Suit No.1575 of 1997 of defendant No.1 was pending at that time before this Court and in said Suit, status quo order was operative.

The Defendant No. 1/Mst Gul Rukh during pendency of Suit No.B-137/2000, did not inform the Court that the allotment of mortgaged suit plot has already been cancelled by the Plaintiff/DHA and in this regard the matter against said cancellation of plot, is subjudice before this Court, wherein the status quo order had been granted, accordingly this Court was not competent to proceed the Suit No.B-137/2000 but she deceived this Court as well as the Askari Bank thus practiced fraud on the Court and caused irreparable loss to the plaintiff/D.H.A. The said Banking Suit No. B-137 of 2000 was decreed later on in favour of Defendant No. 4/Bank. Then after acquiring knowledge by the Plaintiff/DHA through notice of official assignee issued in Execution No. 81 of 2001 for auction of the mortgaged property, the Plaintiff/DHA filed in that Banking Suit a J.M. No. 26 of 2004. This Court after concluding the proceeding had granted the said JM No.26 of 2004 by observing that 'the impugned Judgment and Decree were obtained by suppressing the facts, hence stayed the decree and its execution to the extent of Suit plot.' The Defendant No.1 is persisting in litigation on the basis of forged documents i.e. Sale Deed relating to suit plot executed through forged transfer order and lease deed, accordingly, it is necessary that these forged documents be declared as null & void by this Court, hence this Suit with the following prayers:-

- a. Declare that the cancellation order in respect of Plot No.4-C, 12th Commercial Street, Phase-II Extn., DHA, Karachi passed by Executive Board of plaintiff is valid.

- b. Declare that the transfer order in favour of Defendants No.2 and 3 as well as lease documents in their favour are bogus.
- b.1. Direct defendant No.4 to deposit mortgage documents of suit plot in the Court.
- c. Declare that on the basis of bogus lease, subsequent sale of suit plot in favour of Defendant No.1 through registered sale deed is also bogus and void in the eyes of law.
- d. Restrain Defendant No.1 from creating third party interest on the basis of sale deed in her favour.
- e. Grant any other relief deemed fit and proper in the circumstances.

4. The Defendant No.4 has invoked the provision of order VII Rule 11, CPC for rejection of the plaint, on the grounds i.e. (i) the instant suit is time barred, (ii) the suit is barred by law i.e. Section 27 of the Financial Institutions (Recovery of Finance) Ordinance, 2001; (iii) the instant Suit is hit and barred under Sections 54 and 56 of Specific Relief Act; (iv) the plaint does not disclose any cause of action against the Defendant No. 4 and (v) that the Suit is barred by Res Judicata, in view of the decision given by learned Division Bench of this Court in Writ Petition No. 411 of 1987 filed by the Defendant No. 3 Mohammad Arshad Jalil against Plaintiff/DHA.

5. The plaintiff's counsel has filed objections to the instant application of defendant No. 4, whereby, he brought on record the detail of those Suits, J.M and Execution filed by the parties against each other and which cases have now been disposed of finally in favour of the plaintiff/DHA, therefore, according to the plaintiff the instant application is not relevant at this stage.

6. I have heard the learned counsel for the Defendant No. 4 and the Plaintiff and perused the written synopsis submitted by both the parties, I have also gone through the entire record, specifically the contents of the plaint, as for deciding an application under Order VII Rule 11 CPC the contents of the plaint and its enclosures can only be looked into.

7. Ms. Lubna Aman, Advocate appearing on behalf of the Defendant No. 4 (Askari Commercial Bank Limited) has submitted that the instant Suit filed by the Plaintiff/DHA against the Defendants for Declaration, Injunction and Cancellation of Documents of the Suit property is hopelessly time barred being filed after 32 years. She has further argued that the Remedy of the Plaintiff, if any was to sue for Cancellation of Registered document i.e. a "C" Lease from competent Civil Court under Section 39 of Specific Relief Act but the Plaintiff has not availed that remedy, while the limitation for filing such Suit is three years as provided by Article 91 of the Limitation Act, therefore, the Suit of the Plaintiff is out of time and now has no cause of action against the Defendants to sue them. In support of her contention the learned counsel for the Defendant No. 4 has relied on the following judgments:-

- i. 1986 MLD 1398 @ 1402
- ii. 1988 CLC 606 @ 615.
- iii. 2003 YLR 1760 @ 1766
- iv. 2003 1570 (DB) @ 1571.

8. Ms. Lubna Aman, Advocate has further argued that under Order VII Rule 11 (d) CPC the Suit of the Plaintiff is barred and hit

by Section 27 of the Financial Institutions (Recovery of Finance) Ordinance, 2001. She read out the Section 27 of the Ordinance, 2001 (Ordinance, 2001), which says as under:-

**'FINALITY OF ORDER:-** *Subject to the provisions of Section 22, no Court or other authority shall revise or review or call, or permit to be called, into question any proceeding, Judgment, Decree, sentence or order of a Banking Court or the legality or propriety of anything done or intended to be done by the Banking Court in exercise of jurisdiction under this Ordinance.*

*Provided that the Banking Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree, sentence or order passed by it."*

9. In support of her arguments the learned counsel for the Defendant No. 4 relied on a DB judgment reported in 2000 MLD 421. She emphasized on relevant point of that judgment, discussed in para- 7, at page 424, which is being reproduced here for ready reference :-

"We also find force in the submission of the learned counsel for the respondent that under section 27 of Act XV of 1997 (Banking Companies (Recovery of Loans, Advances, Credits and Finances Act) subject to the provisions of appeal the judgment and decree attains finality and cannot be called in question. Act XV of 1997, which is a special law provides the remedies to the parties concerned including the right of appeal under section of the Act and an application in the nature of section 12 of the Act if and when warranted by the circumstances. Since the special law takes care of the various situations itself, application under the general law i.e., section 12 (2) of C. P. C. would not be competent."



10. It has been pointed out by the learned counsel for the Defendant No. 4 that under Section 22 of the Finance Institution (Recovery of Finance) Ordinance, any person aggrieved by any Judgment and Decree, passed by a Banking Court may within 30 days file an appeal to the High Court, but the Plaintiff has not filed an appeal against the said Judgment and Decree, hence under Section 27 of the Ordinance, 2001 the same Judgment and Decree have attained finality and cannot be called in question before any Court of law, therefore, the instant Suit being hit by the Ordinance, 2001, is liable to be rejected under Order VII Rule 11 CPC.

11. The learned counsel for the Defendant No. 4 emphasized on another point of law that the Suit of the Plaintiff is also barred by the law of Resjudiceta as provided in Section 11 of the CPC, in view of the Decision of learned Division Bench of this Court, passed in respect of the same Suit plot in CP No. 411 of 1987 filed by the Defendant No. 3 / M. Arshad Jalil against the Plaintiff (DHA) and others, and reported in PLD 1992 Karachi 304, whereby the President's Order No. 07/80 mentioned supra regarding power of executive board of DHA has been discussed and decided as under:-

"As the result of above provision of law the Pakistan Defence Officers Cooperative Housing Society Limited, Karachi stood dissolved on the commencement of the said order and Pakistan Defence Officers Housing Authority established under it succeeded the former. Under clause (c) of section 17 of the Order all leases and grants of land made by the defunct-Society shall be deemed to be the cases executed and grants of land made by the authority. Similarly by a separate clause (h) to that section allotments and transfers of plots made by the Society shall also be taken to be those of the authority. Proviso (i) to section 17 of the Order enables the Executive Board to cancel such allotments which were made in contravention of the

bye-laws of the Society or resolution of its managing committee. Power contained in a proviso (i) to section 17 of the Pakistan Defence Officers Housing Authority Order, 1980 does not extend to cancellation of cases and grant of lands deemed to have been executed or granted by the Authority under clause (c) of section 17 of the Order.

The order passed by the respondents herein and impugned in this petition for the foregoing reasons is declared to have been passed without any lawful authority, to be of no legal effect and is quashed. The petition is allowed with no order as to costs."

12. She has further submitted that the Plaintiff/DHA although was not a party of Banking Suit No. B-137 of 2000, filed by the Defendant No. 4 against Defendant No.1 could have filed an appeal against the Judgment and Decree passed in the Suit as the Hon'ble Supreme Court in its Judgment reported as **PLD 1969 Supreme Court 65 (H.M. Saya and others v. Wazir Ali Industries Limited)** held that "Stranger to suit or proceeding, competent to file appeal, if he is adversely affected by order passed in such suit or proceedings." The learned counsel for the Defendant No. 4, while concluding her arguments has prayed that in the light of the facts and circumstances discussed above, the plaint of the Plaintiff may be rejected under Order VII Rule 11 CPC.

13. On the other hand the learned counsel for the Plaintiff, Mr. Abdul Hameed Siddique Advocate has submitted in contravention that the instant application under Order VII Rule 11 CPC has been moved by the Defendant No.4 with mala fide intention to re-open the case, while the order for cancellation of plot passed by the Executive Board of DHA dated 15.10.1994 has attained finality after dismissal of the Suit No. 1575 of 1997 on 14.03.2006, filed by the Defendant

No.1/Mst. Gul Rukh against the Plaintiff/DHA and two sons of S.A. Jalil, the allottee of the plot in question. The learned counsel for the Plaintiff has submitted that the plea of the Defendant No. 4 in respect of filing time barred Suit raised in instant application on the ground that the Plaintiff/DHA had failed to challenge the judgment dated 14.04.1992, passed by this Court in CP No. 411 of 1987, reported in PLD 1992 Karachi 304, is misconceived as the record shows that this Court while allowing C.P No. 411 of 1987 left the Plaintiff/DHA at liberty to decide the matter of cancellation of plot after hearing all the concerned parties, therefore, in accordance with the said permission, the Plaintiff/DHA had issued Show Cause Notice dated 10.08.1992 to the allottee S.A. Jalil, which was replied by the respondent No. 3, Muhammad Arshad Jalil son of S.A. Jalil and simultaneously they have filed C.P. No. 2180 of 1992 against issuance of the said Show Cause Notice dated 10.08.1992 against them, which C.P No. 2180 of 1992 was later on dismissed as withdrawn, vide order dated 01.04.1994, however, the Plaintiff/D.H.A after adopting due process of law, again had cancelled the said Allotment Order on 15.10.1994, while during pendency of said C.P No. 2180 of 1992 the Defendants No. 2 and 3 sons of the allottee S.A. Jalil sold out the plot in question to Defendant No. 1 Gul Rukh vide Sale Deed dated 22.09.1993, who had filed a Suit No. 1575 of 1997 against Plaintiff/DHA and Defendants No. 2 and 3 assailing therein the cancellation order of plot dated 15.10.1994 and meanwhile inspite of Status quo order passed in C.P No. 2180 of 1992 she borrowed amount from Defendant No. 4/Askari Commercial Bank Limited and created a

mortgage over the suit plot. The Bank/Defendant No. 4, thereafter due to non-payment of borrowed amount filed a Suit against Defendant No. 1, being Banking Suit No. B-137 of 2000 for Recovery of borrowed amount, which was decreed on 09.02.2001 in favour of the Bank and accordingly the Bank filed an Execution Application No. 81 of 2001. The learned counsel for the Plaintiff has further argued that the Plaintiff/DHA was not a party in that Suit No. B-137 of 2000, therefore, the Plaintiff/DHA after acquiring knowledge about the said Judgment and Decree through publication of Official Assignee's Notice in newspaper daily "DAWN", dated 2.3.2002 issued in Execution Application No. 81 of 2001 the Plaintiff/DHA had filed a J.M. No. 26 of 2004 in said Banking Suit No. 137-B/2000, and while disposing of it, after hearing the parties' counsel, the learned Single Judge has observed that 'the impugned Judgment and Decree passed in Suit No. B-137 of 2000 were obtained by the Bank/Defendant No. 4 by suppressing the facts which goes to the very root of the matter. He further argued that the learned Single Judge had suspended the operation of the said impugned Judgment and Decree passed in Suit No. B-137 of 2000, vide short order dated 29.09.2005 to the extent of plot in question and the proceeding in the execution No. 81 of 2001 filed by the Bank for the sale/auction of the suit plot, was stayed till the final disposal of the Suit No. 1575 of 1997, filed by the Defendant No.1 /Mst. Gul Rukh against the Plaintiff/DHA against cancellation order of plot in question. The counsel for the Plaintiff has pointed out that the said Suit of Defendant No. 1 bearing No. 1575 of 1997 was dismissed later on vide order dated 14.03.2006 for non-

prosecution and no restoration application of the Suit was filed by Defendant No. 1. The Defendant No. 4/Bank filed HCA No. 293 of 2005, for assailing the order passed in J.M. No. 26 of 2004 in favour of the Plaintiff/DHA which was dismissed and then the Defendant No. 4/Bank filed CPLA-243-K of 2006 before the Hon'ble Supreme Court, which was also disposed of in favour of Plaintiff/DHA. The learned counsel for the Plaintiff / DHA points out that the suit of the defendant No.1/ Mst. Gul Rukh bearing No.1595/197 was dismissed for non-prosecution on 14.3.2006 and then, the Judgment passed by the learned Single Judge in J.M. No.26/2004 has attained finality, therefore, cause of action to the Plaintiff/ DHA to file instant Suit, had accrued, therefore, the instant Suit of the Plaintiff/ DHA is not time barred and after dismissal of defendant No.1's Suit, the Plaintiff/DHA acquired cause of action to file present Suit against the defendants.

14. The learned counsel for the Plaintiff argued further that the plaint of the Plaintiff is also not barred by the law of *Res judicata* under Section 11 of the CPC as the learned Double Bench of this Court in CP No. D-411 of 1987 (PLD 1992 Karachi 304), although had declared the Cancellation order of Plot in question dated 6.4.1987 passed by the Executive Board of the Plaintiff/DHA as unlawful and quashed, but in the same order the Respondents/DHA were set at liberty to initiate any other action against Petitioners / defendant Nos.2 & 3 under the law and decide it after hearing all the concerned parties. Per learned counsel for the Plaintiff the Plaintiff/DHA than initiated another action against the allottee S. A. Jalil and his sons by

issuing Show Cause Notice dated 10.08.1992, who had submitted reply to the said Show Cause Notice and simultaneously they had challenged the same Show Cause Notice before this Court through filing Constitution Petition No. 2180 of 1992, whereby stay was granted to them but later on it was dismissed as withdrawn and then the Board of the Plaintiff/DHA after adopting legal formalities had passed an order on 01.12.1994 and again cancelled the plot in question on the ground that it was allotted in violation of the Provisions of Bye-Laws of predecessor dissolved society. The learned counsel for the Plaintiff points out that the second cancellation order of the Board dated 15.10.1994, passed by the Board after adopting all legal formalities, now is in field, while the previous cancellation order of the plot passed by the Executive Board of DHA dated 06.04.1987 in compliance of the Judgment dated 14.04.1992 passed by this Court in C.P No. 411 of 1987, was quashed being passed without notice to the allottee is not in existence therefore, the principle of Resjudicata is not applicable in this case, as this present suit has been filed by the Plaintiff/DHA for seeking declaration in respect of validity of existing order of cancellation of plot dated 15.10.1994, which means that subject orders of cancellation in both the lis are not same.

15. The learned counsel for the Plaintiff has further argued that the plaint of the Plaintiff is also not barred and hit by the law provided in Section 27 of the Financial Institutions (Recovery of Finance) Ordinance, 2001, owing to the reasons that the judgment was passed by this Court in Suit No. B-137 of 2000 filed by the Bank/Defendant No. 4 against the Defendant No. 1/Mst. Gul Rukh and

others for Recovery of unpaid borrowed amount and in consequences of the judgment and Decree passed in that matter on 07.02.2001 the mortgaged property, which is a subject matter of instant Suit, was ordered to be sold, while the Board had already cancelled it on 01.12.1994. Per record the Defendant No. 1 had purchased this plot on 22.09.1993 from sons of SA. Jalil during existence of the stay order passed by this Court in C.P No. 2180 of 1992, therefore, findings of present Suit would not hamper the findings of Judgment and Decree passed in Suit No. 137-B of 2000, which was for recovery of borrowed amount, however, its upto to the Bank that now in current situation how they would make it possible to recover decretal amount from Defendant No.1/Mst. Gul Rukh, who did not bring the cancellation of plot by the Board, in knowledge of the Bank as well as trial Court, therefore, the present Suit of the Plaintiff/DHA is not barred by the Section 27 of the Ordinance, 2001. The learned counsel for the Plaintiff requests for dismissal of the present application of the Defendant No. 4 filed under Order VII Rule 11 CPC and for disposal of the Suit on merits.

16. After hearing lengthy arguments from both the sides and perusal of the record, I am of the view that admittedly there is a long chronological history of litigation between the parties in respect of the plot involved in this matter as discussed by the parties counsel during their arguments by referring the relevant documents, judgments and orders etc. passed by the several Courts in C.Ps, Suits and Appeals filed by the respective parties time to time in respect of the disputed plot after its allotment in the name of S.A. Jalil. The

Plaintiff/DHA claims that the allotment of the plot in question in the name of S.A. Jalil and then transfer of that plot by him in the names of his sons by way of Gift (Hiba) was done in violation of the Bye-Laws of the dissolved society, the predecessor of the Authority/Plaintiff, hence after President's Order No. 7/80, the Successor of the society i.e. the Authority had cancelled the Suit plot as according to them, the subject allotment then transfer of plot in the names of his sons through Execution of "C" Lease was based on forged documents,, fraud and in contravention of the Bye-Laws of the Society. Although, the said cancelation of plot by the Board could not sustain and set-aside by this Court in C.P. No.411/1987 but in compliance of the Court's order passed in same C.P. No.411/1987, the Plaintiff/DHA after adopting legal formalities again cancelled it and now the Plaintiff/DHA has filed this Suit in order to seek declaration of validity of that cancellation order passed on 15.10.1994. The Plaintiff/DHA as such has shown cause of action to file instant Suit. The record shows that the defendant No.1/ Mst. Gul Rukh's Suit No.1575/1997, whereby, she challenged the first cancellation of plot's order of the Plaintiff/DHA was dismissed for non-prosecution vide order dated 14.3.2006. The record further reflects that this Court vide order dated 14.03.2006 passed in the Suit No.1575/1997, wherein, the Plaintiff/DHA was also party / defendant alongwith other defendants, restrained all the defendants from transfer, mutation, sell, adversely deal with the plot in question, therefore, after dismissal of the said Suit No.1575/1997 on 14.3.2006, the Plaintiff / DHA has filed instant Suit, which is very much within time.



17. The another plea of the learned counsel for defendant No.4 / Bank that the Suit of the Plaintiff is barred and hit by Section 27 of the Ordinance, 2001, according to which, the Judgment and Decree passed by this Court in the Suit No.B-137/2000 filed by the Bank against defendant No.1/Mst. Gul Rukh for recovery of borrowed amount had attained finality and cannot be called into question any proceeding of Judgment and Decree of a Banking Court. In my view, the instant Suit filed by the Plaintiff/DHA is for seeking Declaration in respect of validity of cancellation of plot order of the Plaintiff/DHA, Injunction and Cancellation of mortgaged documents deposited by the defendant No.1 in the Bank / defendant No.4 at the time of borrowing amount, has no nexus as the Suit No.B-137/2000 was between Bank and borrower / defendant No.1 for recovery of amount and the documents which were mortgaged had already been cancelled even before creation mortgage of that documents of the plot in question. In my view, this is also not liable to be considered for rejection of the plaint. The plea of *Res judicata* under Section 11 of the C.P.C is also not applicable in this matter as the record shows that the learned Double Bench of this Court in CP No. D-411 of 1987 (PLD 1992 Karachi 304), although had declared the Cancellation order of Plot in question dated 6.4.1987 passed by the Executive Board of the Plaintiff/DHA as unlawful and quashed it, but in the same order the Respondent/DHA was set at liberty to initiate any other action against Petitioners / defendant Nos.2 & 3 under the law and decide it after hearing all the concerned parties. Per learned counsel for the Plaintiff the Plaintiff/DHA than initiated another

action against the allottee S. A. Jalil and his sons by issuing Show Cause Notice dated 10.08.1992, who had submitted reply to the said Show Cause Notice and simultaneously they had challenged the same Show Cause Notice before this Court through filing Constitution Petition No. 2180 of 1992, whereby stay was granted to them but later on it was dismissed as withdrawn and then the Board of the Plaintiff/DHA after adopting legal formalities had passed an order on 01.12.1994 and again cancelled the plot in question on the ground that it was allotted in violation of the Provisions of Bye-Laws of predecessor dissolved society. The learned counsel for the Plaintiff points out that the second cancellation order of the Board dated 15.10.1994, passed by the Board after adopting all legal formalities, now is in field, while the previous cancellation order of the plot passed by the Executive Board of DHA dated 06.04.1987 in compliance of the Judgment dated 14.04.1992 passed by this Court in C.P No. 411 of 1987, was quashed being passed without notice to the allottee is not in existence therefore, the principle of Resjudicata is not applicable in this case, as this present suit has been filed by the Plaintiff/DHA for seeking declaration in respect of validity of existing order of cancellation of plot dated 15.10.1994, which means that subject orders of cancellation in both the lis are not same.

18. Upshot of the above discussion is that the instant application has no merits to be considered, therefore, it is dismissed with on order as to costs. Let the matter be proceeded on merits.

**J U D G E**

M. Fahim/P.A