

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

First Appeal No.86 of 2024

Appellants: Farhan Najeeb, through Ms. Shumaila Kanwal Advocate

Respondents: Aslam Qureshi and others, through Mr. Shaikh Adnan Nisar Advocate

Date of hearing: 21.03.2025
Date of decision: 14.04.2025

JUDGMENT

MUHAMMAD HASAN (AKBER) J.:-Through this First Appeal filed under section 15 of the Defamation Ordinance 2002 (**Ordinance 2002**), the Order dated 05.12.2024 passed by the learned 8th Additional District Judge Hyderabad has been assailed, whereby plaint of the Defamation Suit No.95 of 2024 was rejected under Order VII Rule 11 CPC for lack of cause of action.

2. Brief facts of the case are that the Appellant filed Defamation Suit No.95 of 2024 against the Respondents alleging therein that parties are related to each other and certain allegations of personal nature were made by the defendants which damaged the name, dignity, reputation and social status of the Plaintiff, for which the Plaintiff claimed Rs.2,00,00,000/- as damages for causing defamation to his honour, goodwill and dignity. The claim of the plaintiff was for damages arising out of the alleged defamation in the form of *slander*, thus, the suit was governed under the Defamation Ordinance 2002 (**Ordinance-2002**). The Respondents/ Defendants in their written statement contested the suit wherein it was averred *inter alia* that the plaint disclosed no cause of action; the suit was barred under section 42 and 54 of the Specific Reliefs Act and, the suit was frivolous. The Respondents also filed an application under Order VII Rule 11 CPC., which was contested by the parties and after hearing, the same was allowed vide impugned Order dated 05.12.2024, which has been challenged in this Appeal.

3. Ms. Shumalla Kanwal, the learned counsel for the appellant contended that the plaint was wrongly rejected, though the appellants had a valid grievance to agitate before the Court of law; that such rejection was based upon considerations which were extraneous to the provision of Order VII, Rule 11 C.P.C.; that such facts were taken into consideration which were neither part of the plaint nor were admitted by the appellant; that written statement was wrongly considered for determination of factual allegations which were required to be proved in evidence; that notice under the Ordinance was served upon the Respondents; and that the plaint clearly disclosed a valid and legal cause of action. Reliance was placed upon 1994 SCMR 826, PLD 2009 Karachi 38, 2013 MLD 1532.

4. Conversely, Mr. Shaikh Adnan Nisar Advocate learned counsel for the Respondents 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 mandatory notice as envisaged under section 8 of the Ordinance was not served within time by the Appellant; that Order V11 rule 11, C.P.C does not limit the inherent powers of the Court for rejection of a plaint; and that the rejection of plaint was validly done. He placed reliance upon an unreported Order dated 30-05-2016 passed by a learned Single Judge in Suit No.135 of 2012.

5. Heard arguments of the learned counsels and perused the record with their able assistance. The main question in the present appeal is, whether the plaint in Defamation Suit No.95 of 2024 disclosed a cause of action, or the same fell under the mischief of rule 11 of Order VII CPC. For this purpose, the plaint is to be tested on the criterion of the Defamation Ordinance 2002, and also on the touchstone of Order VII Rule 11 CPC. whereas the relevant Constitutional provisions can always be looked into in this regard.

6. Section 3 of the Ordinance 2002 defines the two forms of defamation, as '*libel*' and '*slander*'. The former part of Section 4 specifically declares publication of defamatory matter as an actionable wrong, even in the absence of special damage, whereas the latter part grants statutory presumption of damages, in cases of publication of defamatory matter, subject to proof. Even the defenses to be adopted in such cases have also been elucidated in the Ordinance, whereby two of such defenses (absolute and qualified privileges) have been expressly outlined in sections 6 & 7 respectively. That specifically with respect to actions against newspapers and broadcasting sections, six months' time has been statutorily fixed for initiating an action. The District Courts and the High Courts have been vested with exclusive jurisdiction for deciding suits and appeals respectively, within the specific and expeditious periods, as provided under sections 13 to 15 of the Ordinance. 'Dr. Abdul

*Jabbar Khatak V. IInd Senior Civil Judge, Larkana And Others*¹ and *"A. Khalid Anari V. Mir Shakee ur Rahman"*². Section 11 keeps open the remedy of criminal defamation, meaning thereby that both remedies are concurrently available to an aggrieved person.

7. To understand the basic source of law and from the perspective of fundamental rights, the freedom of speech and expression have been guaranteed as a fundamental right under Article 19 of the Constitution of Islamic Republic of Pakistan 1973, subject to reasonable restrictions imposed by law, and as per the categories provided therein. Freedom of expression, being corner stone of democratic societies, carries with it the right to publish and circulate one's ideas, opinions and views with freedom. Such right though, is not unfettered and unbridled, for in any modern State, absolute and uncontrolled liberty is not encouraged.

8. While on one hand, where Article 19 protects freedom of expression, so on the other hand, Article 14 of the Constitution guarantees dignity of man and privacy of home as inviolable. Not only in the Constitution of Pakistan, but since time immemorial in history and even in religions, great value has been attached to the dignity of man and the privacy of home. The test would be to find a balance between these two fundamental rights, for where defamation is caused, it directly effects human dignity, honour, respect and privacy. The Defamation Ordinance 2002 is an attempt to strike such a balance between these two Constitutional guarantees, so that one does not infringe the other. Hence, in all fairness, a person while exercising the right of freedom of speech and expression, must keep in mind that he also has a corresponding responsibility to ensure that his freedom of expression or speech shall not transgress the limits of freedom, beyond the boundaries of Article 14 of the Constitution. The case of *'Flt. Lt. (Dr) Shariq Saeed V. Mansoob Ali Khan and 5 others'*³ can be referred on the subject.

9. Award of general damages by Courts is comprised on the conditions of vindication, injury to reputation and injury to feelings. The amount of damages awarded in respect of vindication and injury to reputation and feelings depends on a number of factors, including (a) the gravity of the allegation; (b) the size and influence of the circulation; (c) the effect of the publication; (d) the extent

1. PLD 2017 Sindh 438
2. PLD 2011 Karachi 484
3. 2010 YLR 1647

and nature of the claimant's reputation; (e) the behaviour of the defendant; and (f) the behaviour of the claimant. The standard of proof is the normal civil standard of the balance of probabilities. However, in common with a plea of justification to serious charges, the evidence must be clear and cogent. Proof of a state of mind can only be inferred from the facts.³

10. For the present proceedings, fourteen days prior written notice, as required under section 8 of the Ordinance, to be sent by a Plaintiff, within two months of the defamatory publication coming to his notice. The cases of '*Preetam V. Madhu Das Godwal*⁴', '*Chief Editor Muhammad Riaz Anjum V. Dr. Muhammad Shahbaz*⁵', '*Kazim Ali V. Ishaq Ali*⁶', '*Said Rasool V. Dr. Humayun Khan*⁷', '*Mst. Dr. Yousaf Fida v. Justice (Retd.) Muhammad Azam Khan*⁸', '*Shafqat-ur-Rehman V. Daud-ur-Rehman*⁹' and '*Said Rasool V. Dr. Hamayun Khan*¹⁰' can be referred in this regard. Section 8 provides that,

"8. Notice of action.--No action lies unless the plaintiff has within two months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, fourteen days notice in writing of his intention to bring an action specifying the defamatory matter complained of."

11. As per the plaint, a notice was sent by the Plaintiff which is also annexed with the plaint, however there is no date mentioned therein, which fact has been recorded in the impugned Order as well which fact was interpreted by the learned Judge as that notice was not served within the stipulated period, without even allowing an opportunity to the Plaintiff to establish such fact. The second aspect which requires consideration is the language used in the provision of section 8, which specifically uses the words "publication of defamatory matter", whereas the term "publication" is defined under section 2(e) of the Ordinance. Whether the same would include both forms of defamation as provided under section 3 of the Ordinance, or would solely apply to cases of libel, is another aspect which needs to be considered. The words at the start of the provision being couched in negative language i.e. "No action lies unless..." also requires consideration whether the provision and each word used therein, has to be construed and interpreted in a strict manner or otherwise, is yet another aspect which requires consideration. Thirdly, the

4. 2021 MLD 1
5. 2023 MLD 525
6. PLD 2022 Quetta 66
7. 2014 MLD 1199
8. PLD 2016 Peshawar 105
9. PLD 2006 Peshawar 206
10. 2014 CLD 284

learned trial Court has also non-suited the Plaintiff for lack of cause of action under rule 11 of Order 7 CPC. Suffice it to say that there is abundance of case law available on the scope and applicability of this provision, which settles that for the purposes of considering an application under Order VII Rule 11 CPC, (i) the Court has to presume the facts stated in the plaint as correct; (ii) nothing more than the averments of the plaint have to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action; (iii) that in case of any mixed questions of law and facts, the correct methodology and approach is 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; (iv) that the dearth or weakness of proof would not be a justification for coming to the conclusion that there is no cause of action disclosed in the plaint; (v) that for the rejection of a plaint, the Court cannot take into consideration pleas raised by the defendants in the suit, as at that stage, the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record; 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 the rejection of plaint; (vi) 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 to reject the plaint; (vii) 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 (viii) that the plaint is not to be read in fragments but it has to be read as a whole. Reliance is placed on '*Rehmat Begum V. Mehfooz Ahmed and others*'¹¹ and '*Media Max (Pvt) Ltd. through Chief Executive V. Ary Communication Pvt. Ltd. through Chief Executive and another*'¹² and '*Jehangir Akhter V. Inayat Ahmed*'¹³. (ix) That with the aim of deciding whether the plaint discloses cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents; (x) that in case of any mix question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial; as held in '*President, Zarai Taraqiati Bank Limited, Head Office, Islamabad V. Kishwar Khan and others*'¹⁴.

11. 2024 CLD 1254
12. (PLD 2013 Sindh 555)
13. 1990 CLC 1053
14. 2022 SCMR 1598

(xi) Moreover, factual inquiry regarding averments in the plaint is not permissible *'Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi'*¹⁵, *'Messrs Bengal Corporation V. D.D.G. Hansa and 3 others'*¹⁶, *'Hyderabad Municipal Corporation V. Messrs Fateh Jeans Ltd.'*¹⁷, *'Dost Muhammad V. Ghulam Nabi'*¹⁸ and *'Karachi Development Authority V. Evacuee Trust Board through Administrator'*¹⁹. (xii) 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 merits of his cause; (xiii) even in 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 case of *'Dost Muhammad V. Ghulam Nabi'*²⁰, *'N. A, Shah Riyar V. Messrs Conforce Ltd., Lahore and another'*²¹, and *'Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi'*²².

(xiv) It has also been 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. Such view was taken by the Supreme Court in the case of *'Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others'*²³. It was also held that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his case, is possible only if the Court reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct. (xv) *'Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others'*²⁴ was the case wherein the Supreme Court expressed that the scope of Order VII, Rule 11, C.P.C. 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 the

15. 1993 CLC 2523
 16. PLD 1992 Karachi 75
 17. 1991 MLD 284
 18. 1990 MLD 164
 19. PLD 1984 Karachi 34
 20. 1990 MLD 164
 21. 1981 CLC 1009
 22. PLD 1976 Karachi 21
 23. 1994 SCMR 826
 24. PLD 2008 Supreme Court 650

purpose of determination of the question whether plaint is liable to be rejected or not but the scope of Order VII, Rule 11, C.P.C. cannot be enlarged to consider the pleading of the other side in the written statement or defense plea raised therein for the purpose of rejection of plaint;

(xvi) The Supreme Court, in '*Haji Mitha Khan V. Muhammad Younus and 2 Others*'²⁵ has taken the view that the test of cause of action is that, what the plaintiff claims that he had entered into a valid compromise, and the respondents were party to it or bound by it, that both the parties were bound by it and that the rights of the appellant 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 deficiency in court-fee, then an opportunity is to be allowed to the Plaintiff to correct such defect and to remove the deficiency.

(xvii) '*Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another*'²⁶, held that in order to enable a Court to reject a plaint on the ground that it does not disclose a cause of action under Order VII rule 11(a) CPC, it should travel within the four corners of the plaint and nothing else. Neither the defense set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose cause of action, plaint can be rejected only, if the allegations given in the plaint, even if it is taken to be true in the manner and form, the plaintiff is not entitled to any relief whatsoever. 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.

12. '*Muhammad Ansarullah V. Masood Bakhtiar*'²⁷ lays the basic rule that, the question of damages is a question of fact, which is to be determined after recording evidence of both the parties, whereas '*Syed Shakeel Ahmed V. Raj Kumar*'²⁸ propounded that the allegation of defamation is a mixed question of law and facts, which cannot be tried as a preliminary issue, without recording evidence.

25. 1991 S C MR 2030.
26. PLD 1989 Lahore 320
27. 2008 MLD 786
28. 2023 CLC 1273

13. Here, it would be necessary to observe that 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 however differ in cases where the plaint is to be rejected being 'barred by law', under clause (d) of Rule 11 of Order VII, as for instance, barred under the principles of *Res judicata*; or *estoppel*; or Order II Rule 2; or under any other law.

14. A plain reading of this provision would show that, subject to certain exceptions to clause (d) as a general principle, the plaint in a suit cannot be rejected on the basis of defense plea or material supplied by the opposite party with the written statement. It is settled law that in case of controversial questions of fact or law, the provision of Order VII, Rule 11, C.P.C. cannot be invoked, rather the proper course for the Court in such cases is to frame issue on such question and decide the same on 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, C.P.C. Same view was held in the case of *Saleem Malik supra*.

15. Applying the above discussed principles on the scope and applicability of Order VII Rule 11 CPC are applied to the facts of the case as pleaded in the plaint of Defamation Suit No.95 of 2024, it appears that the factual allegations in the contents of the plaint clearly disclose a triable cause of action. Whether the allegations levelled in the plaint are true or false; and whether the plaintiffs will be able to succeed in their claim on the basis of the allegations levelled in the suit; whether the notice in cases of libel is also mandatory; and whether the Plaintiff is able to establish service of such notice within the mandatory stipulated time, are all questions of fact, the burden to prove whereof lies on the Plaintiffs, and without which the plaintiffs would not be able to succeed. This can only be decided once issues are framed and opportunity of leading evidence is allowed to the Plaintiffs. Without recording of evidence, it would not be appropriate to hold at this stage as to which of the versions is correct, whether the one set up in the plaint is true, or the other one as pleaded in the defense is the correct version of the events. The defendants have already filed their written statement and they will also be at liberty to lead their evidence.

16. The case law relied by the Respondents is either inapplicable and distinguishable to the facts and circumstances of the present case, in view of the principles and Judgments of the Supreme Court discussed *ibid*.

17. Considering the above analysis, I am of the humble view that the plaint in the Defamation Suit No.95 of 2024 was wrongly rejected under VII Rule 11 CPC. Consequently, the instant appeal is allowed; the impugned Order dated 05-12-2024 is set-aside; and the case is remanded back to the learned trial Court with direction to expeditiously decide the same, after framing proper issues and allowing opportunity to the parties to produce evidence in accordance with law. There will be no order as to costs, in the circumstances of the case.

JUDGE