

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Revision Application No.S-223 of 2021

Applicant: Muhammad Imran Ansari, through Mr. Abdul Samad Qureshi Advocate

Respondent: Muhammad Ali, through Mr. Abdul Ghafoor Hakro Advocate

Date of hearing: 24.10.2025  
Date of decision: 31.10.2025

### JUDGMENT

**MUHAMMAD HASAN (AKBER):** Through the instant Revision Application under section 115 of the Civil Procedure Code 1908 [CPC.] the applicant assails the Judgment dated 19.01.2021, passed in Civil Appeal No.117/2020 by the learned VI<sup>th</sup> Additional District Judge, Hyderabad; and the Order dated 11.09.2020 passed by learned 5<sup>th</sup> Senior Civil Judge, Hyderabad in F.C.Suit No.856/2020 for Declaration and Specific Performance, whereby plaint of the said Suit was rejected in *limine* under Order VII Rule 11 CPC.

2. Brief history of the case is that with respect to House No.213, Block-C, Unit No.8, Latifabad, Hyderabad ad-measuring 513 square feet (backside/ street side portion) [**subject property**], a sale agreement dated 04.07.2000 was executed between Applicant's father and Respondent No.1 and since then, possession of the subject property was with the applicant's father. For specific performance of the said agreement, F.C.Suit (Old FCS No.194 of 2000) New FCS No.32/2005 was filed by Applicant's father against Respondent No.1, which was rejected under Order VII rule 11 CPC., against which, Second Appeal 49 of 2011 has been filed, which is also pending before this Court. A counter suit No.1446 of 2019 for possession was also filed by Respondent No.1 against Applicant's father, which is presently pending before the learned VI Senior Civil Judge, Hyderabad. The applicant's father passed away in 2016.

3. As claimed by the Applicant, after the demise of his father in 2016, a fresh Sale Agreement [*Muahida Behimi Razamandi Makan No.213*] dated 15.03.2020 was executed between the present Applicant and Respondent No.1 with respect to the same subject property. For specific performance of

such second sale agreement dated 15.03.2020, a fresh F.C.Suit No.856 of 2020 was filed by the Applicant himself against Respondent No.1. However, without even admitting the same or issuing notice to the Defendant, the learned trial Judge proceeded to reject the plaint in *limine*, based upon the conclusion that the agreement was not genuine; that the signatures in both the agreements did not match, and that such an agreement could not have been executed in presence of the earlier transaction and litigation between Applicant's father and Respondent No.1. The said Order was assailed in Civil Appeal 2/2018, which was dismissed vide Order dated 25.09.2018., and which has is the subject matter of the instant Revision Application.

4. Learned counsel for the Applicant contended that the plaint was wrongly rejected although the Applicant had a valid grievance to agitate before the Court of law, the same was rejected based upon considerations which were extraneous to the provision of Order VII, Rule 11 CPC.; that even notice was not ordered to be issued; that such facts were taken into consideration which were neither part of the plaint nor were admitted by the applicant nor even agitated by the Defendant; and which were otherwise required to be established in evidence; that the plaint clearly disclosed a valid and legal cause of action; and that the impugned Order be set-aside. Reliance was placed upon PLD 2014 Sindh 465, 2022 SCMR 1598, 1990 SCMR 1630.

5. Conversely, learned counsel for Respondent No.1 supported the Order impugned and submitted that the suit itself was not maintainable, since even on the facts stated in the plaint, no cause of action existed; that Order VII rule 11, CPC. does not limit the inherent powers of the Court for rejection of a plaint; and that the rejection of the plaint was validly done.

6. Heard learned counsel for the parties and perused the record with their able assistance. The moot question is whether, based upon the factors recorded in the impugned Order, the plaint was rightly rejected under the mischief of rule 11 of Order VII CPC., without issuance of notice to the Defendant. Written synopsis were also submitted, wherein reliance was placed upon PLD 1996 Karachi 451 and 1996 SCMR 813.

7. For understanding the scope and applicability of the provision of Order VII rule 11 CPC., the following guidelines provide that:

- (i) the Court has to presume the facts stated in the plaint as correct.
- (ii) that the plaint is not to be read in fragments but must be read as a whole.
- (iii) that the dearth or weakness of proof would not be a justification for concluding that there is no cause of action disclosed in the plaint.
- (iv) that nothing more than the averment of the plaint has to be seen for adjudicating whether the plaint reveals a cause of action.
- (v) that even where there is a joinder of multiple causes of action, and at least some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted for rejecting the plaint.
- (vi) that if there are several parties and the plaint discloses a cause of action against one or more of them, then too, the plaint cannot be rejected; and
- (vii) that in most of the cases, the Court cannot take into consideration pleas raised by the defendants in the written statement suit, as at that stage, such pleas are only contentions in the proceedings, unsupported by any evidence on record; and that only in rare and exceptional cases, the Court can consider the legal objections in the light of averments of the written statement, but the pleading as a whole cannot be taken into consideration for rejection of a plaint. These guidelines have been provided in '**Rehmat Begum v. Mehfooz Ahmed and others**' (2024 CLD 1254), '**Media Max (Pvt) Ltd. through Chief Executive v. ARY Communication Pvt. Ltd. through Chief Executive and another**' (PLD 2013 Sindh 555) and '**Jehangir Akhter v. Inayat Ahmed**' (1990 CLC 1053).
- (viii) In '**President, Zarai Taraqati Bank Limited, Head Office, Islamabad V. Kishwar Khan and others**' (2022 SCMR 1598), it was held by the Honourable Supreme Court that in case of mixed questions of law and facts, the correct approach would be to allow the suit to proceed to the written statement and discovery phases and to determine the matter, either by framing preliminary issues, or through a regular trial.
- (ix) that factual inquiry regarding averments in the plaint is not permissible, as held in '**Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi**' (1993 CLC 2523) '**Messrs Bengal Corporation V. D.D.G. Hansa and 3 others**' (PLD 1992 Karachi 75) '**Hyderabad Municipal**

**Corporation V. Messrs Fateh Jeans Ltd.**' (1991 MLD 284) '**Dost Muhammad V. Ghulam Nabi**' (1990 MLD 164) and '**Karachi Development Authority V. Evacuee Trust Board through Administrator**' (PLD 1984 Karachi 34).

(x) That where a cause of action is disclosed in the plaint, the plaintiff has a right to a fair trial and to produce evidence and a judicial decision on the merits of his cause; and

(xi) that even in a case of vague pleadings and lack of proper particulars and details, the Court shall ask for better particulars and the proper course is to order the party to remove the vagueness and not to reject the plaint, as enunciated in the cases of '**Dost Muhammad V. Ghulam Nabi**' (1990 MLD 164), '**N. A, Shah Riyar V. Messrs Conforce Ltd., Lahore and another**' (1981 CLC 1009), and '**Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi**' (PLD 1976 Karachi 21).

(xii) The Honourable Supreme Court in the case of '**Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others**' (1994 SCMR 826) held that the Court cannot take into consideration pleas raised by the defendant in his defense, as at that stage the pleas raised by the defendants are only contentions in the proceedings unsupported by any evidence on record. However, if there is some other material before the Court apart from the plaint at that stage which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court. Beyond that, the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence.

(xiii) In '**Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others**' (PLD 2008 Supreme Court 650) the Hon'ble Supreme Court expressed, that the scope of Order VII Rule 11, CPC. is confined only to the extent of averments of the plaint and in addition, at the most, uncontroversial material available on record can be considered for determination of the question whether plaint is liable to be rejected or not but the scope of Order VII Rule 11, CPC. cannot be enlarged to consider the pleading of the other side in the written statement or defence plea raised therein for the purpose of rejection of the plaint.

(xiv) The Hon'ble Supreme Court, in '**Haji Mitha Khan V. Muhammad Yunus and 2 Others**' (1991 SCMR 2030) has taken the view that the test of cause of action is, that where the plaintiff claims that he had entered into a valid compromise, and the respondents were party to it or bound by it, and that the rights of the applicant under the compromise were being violated, this was enough to afford a cause of action to the plaintiff and it would only be on merits that he could be defeated. It was further observed that if it is held that the claim is not within time, or that the parties were not parties to the compromise, or the compromise is not in accordance with the law applicable to the parties, then it would be a decision on merits which must take place in proper form. If any defect was found in the frame of the suit or a deficiency in the court fee, then an opportunity is to be allowed to the Plaintiff to correct such defect and to remove the deficiency.

(xv) '**Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another**' (PLD 1989 Lahore 320) was the case wherein it was held that to enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should travel within the four corners of the plaint and nothing else. Neither the defence set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose the cause of action, the plaint can be rejected only if the allegations given in the plaint, the plaintiff could not be entitled to any relief whatsoever, even if it is taken to be true in the manner and form. If the contents of the plaint read as a whole disclosed triable issues, then the dispute between the parties should not be resolved without proper trial, i.e. settlement of proper issues and recording of evidence.

8. What appears to have been settled in the above-discussed cases is, that in case of controversial questions of fact or law, the provision of Order VII Rule 11, CPC. cannot be invoked. Rather, the proper course for the Court would be to frame an issue on such a question and decide the same on the merits in the light of evidence in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person from his legitimate right of availing the legal remedy for undoing the wrong done in respect of his legitimate right, therefore, the Court may in exceptional cases, consider the legal objection in the light of averment of the written statement; but the

pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII Rule 11 CPC. The same view was also taken in the case of **Saleem Malik** *supra*. A plain reading of the provision shows that, subject to certain exceptions to clause (d) as a general principle, the plaint in a suit cannot be rejected based upon a defence plea or on disputed material supplied by the opposite party with the written statement. In the instant case, since the question of lack of cause of action was involved, hence the above principles have been applied, whereas the situation may differ in cases where a plaint is rejected being 'barred by law', under clause (d) of Rule 11 of Order VII, for instance, barred under the principles of *Res judicata*; or *estoppel*; or under Order II Rule 2; or barred under any other law.

9. Reverting to the case in hand, the following reasons have been recorded in the impugned Order by the learned trial Court, for rejecting the plaint:

**"I have very carefully gone through with instrument; however, the same does not bear the copy of CNIC of Defendant No.1 to show that, in fact such instrument had been executed by the Defendant No.1 personally, though his CNIC number is mentioned in such instrument, but mere mentioning such number is not enough to believe that, such instrument is genuine one, as admittedly the parties of the client are under litigation since long and it is not difficult for both of them to know about their number of CNIC, as the same are definitely available in affidavit done by them".**

**"The instrument does not bear the photographs of Defendant No.1 to show that, actually such instrument was executed by Defendant No.1."**

**"I have very carefully compared the signatures of Defendant No.1 available on instrument and claimed sale agreement, dated 04.07.2000 and their comparing the same, I am not feeling any hesitation, while saying that both signatures are totally inconsistent, different from each other and the same could be seen/verified from necked eye; hence, in such circumstances, I am of the considered opinion that, instrument is otherwise document, but not a genuine/true, which was executed by Defendant No.1."**

**"There is another thing, which also requires the consideration of "respecting instrument. The instrument had been shown to be attested by notary public, namely**

**Syed Anwar Ali and after seeing his name upon such instrument, I recollect my memory that, said notary public had appeared before this court in a civil suit and his evidence was recorded by this court respecting cancellation of his license.”**

10. From the above reasoning, it appears that the plaint was rejected in *limine inter alia* on the grounds, that the agreement/ instrument is not genuine one; that the instrument had not been executed by Defendant No.1; that photograph of Defendant No.1 is not available with the agreement; that signatures are different; that the instrument has been managed by the Plaintiff; that nothing has happened, as claimed by the plaintiff side in this plaint; that there is litigation already pending between the father of the Plaintiff and the Defendant; that license of the oath Commissioner was terminated; that “the plaintiff is not competent to seek anything in respect of instrument, which is otherwise document”; and “the plaint is not maintainable under the law.”

11. Applying the scope and principles applicable under Order VII rule 11 CPC. as discussed at para 7 to 8 *ibid*, to the facts of the case (at para 2 and 3) and to the reasoning by the learned trial Court for rejecting the plaint (at para 9 and 10 above), it appears that the factual allegations in the plaint clearly disclose a triable cause of action. Whether the allegations levelled in the plaint are true or false, and whether the plaintiff will be able to succeed in his claim, are questions of fact, the burden to prove whereof lies upon the Plaintiff, and without which, the plaintiff would not be able to succeed. This can only be decided once notices are issued and the Defendants are allowed to file their Written Statement, and without which, it would not be appropriate to hold at this stage, as to whether Plaintiff's version is correct or otherwise. It was therefore inappropriate at such stage, to comment about the genuineness or otherwise of the sale agreement by the learned trial Court, without even such a defence being raised by the Defendant side. The learned Court also wrongly got impressed about the earlier litigation between the Plaintiff's father and Defendant and the pending proceedings between them, at such a stage. While making such observations, the learned Judge completely overlooked the plaint and its prayers in the present *lis*, which were for the claim of specific performance and which the Applicant was required to prove in evidence, yet such an opportunity was never allowed to the Applicant. Certain observations

on the merits of the case were also made, which may have prejudiced the rights of the parties, though such an exercise was also not permissible at this stage. The Order impugned practically amounts to dismissing the suit without even notice to the Defendant, which is not permissible at the stage of hearing of an application under Order VII Rule 11 CPC.

12. Needless to mention that, the learned trial court while dismissing the plaint in *limine* also failed to consider that the vendee in the first sale agreement of the year 2000, and in the second sale agreement of the year 2020 were different; so also the sale consideration in both the agreements; and also the witnesses in both the agreements were different, and therefore, the applicant had a fresh cause of action to agitate and to bring the *lis* before the Court, which ought to have been decided independently on its own merits, instead of being prejudiced because of the earlier transaction and litigation between the applicant's father and Respondent No.1.

13. Another reason for rejection of plaint was the notary public, without realizing the marked distinction between a 'Notary Public' and an 'Oath Commissioner', since both are not the same and synonymous terms/ offices.it was also not realised that a Notary is appointed under the Notaries Ordinance (XIX of 1961) and the power to appoint a Notary, vests in the Provincial Government. Functions of the Notaries are laid down in section 8 of the Ordinance; the exercise of their powers are conferred under section 15; and the West Pakistan Notaries Rules were framed in 1965. On the other hand, an Oath Commissioner is to be appointed by the High Court under section 139(b) CPC. and section 539 Cr.PC. The object of appointing an Oath Commissioner is to attest affidavits which are to be produced before a court to prove some particular fact. Therefore, "Oath Commissioner" and "Notary" are both different and distinct terms/offices and intermingling of both could result in legal complications. Reference can be made to '**Col. (R) Muhammad Shabir Awan v. Raja Saghir Ahmed and 4 Others**' (PLD 2023 Lahore 458). Lastly, the focus was upon the Notary public, and that too, while considering application under Order VII Rule 11 CPC. without realising the ratio settled by Supreme Court in the case of '**Sahib Khan through legal heirs v. Muhammad Panah**' (PLD 1994 SC 162), that an agreement to sell is not required to be signed by the parties and its witnesses in the presence of an Oath Commissioner or a



Notary Public, or before any other officer or authority. In the case of **'Zafar Iqbal v. Sher Muhammad & 3 others'** (2003 YLR 673), it was held that a sale agreement is not mandatorily required to be attested by a notary public. Based upon the above principles, it was further held in the case of **'Sikandar Ali v. Badruddin'** (2019 CLC 1046) that, a notary public could not be said to be an attesting witness to an agreement and the evidence of a Notary public was not relevant for purposes of proof of execution of a contract of sale, as the same was not required by law to be verified by a Notary public. Further guidance in this regard can be taken from the case of **'Ghazi Khan v. Muhammad Yousaf'** (2023 CLC 2098).

14. Turning to the last aspect of the matter, I am mindful that the instant Revision application has been filed against concurrent findings by two Courts below, for which the basic rule is, that the scope of revisional jurisdiction is limited to the extent of jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law. The ratio laid down by the Honourable Supreme Court in the case of **'Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi v. Ikhtlaq Ahmed'** (2014 SCMR 161) is that provisions of section 115 CPC., under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure the effective exercise of its superintendence and visitorial powers of correction, unhindered by technicalities. But at the same time, the Court could interfere when the concurrent findings of fact recorded are based on erroneous assumptions of fact or patent errors of law or reveal arbitrary exercise of power or abuse of jurisdiction or where the view taken is demonstrably unreasonable. The cases of **"Asmatullah v. Amanat Ullah through Legal Representatives"** (PLD 2008 SC 155) **"Abdul Sattar v. Mst. Anar Bibi and others"** (PLD 2007 SC 609), and **"Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs"** (1999 SCMR 1171) can be referred to support this. Hence, as discussed at paras 10 and 11 *ibid* in detail, by deciding the question of truth or falsity of the claim of the Plaintiff on multiple questions of fact at such stage of hearing of application under Order VII Rule 11 CPC., the learned trial Court materially erred by acting beyond its jurisdiction and the parameters under Order VII Rule 11 CPC.,

whereas the learned appellate Judge also followed lead and failed to apply correct judicial approach in light of the dictum discussed above, this appears to be a fit case for exercise of revisional jurisdiction under section 115 CPC. In view of the above-discussed principles and judgments, the principles enunciated in the two Judgments referred by the Respondent have already been taken care of.

15. Upshot of the foregoing legal and factual analysis is that the plaint in the F.C. Suit No.856 of 2020 was wrongly rejected in *limine* under VII Rule 11 CPC., beyond the scope of such provision. Consequently, the instant Revision Application is allowed; the impugned Judgment dated 19.01.2021 and the impugned Order dated 11.09.2020 are set-aside; and the case is remanded back to the learned trial Court, with directions to expeditiously decide the same on its own merits, after issuing notice to the Defendant in accordance with law. There will be no order as to costs in the circumstances of the case.

**J U D G E**