

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

Summary Suit No.1062 of 2020

Siddiqsons Private Limited & another  
Versus  
Creek Marina Singapore PTE Limited & others

Date	Order with signature of Judge
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1. For hearing of CMA 21807/21
2. For hearing of CMA 12938/20
3. For hearing of CMA 8992/21
4. For orders on CMA 13632/22

**Dated: 17.10.2022**

**(Order on CMA No.13632/2022)**

Mr. Omer Soomro and Mr. Danish Nayyer for plaintiffs.  
Mr. Amel Khan Kasi and Mr. Farjad Ali Khan for defendants.

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**Muhammad Shafi Siddiqui, J.**- In this summary suit under order XXXVII CPC based on negotiable instruments, defendants have filed application under order VII Rule 11 CPC being CMA No.13632/2022, which is fixed for orders, for rejection of plaint on the count that plaintiffs in a previously instituted suit i.e. Suit No.805 of 2020 has not claimed such relief and hence deemed to have surrendered and relinquished said part of their claim that has now been brought and agitated in the instant suit and hence plaint is liable to be rejected being barred under Order II Rule 2 CPC.

2. I have heard Mr. Amel Khan Kasi, learned counsel appearing for defendants, and perused material available on record.

3. Order XXXVII is a special summary procedure carved out in the Civil Procedure for cases based on negotiable instrument. All cases based on negotiable instruments, in case the “plaintiff desires to proceed under”, be instituted by presenting a plaint in a special format prescribed and special summary proceeding to follow. So it is the

prerogative of plaintiff to either opt for special procedure of original jurisdiction, prescribed under Order XXXVII, in case it is covered, or to institute a suit for same relief of recovery under ordinary procedure of original jurisdiction. Difference however is that in the former leave of Court is inevitable whereas in the later defendant would get away by filing written statement directly to avail trial.

4. Earlier suit i.e. Suit No.805 of 2020 between parties was in respect of a settlement agreement dated 24.11.2019 to be declared as valid along with letter of defendant's counsel dated 08.02.2020. The cause triggered to initiate the proceedings under the aforesaid suit No.805 of 2020 were claimed to have triggered on the same day for instant suit i.e. when the post-dated cheques were signed i.e. 02.03.2020 and 15.04.2020. Close scrutiny of such cheques and attached bank slip with endorsement however reveals that cause was not only triggered on 02.03.2020 and 15.04.2020 but in fact also on 18.06.2020 when cheques were bounced due to "payment stopped by drawer". However, my response hereunder would include even if the cause accrued on the same day i.e. when earlier suit for declaration was filed.

5. Out of a common cause, parties may have different reliefs and remedies available to them within same jurisdiction of the Court but with different procedural way outs for reliefs and remedies claimed such as original civil jurisdiction and jurisdiction under Summary Chapter, though later is also categorized as original jurisdiction. The referred suit No.805 of 2020 was filed in respect of a settlement agreement of 24.11.2019 for which the plaintiffs sought a declaration as of binding contract under original civil jurisdiction proceeded under normal procedure; whereas the subject matter of the instant suit is the recovery of the amount based on negotiable instrument processed under Summary Chapter. It could not be conceived that the two remedies/

reliefs of different class could necessarily be merged into one under normal original jurisdiction. It could however be only, if plaintiff desires, but for that the special procedure would yield against regular/normal procedure.

6. Thus, when such claims, based on negotiable instruments are made part of claim triable under normal/original civil jurisdiction, it loses its efficacy as embodied in Chapter XXXVII and would become an ordinary suit and for this reason the discretion is vested with plaintiff. The case in hand is also based on negotiable instrument wherein defendants are required to obtain a leave and as such procedure is governed under Order XXXVII CPC; whereas relief sought by the plaintiffs in the referred suit No.805 of 2020 is under ordinary civil jurisdiction, the procedure of former claim, based on negotiable instrument, could not be exercised in the later suit if both claims are made in one suit, as it would then be followed by ordinary procedure. Both of them may have common procedure as far as “recording of evidence” etc. is concerned, but in a suit under Order XXXVII such is only when the leave is granted. This distinction of special procedure has thus excluded the applicability of principle of Order II Rule 2 CPC, if a party opts for a desired exercise under order XXXVII.

7. Although the object of Order II Rule 2 is to prevent multiplicity of proceedings, however the test for raising objection under the rule *ibid* is that whether the claim made in the instant suit could have been made in the earlier suit i.e. 805 of 2020 or not. When this test is applied we undisputedly resolve that neither the earlier suit was within the frame of Chapter XXXVII CPC nor could plaintiff be “compelled” to include his summary chapter claim in a suit filed under ordinary original civil jurisdiction which if done will dilute the efficacy of his relief and remedy under summary chapter. Hence, it could not be presumed that

plaintiff had surrendered his claim of summary chapter when he preferred ordinary suit for declaration, referred above.

8. Mr. Kasi has relied upon a judgment of Lahore High Court in the case of Zahoor Ahmed<sup>1</sup> where 16 cheques claimed to have been bounced on the same day and that was treated as a common cause of action and since all cheques were bounced by a common transaction on the same day by a common cause, after initiation of proceedings in respect of one cheque, subsequent suits for the recovery of rest of the amount, based on 15 left over cheques, were hit by Order II Rule 2 CPC and rightly so hence learned Single Judge passed the following order:

*19. In view of the above, suits bearing No.9/1 to 23/1 of 2000 shall be deemed to have been filed after suit No.8/1 of 2000 and consequently shall be hit by the provisions of Order II Rule 2 CPC. Issue No.2 is accordingly decided in favour of the appellant-defendant and it is held that suits Nos.9/1 to 23/1 are barred in terms of Order II Rule 2 CPC and the plaints in the said suits are accordingly rejected.”*

The above case is distinguishable in the sense that all those 16 suits were of summary nature and ought to have been filed together as declared. The ratio of the judgment is not applicable to the case in hand.

9. The next case cited by Mr. Kasi is of Muhammad Arif<sup>2</sup>, which is also distinguishable in the sense that it was a common jurisdiction, which was invoked by a party, and were not separate remedies governed by different procedural law, as is in the instant case.

10. The contention of Mr. Kasi, that claim of plaintiffs in the instant suit could only be considered and matured once the settlement agreement is set at rest i.e. one way or the other in the earlier suits as the post-dated cheques were issued in pursuance of the settlement agreement impugned independently in two suits (805 and 1062 of 2020), carry weight, however, not for the purposes of rejecting a plaint in particular. No doubt, the subject cheques were issued by way of a settlement

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<sup>1</sup> 2016 CLC 937 (Zahoor Ahmed v. Mushtaq Ahmad)

<sup>2</sup> 1991 CLC 442 (Muhammad Arif v. Abdul Qayyum)

reached between the parties but those arguments could support the defendant in consideration of leave application and not the application under order VII Rule 11 CPC.

11. The application under Order VII Rule 11 CPC thus merits no consideration and is accordingly dismissed.

12. However, since plaintiff has requested that leave application is pending for quite some time, let it be fixed by office in two weeks' time along with other pending applications.

**J U D G E**