

# ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1675 of 2019

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Date: Order with signature of the Judge  
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1. For orders on CMA No.19303/2023
2. For orders on CMA No.7074/2023
3. For orders on CMA No.11582/2023
4. For hearing of CMA No.17039/2023
5. For hearing of CMA No.10135/2021
6. For hearing of CMA No.15957/2021
7. For hearing of CMA No.9861/2023

**07.02.2024**

Mr. Hussain Bux Saryo, advocate for the plaintiff  
Mr. Hussain Bux, defendant is present in person.

1,2,3,5,6 & 7. The defendant does not press these applications, hence, they are dismissed as not pressed.

4. This is an application under Order VII Rule 11 CPC for rejection of the plaint. The defendant appearing in person submits that no cause of action accrued and hence plaint ought to be rejected. Perusal of the plaint demonstrates that cause of action has been pleaded in paragraph 14 thereof:

*That cause of action accrued to the plaintiff for filing of this suit in the year 2017, when the plaintiff came to know about fraudulently sale of property i.e. House No.2939, Phase-II, Gulshan-e-Hadeed, Karachi and other properties, which were already sold out by him without the intimation, permission or consent of the plaintiff and secondly in the month of May, 2019, when the defendant came to the resident of the plaintiff and directed him to vacate the property i.e. House A/6, Ezzi City, Main National Highway Road, Karachi in the physical possession of the plaintiff, failing which he shall forcible vacate the same and continuously day by day until the unless the redressal of the grievance of the plaintiff.*

The primary underlying order is the rejection of plaint under Order VII rule 11 CPC. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*<sup>1</sup> wherein the Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested. The guidelines distilled by the Court in such regard are reproduced below:

“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

<sup>1</sup> Per Saqib Nisar J in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

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.”

It merits mention at this juncture that the aforesaid observations are required to be paramount considerations before a learned Judge, seized of an application seeking rejection of a plaint. It is settled law that the primary instrument to be considered while dealing such matters is the plaint itself, and in the present instance it *prima facie* pleads a cause of action. Whether or not the suit will be successful or otherwise can only be determined after conclusion of the proceedings, however, the plaint itself could not be considered to be devoid of an articulated cause of action.

A Division Bench of this court has held in the *Rana Imran case*<sup>2</sup> that in the instance of controversial questions of fact and / or law, the provisions of Order VII rule 11 CPC would not be attracted and the proper course for the court, in such cases, was to frame the relevant issue/s and decide the same on merit in the light of evidence and in accordance with the law.

In the present facts and circumstances the plaint does disclose a cause of action, therefore, no case is set forth for the grant of this application; which is hereby dismissed.

Judge

Amjad

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<sup>2</sup> Per Muhammad Ali Mazhar J. in *Rana Imran & Another vs. Fahad Noor Khan & Others* reported as 2011 YLR 1473.