

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-6878 of 2019  
Constitutional Petition No.D-6879 of 2019  
Constitutional Petition No.D-6880 of 2019  
Constitutional Petition No.D-6881 of 2019

Date	Order with signature of Judge
------	-------------------------------

Before: Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan Iqbal Chaudhry

01.11.2019

Mr. Muhammad Kamran Iqbal Bhutta advocate for the Petitioner  
-----

**Muhammad Shafi Siddiqui, J.** Being aggrieved of an order of Respondent No.4 dated 18.10.2019 passed in Appeals No.125, 126, 127 and 128 of 2019, the Petitioners have preferred these four petitions.

2. Brief facts of the case are that the Appellants filed their respective suits before Civil Judge & Judicial Magistrate, Malir, Karachi for declaration and permanent injunction. After service of notices and summons, the learned Civil Judge was pleased to reject the plaint under Order VII Rule 11 CPC. Aggrieved of it, the Petitioners filed their respective appeals before the learned District & Sessions Judge, Malir, Karachi, which maintained the order and the appeals were dismissed. Though in these petitions, the Petitioners have impugned the order passed in the aforesaid appeals, however, what transpired during hearing this case that the Petitioners have also made an attempt to impugn the same order of Respondent No.4 before the single Appellate Bench of this Court by filing II-Appeal in terms of Section 100 CPC. The learned single Judge while considering the case of the Petitioners dismissed the appeal, however, the Petitioners were directed to file "writ". The Petitioners as such have filed these petitions, wherein order of the learned District & Sessions Judge, Malir, Karachi / Respondent No.4 is impugned, yet again.

3. We have heard the learned counsel on the maintainability of these petitions and perused the material available on record.

4. Section 100 CPC provides that an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on the ground such as decision being contrary to law or usage having the force of law, the decision having failed to determine some material issue of law or usage having the force of law and a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits unless otherwise other remedies are provided by this Code or by any other law for the time being in force. Other remedial provisions available under the Code are Section 115 where the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto. In order to determine as to what remedy was available to the Petitioners, Section 100 of the Code could play a vital role in deciding such controversy. It provides that a second appeal shall lie to a High Court from every decree passed in appeal by a Court subordinate to High Court.

5. Section 2 sub-section (2) CPC deals with decree and provides that a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final, such expression deemed to include the rejection of a plaint.

6. Thus, the rejection of the plaint is a decree, which decree was also maintained by the Appellate Court. Petitioners have made an attempt to exhaust their remedy by filing such appeal under Section 100 of the Code. The learned single Judge of this Court declined the relief in limine primarily by upholding the office objection regarding maintaining single appeal by all four Petitioners since a common second appeal was filed by all Petitioners. Order dated 22.10.2019 passed by the learned single Judge in II-Appeal No.180 of 2019 is reproduced as under: -

*“.....Admittedly plaint was rejected under Order VII rule 11 CPC, appeal was preferred and same was also dismissed, hence, remedy is only to file writ petition, whereas appellants have filed II-Appeal. Besides, office has raised objection over one appeal filed by four appellants. Albeit, Appellate Court has dismissed six appeals by joint order, passing of joint order is not giving any cause to file one appeal jointly. Accordingly, objection of the office is rightly mentioned. Hence, instant appeal is dismissed in limine alongwith listed applications subject to filing fresh cases on writ side in accordance with law.”*

7. Without going into merits and de-merits of the order passed in II-Appeal No.180 of 2019 by the learned single Judge at the Appellate Side, we have realized that these petitions impugned the order of the Respondent No.4 i.e. District & Sessions Judge, Malir, Karachi, for which this is not the remedy. We cannot comment upon an order passed in the aforesaid II-Appeal No.180 of 2019 since it is not impugned in these proceedings. We may, however, observe that if the Petitioners are now aggrieved of an order passed in the aforesaid II-Appeal, they may pursue their remedy as available to them under the law. We, however, maintain that a writ petition before a Division Bench is not competent to assail an order of a decree of rejection of plaint before a Division Bench under Article 199 of the Constitution of the Islamic Republic of Pakistan. The remedies were and are still available under the Code, which may be exhausted in accordance with law.

8. These petitions as such are not maintainable and are accordingly dismissed alongwith listed applications.

JUDGE

JUDGE

Zahid/\*