

IN THE HIGH COURT OF SINDH AT KARACHI

M.A. No. 216 of 2024

Professor Dr. Syeda Azra Qamar Appellant

Versus

Kifayat Academy & others Respondents

M.A. No. 217 of 2024

Professor Dr. Syeda Azra Qamar Appellant

Versus

Dr. Muhammad Tanveer Ahsan & others..... Respondents

Date of Hearing : 26.03.2025

Date of Order : 26.03.2025

Petitioner through Mr. Kazim Raza Abbasi, Advocate.

Respondents through : Mr. Junaid Alam, Advocate for Respondent No. 2 & 4.
Mr. Yasin Ali, Advocate for Respondent No.3.

JUDGEMENT

Muhammad Jaffer Raza, J: - These appeals have been preferred against the orders dated 30.11.2024 (“**Impugned Orders**”) passed by learned Intellectual Property Tribunal at Karachi in Suit No. 12 of 2021 and Suit No. 13 of 2021 (“**Suits**”) respectively, under Section 19 of the Intellectual Property Act 2012 (“**Act**”). Since these appeals are interlinked, therefore, these were heard conjunctively and shall be decided vide this common Judgement. The said suits were filed by the Appellant with the following prayers: -

Prayer of Suit No.12/2021

“a) Declare that the Defendants act of reproducing the registered copyright work in material form, publishing the work, marketing and selling of the practical journals of the Botany for classes XI and XII is illegal and amounts to infringement of Plaintiff’s registered copyright journals of Botany for classes XI and XII work;

b) *Permanent injunction against the Defendants, agents, distributors, representatives, dealers and all persons claiming through Defendants, from illegal reproducing the registered copyright practical journal of Botany of Class XI and XII work in material form, publishing the work, marketing and selling practical journal with the same scheme of arrangement of written practical book and combined it with the plain papers as a journal or slavish imitation or counterfeit and/or infringement of Plaintiff's registered copyright practical journal of Botany XI and XII;*

c) *Temporary injunction against the Defendants, acting directly or through any other persons, from illegal reproducing the copyright practical journals of Botany for Classes XI and XII work in material form, publishing the work, marketing and selling practical journal with the same scheme of arrangement of written practical book and combined it with the plain papers as a journal or in any manner whatsoever, pending final determination of this suit;*

d) *For an order to Defendants to deliver upon oath to remove all counterfeited/ imitated practical journals from the market;*

e) *For an order that the Defendant do pay to the Plaintiff the sum of Rs. 5000000.00 as damages;*

f) *Any other, better or further relief(s) which this Hon'ble Tribunal may deem fit to grant in the facts and circumstances of the case;*

g) *For costs of the suit;"*

Prayer of Suit No.13/2021

"a) Declare that the Defendants act of reproducing the registered copyright work in material form, publishing the work, marketing and selling of the practical journals is illegal and amounts to infringement of Plaintiff's registered copyright practical journals work for Zoology of classes XI and XII;

b) *Permanent injunction against against the Defendants, agents, distributors, representatives, dealers and all persons person claiming through Defendants, from illegal reproducing the copyright work in material form, publishing the work, marketing and selling practical journal with the same scheme of arrangement of written practical book and combined it with the plain papers as a journal or slavish imitation or counterfeit and/or infringement of Plaintiffs registered copyright practical journal of Zoology XI and XII*

c) *Temporary injunction against the Defendants, acting directly or through any other persons, from illegal reproducing the copyright practical journals work in material form, publishing the work, marketing and selling practical journal with the same scheme of arrangement of written practical book and combined it with the plain papers as a journal or in any manner whatsoever, pending final determination of this suit*

d) *For an order to Defendants to deliver upon oath to remove all counterfeited/ imitated practical journals from the market;*

e) *For an order that the Defendant do pay to the Plaintiff the sum of Rs. 5000000.00 as damages,*

Any other, better or further relief(s) which this Hon'ble Tribunal may deem fit to grant in the facts and circumstances of the case;

For costs of the suit; and"

2. Thereafter, the Respondent No.2 & 4 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") and the said

application was allowed vide Impugned orders dated 30.11.2024 wherein the complaints of the Appellant were rejected.

3. Learned counsel for the Appellant has argued that the Impugned orders are legally unsound and fallacious. The same, according to the learned counsel were passed without giving any due consideration to the parameters of Order VII Rule 11 CPC. Learned counsel further contended that the learned Tribunal has gone into a very elaborate and needless discussion regarding merits and demerits of the cases at hand and the same is not permissible under the scope of the above noted provision. He further relied upon the Copyright Registration Certificate (“**CRC**”) of the Appellant and states that cause of action accrued in his favour after his copyright was duly registered by the Intellectual Property Organization (“**IPO**”). He further stated that determination on merits ought to be done after recording of evidence and the facts and circumstances of the application filed by the Respondent No. 2 & 4, do not warrant for the complaints be rejected in a summary manner.

4. Conversely, learned counsel for the Respondents No. 2 & 4 has contended that the Impugned orders do not suffer from any infirmity and are liable to be upheld by this Court. He has argued that there is no “*resemblance*” between the alleged “work” of the Appellant and the “work” was created by the Respondents represented by him. He has further urged that this Court can examine and compare the work and no resemblance will be found and that the artistic scheme and style etc. is remarkably distinct and by no stretch of imagination can be compared with the “work” of the Appellant. In this light it was further averred that no case of infringement has been made out by the Appellant. He has further contended that the copyright in his favour was registered prior in time and the CRC which was issued in favour of the Appellant was issued without compliance of relevant provisions of Law. He further argued that the Appellant failed to send the copy of application for registration to the

Respondents in deference of mandatory prescriptions of sub-rule (3) of Rule 4 of the Copyright Rules, 1967 (“Rules”) for inviting objections from the Respondents. Lastly, learned counsel has argued that no cause of action accrued in favour of the Appellant which would warrant filing of the said suit.

5. Learned counsel appearing on behalf of the Respondent No.3 (although the application Under Order VII Rule 11 CPC was not preferred by him) has supported the Impugned orders. He has maintained that no cause of action has been disclosed in the plaint. He has further argued that the CRC was issued to the Appellant on 08.11.2021 and the suit was filed immediately afterwards in December, 2021 and it is inconceivable that the cause of action arose in favour of the Appellant on such a short notice. He has further contended, supporting the Impugned orders, by stating that the books which the Appellant claims to be her copyright, was first published in the year 2010 by the Respondent represented by him. Subsequently, he has submitted that various editions were published, therefore, his “work” was prior in time. He has lastly contended that even if the averments in the plaints are considered to be true, the “work” of the Appellant was published earliest in the year 2017 which was at least seven (07) years after he had published his own “work”.

6. I have heard learned counsel for the parties and perused the record. The law pertaining to the Order VII Rule 11 CPC is now well developed and in light of pronouncements of the Superior Courts the instant appeals shall be adjudicated. I have examined the Impugned orders in detail and found that the learned Tribunal went over and above the permissible scope of Order VII Rule 11 CPC.

7. It is a well settled principle of law that for an application to be adjudicated under the noted provision it is **largely** the plaint which needs to be examined. The learned Tribunal in this regard has gone over and above the scope of the noted provision and adjudicated the matter on merits placing reference to the

respective written statements, and documents annexed therewith, filed by the Respondents. The learned Tribunal has further gone into a very elaborate discussion regarding the factual controversy between the contesting parties.

Relevant excerpts of the Impugned order are reproduced below: -

"It is pertinent to mention here that though the plaintiff applied for registration of the copyright work being author of the practical journal of botany for class XI & XII on 22 January 2019 under the title of botany printed practical journal and practical book as per annexure A of plaint which has been specified by the concerned registrar of copyright on serial No.05 of form 01 1.0 class and description of the work and the year of creation that "literary work book 2017" for which the plaintiff applied for registration but as per annexure 8 of plaint which is registration certificate issued by the concerned registrar of copyright in which it was specifically mentioned that "please note title/name/brandmark given by the applicant in application form on "Work" is not registered but only the expression/style/getup of the "work" is registered/protected under copyright law".

It is pertinent to mention here that the plaintiff has filed this suit on the basis of registration certificate and for claiming the scheme of arrangement of her work registered in copyright but nothing has been registered as per registration certificate of copyright as scheme of arrangement except only the expression/style/getup of the work attached with the copyright registered certificate.

It is pertinent to mention here that according to the record the defendant No.01 got registered its trademark bearing No.349962 prior to registration of copyright by the plaintiff as the defendant No.01 got his trademark registration in the year 2012 which has not been denied by the plaintiff's side and the defendant No.4 has also registered its copyright bearing No.21226-Copr and got its registration on 30-04-2010 while the plaintiff registered her copyright on 22nd January 2019 after about 09 years and after comparison of copies of both journal as annexure B & D of plaint it appears that the title page of plaintiff's practical journal has black & yellow theme & titled with specific name Dr Qamar's "Botany XI" and sub title "PRINTED PRACTICAL JOURNAL AND PRACTICAL BOOK WITH VIVA VOICE" with dividends alongwith flower artistic work and footer DR.SYED AZRA QAMAR ROSHAN PUBLICATIONS while the defendant practical journal appears with black & white theme alongwith title "Practical Journal Botany" and sub title "for class XI" alongwith Dr. Muhammad Farid Akhtar Principal Govt. Degree Science College Malir Karachi and footer Kifayat Academy Karachi-Lahore which is completely different with the title page of plaintiff as well as with different scheme of arrangement.

It is also pertinent to mention here that as per para No.22 of plaint the cause of action arose to the plaintiff for filing this suit due e substantial illegal publishing and selling of the practical journal by the defendants and the action firstly arose when the plaintiff became aware use about the illegal publication/reproduction of the practical journals

by copying same concept/scheme or arrangements but no any specific date, month or year has been mentioned in it Which shows that it is also the case of lack of period of time for arising the cause of action to her that on which date it was arose to the plaintiff for filling this suit.”
(Emphasis added)

8. This detailed deliberation on facts, which were otherwise disputed between the parties, was adjudicated on an application under Order VII Rule 11 CPC and it is held that the same could only have been adjudicated after recording of evidence. Moreover, the strength and weakness of a particular case cannot be a ground for rejection under Order VII Rule 11 CPC as grounds for rejection are very clearly spelt out in the said provision. The learned Tribunal, with respect, has failed to appreciate the clear distinction between a “rejection” and a “dismissal”. By observing that “*frivolous and non-sensical litigation*” ought to be buried at inception, the learned Tribunal has for all intents and purposes, dismissed the suit of the Appellant, whilst deciding an application filed under the noted provision. As noted above, the law regarding Order VII Rule 11 CPC is well settled and the elaborate judgment of the Honourable Supreme Court in the case of *Haji Abdul Karim v. M/s. Florida Builders Pvt. Ltd*¹ expounds on the principles regarding the said provision. Relevant parts of the judgment are reproduced below: -

8. At this stage it would be appropriate to carry out an analysis of Order VII, Rule 11 of the Code of Civil Procedure 1908. The said provision is reproduced below:

“(11) Rejection of plaint.---The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action.

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

¹ PLD 2012 S.C. 247

(d) Where the suit appears from the statement in the plaint to be barred by any law.

This is an important provision of law which has often been construed in a wide ranging series of cases. The interpretation applied thereto falls within a wide spectrum and some of the important case-law will be examined by us at a later stage. Prior to doing so, however, it is important to carry out an analysis of the precise language used in the statute. The salient features contained in the provision are the following;

(i) The words used are "rejection of plaint". In other words the legislature has deliberately refrained from providing that the suit should be "dismissed". A distinction has thus been drawn between a dismissal of a suit and the rejection of a plaint and it is this distinction which needs to be elucidated.

(ii) The opening words indicate that it is mandatory on the court to reject the plaint if one or more of the four clauses is found to be applicable. This is made clear by the use of the word "shall" in the opening phase.

(iii) The first clause need not detain us for long since it contains a clear statement that in case the plaint does not disclose a cause of action it is to be rejected. The next two clauses, namely, clauses (b) and (c) relate to the valuation of the plaint and the stamp duty to be affixed thereon and again do not require much discussion. It is the last clause, namely (d) in relation to which most of the litigation has taken place. It is this, therefore, which requires a careful analysis.

(iv) Clause (d) has three constituent elements. The first part uses the important word "appears", the second part relates to statements made in the plaint, (i.e. there is no reference to the written statement) and the third part states the inference to be drawn if a suit "appears" from the statement in the "plaint" to be "barred" by any law. This read in conjunction with the opening words of Rule 11 make it mandatory on the court to reject the plaint.

Right at the inception it needs to be stated clearly that Order VII, Rule 11, C.P.C. cannot be properly construed in isolation. In order to understand the theory of law underlying it reference has to be made to its complementary provision, namely, Order VII, Rule 13, C.P.C. which is reproduced below:--

"13. Where rejection of plaint does not preclude presentation of fresh plaint.--The rejection of the plaint on any of the grounds hereinabove mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

Rule 13 states the consequence of the rejection of the plaint. It is, in brief, to keep the right of the plaintiff alive to present a fresh plaint even if based on "the same cause of action" notwithstanding the rejection of the plaint. This is a distinctly unusual provision. It will be seen immediately that this marks a clear distinction from the provisions of section 11, C.P.C. which not merely imposes a legal bar on an unsuccessful plaintiff but actually takes away the jurisdiction of the court to try any suit or issue in which the matter directly or substantially in issue has also been in issue in a former suit between the same parties litigating under the same title in a court of competent

jurisdiction which has been "heard and finally decided". This is of course the well known principle of res judicata which is one of the foundational principles of our procedural law. It follows that in Order VII, Rule 11 read with Rule 13 the concept of rejection of a plaint is clearly distinct from that of a suit which is decided and disposed of in the normal course by a court of competent jurisdiction after recording evidence. The question which therefore arises is, what is the reason for this distinction and why has it been created? What has to be determined is, firstly the exact scope and ambit of Order VII Rule 11, and secondly, the effect of an order passed rejecting the plaint in accordance therewith.

9. We have already noticed that the court is bound by the use of the mandatory word "shall" to reject a plaint if it "appears" from the statements in the plaint to be barred by any law. What is the significance of the word "appears"? It may be noted that the legislative draftsman has gone out of his way not to use the more common phraseology. For example, in the normal course, one would have expected that the language used would have been "where it is established from the statements in the plaint that the suit is barred by any law" or, alternatively, "where it is proved from the statement in the plaint that the suit is barred by any law". Neither of these alternatives was selected by the legislative draftsman and it must be assumed that this was a deliberate and conscious decision. An important inference can therefore be drawn from the fact that the word used is "appears". This word, of course, imports a certain degree of uncertainty and judicial discretion in contradistinction to the more precise words "proved" or "established". In other words the legislative intent seems to have been that if prima facie the court considered that it "appears" from the statements in the plaint that the suit was barred then it should be terminated forthwith. The great advantage of this would be twofold:--

(a) On the one hand the defendant would be saved from the harassment of being subjected to a prolonged and costly trial including the leading of evidence which could be extended over a considerable period of time. Secondly, a great deal of valuable court time would also be saved from being wasted. This second consideration is of special importance considering the extent to which the courts are at present clogged with an enormous amount of arrears. Thus the idea, in brief, would be to bury the suit at its inception. This therefore, appears to be the rationale for the use of word "appears" as against the more strong words "established" or "proved". A further reason why the latter words have not been used is, of course, that normally they would be used if evidence had been recorded. That would then be a definitive finding by the court based on evidence and after examination of the law in the light thereof.

(b) At the same time we have to consider the matter from the other point of view as well. It is important that injustice should not be caused to a plaintiff merely because, for example, of defective drafting in the plaint. No irretrievable loss should be caused to a plaintiff in the event of a plaint being rejected merely on the basis that it "appears" to be barred. It is for this reason that the legal status of rejection of a plaint has not been equated to that of a judgment and decree given after the recording of evidence. In the latter case section 11

and the principle of res judicata become applicable whereas in the present case that principle has been expressly excluded by the provisions of Order VII, Rule 13. It needs to be emphasized that the language of Rule 13 is explicit in clarifying that a fresh plaint can be filed in respect of the very same cause of action in relation to which the plaint was earlier rejected. This interpretation reconciles the language of Rule 11 and Rule 13 with that of section 11 of the C.P.C. by providing a valid rationale for the differentiation. A further pointer in the same direction is to be found if the definition of decree contained in section 2, C.P.C. is taken into account. In common practice the words judgment and decree are often used more or less synonymously. However, these two concepts are completely distinct in terms of clauses (2) and (9) of section 2, C.P.C. Clause 9 defines a "judgment" as meaning merely the grounds given by a judge for arriving at the conclusion embodied in a decree. (Emphasis added)

9. The Honourable Court before parting with the judgment laid down clear and unambiguous guidelines in paragraph number 12. The same are reproduced below: -

"12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.

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 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.” (Emphasis added)

10. It is also well settled law that not having a cause of action is distinct from not disclosing a cause of action. Plaint can only be rejected in the latter and not the former as having a cause of action or not can only be determined after recording of evidence and the same cannot conceivably be a ground for rejection of plaint. The said distinction was elaborated in the case of ***Shaheen Nasir Khan versus Mst. Asmat Ara***² in the following words: -

“The applicant asserted that the plaintiffs had no cause of action. Plaintiffs having no cause of action is something different from the plaint disclosing no cause of action. Whether the plaintiff has a cause of action or not can only be determined on the basis of evidence. It could be rejected under Order 7, rule 11, C.P.C. only in case disclose a cause of action.”

11. It is clear that the learned Tribunal went beyond the scope of what was permissible in adjudicating the application under Order VII Rule 11. A detailed comparison of the “work” between parties was unwarranted and unnecessary.

12. For the aforesaid reasons, the appeals are allowed, Impugned orders are set aside with no order as to cost. The learned Tribunal shall decide the case on merits, without being influenced by the findings in the Impugned order, after recording of evidence of the respective parties.

JUDGE