

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Civil Revision Application 132 of 2023

Date	Order with signature of Judge
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Fresh Case

For order on CMA No. 8288/2023 (Urgency)
For order on CMA No. 8289/2023(Exemption)
For hearing of main case

30.10.2023

Mr. Sajjad Ali Bhutto advocate for the applicant

Through this civil revision application, the applicants have called into question the legality of the order dated 06.10.2023 passed by learned XII-Additional District Judge Karachi East in Summary Suit No.175/2022 whereby the learned Court directed to hear and decide the application under Order VII Rule 11 CPC filed by the Respondent No.2 for rejection of plaint as well as leave to defend the application. An excerpt of the order dated 06.10.2023 is reproduced as under:-

“ I have examined the contents of both applications. Most of the grounds taken in both applications are similar. It is noteworthy that yet counter affidavit to the application under order 7 rule 11 CPC has not been submitted. It seems well in the fitness of the things that after receiving the counter affidavit to the application under order 7 rule 11 CPC, joint arguments on both applications may be heard whereafter the application under order 7 rule 11 CPC may be decided and if circumstances warrant the application for leave to defend may also be decided with the single order. This exercise will curtail the delay in proceedings as well as a decision on pending application/applications on merits.

Since the issue involved in the present proceedings is legal as such I intend to dispose of this Civil Revision Application without issuing notice to the other side as no prejudice shall be caused to either party.

At the very outset, I enquired from the learned counsel about the maintainability of this Civil Revision Application on the premise that the order passed by the learned trial Court is interim and the matter is yet to be decided on merits including the application for leave to defend as well as application under order VII Rule 11 CPC filed by the private respondent.

Per learned counsel, there are various pronouncements on the subject issue, and the learned trial Court was/is required to decide the application for leave to defend if the same is allowed then the other

interlocutory application could be entertained as such the procedure adopted by the learned trial Court is against the dicta laid down by the Supreme Court on the subject issue as such the impugned order is liable to be set aside with a direction to the trial Court to see the legality of application for leave to defend the suit at the first instance.

I have heard the learned counsel for the applicant and have perused the material available on record including the order dated 06.10.2023.

It is well-settled law that in the summary suit if the trial Court deems fit and proper to issue a summon to the defendant in terms of order XXXVII Rule II CPC calling upon him/her to obtain leave to appear and defend the suit subject to certain conditions as required under the law and upon service of the summons defendant was/is required to apply for leave to defend the suit and if he succeeds to obtain order allowing his/her application then he can seek an order for rejection of plaint if law permits. It is well settled law that in case of default of his obtaining such leave from the Court so to appear and defend in pursuance of the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree.

Prima facie, the learned trial Court is required to see the legality of the application for leave to defend whether the defendant has a good arguable case to defend the suit then the decision on the application may be made on merits. The learned trial Court is also free to pass an appropriate order on the interlocutory application. However, preference shall be given to the application for leave to defend in terms of the ratio of the judgment passed by this Court in the case of Messr United Distributors Pakistan Ltd v Ahmed Zarie Services and another **1997 MLD 1835**, as the same has not yet been set aside by the Supreme Court as informed, so that the matter could be set at rest on the subject issue.

In view of the above, without touching the merits of the case, this civil revision application is disposed of with a direction to the learned trial Court to decide the application for leave to defend within one week from the date of receipt of this order.

JUDGE