

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No.S-190 of 2022

Applicant : Srichand son of Heeranand,  
through Mr. Abdul Mujeeb Shaikh, Advocate.

Respondent : Dileep Kumar son of Jhamat Mal,  
Called absent.

**Date of Hearing: 05.05.2025.**

**Date of Order: 05.05.2025.**

## **ORDER**

**Abdul Hamid Bhurgri, J.** Through this Civil Revision, the applicant, being the defendant in a Summary Suit, has challenged the order dated 12.10.2022 passed by the learned II-Additional District Judge, Ghotki, in Summary Suit No.24/2021 (*Dileep Kumar v. Srichand*), whereby his application under Order VII Rule 11 of the Code of Civil Procedure (**CPC**) was declined.

**2.** The respondent/plaintiff instituted a Summary Suit against the applicant/defendant, asserting that both parties were engaged in the business of pharmaceuticals. The applicant allegedly purchased medicine worth Rs.16,50,000/- in March 2020 and issued a cheque dated 28.07.2020, drawn on Meezan Bank, in favour of the respondent for payment. Upon presentation, the cheque was dishonoured due to insufficient funds. It was further submitted that an FIR had also been lodged by the respondent against the applicant, which culminated in his acquittal. Notwithstanding the acquittal, the respondent initiated the present Suit, seeking a decree for Rs.16,50,000/- along with markup.

**3.** Upon service of summons, the applicant filed his written statement along with an application under Order VII Rule 11 CPC, which was duly contested by the opposing side. After hearing both parties, the learned trial Court dismissed the application vide the impugned order dated 12.10.2022.

**4.** Learned counsel for the applicant contended that the impugned order is contrary to the law and the learned trial court failed to consider the legal and factual dimensions of the case. He further argued that the

trial court overlooked the applicant's acquittal in related criminal case which had effectively nullified the respondent's claim. He further submits that the defendant/applicant had no account in the bank on the date when cheque is shown to have been issued. He also contended that the impugned order suffers from material legal infirmity and prayed that the revision application may be allowed.

**5.** Heard the arguments and perused the material. I have gone through the application under order VII rule 11 CPC filed by the applicant, the grounds taken by the applicant in his application can only be adjudicated after framing of issue and leading evidence. No ground as contemplated in order VII rule 11 CPC has been taken by applicant in his application under order VII rule 11 CPC. The rejection of a plaint under order VII rule 11 CPC is an exception and must be exercised sparingly only when the plaint on its plain reading discloses no cause of action or barred by any law. In a summary Suit under order XXXVII CPC, where the object is to ensure expeditious disposal of suits based on negotiable instruments or written contracts, the mechanism is not meant to substitute the regular process of trial unless strictly warranted. There are plethora of judgments of apex Courts where it has been emphasized that rejection of plaint at initial stage should not be resorted to where factual controversies exists, and the plaint discloses cause of action requires adjudication. Therefore, in a summary suit unless the conditions under order VII rule 11 CPC are squarely met from the face of plaint alone, the rejection of plaint would amount to denial of the right to be heard and is contrary to the spirit of fair trial under article 10A of Constitution of Islamic Republic of Pakistan. Mere defences raised in leave to defend application or the existence of disputed question of facts do not warrant rejection of the plaint.

**6.** The principle governing rejection of plaint under order VII rule 11 CPC is consistently interpreted by Indian and English courts require that such rejection must be confined to the four corners of the plaint alone. The power to reject the plaint must be exercised consciously and only in clear cases where the plaint is barred by any law or do not disclose cause of action. No litigant should be deprived of his right to be heard unless the

legal bar is explicit and insurmountable on the face of plaint. A summary suit under order XXXVII CPC though intended for expeditious disposal, still requires the Court to respect procedural fairness, and any attempt to reject the plaint without fulfilling the strict requirements of order VII rule 11 CPC would violate the litigant constitutional guarantee of access of justice. Courts must, therefore, refrain from denying trial unless the plaint is patently and unequivocally barred by law, a principle applicable with equal force to summary proceedings. The summary procedure is intended to expedite justice, not to short circuit it, and questions requiring evidence must proceed to adjudication rather than being blocked at the threshold through technical objections.

In the case Muhammad Altaf and others vs. Abdur Rehman Khan and others (**2001 SCMR 953**), the Honourable Supreme Court has observed as under;-

*“.....However, it will suffice to observe that for the purpose of an application under Order VII, Rule 11, C.P.C., the averments contained in a plaint are to be presumed to be correct. In the case in hand, learned Judges of the Division Bench have rightly pointed out that the allegation of fraud which was also averred in the plaint could not have been resolved without recording evidence. In this view of the matter, the learned Single Judge was justified in non-suiting the petitioners under Order VII, Rule 11, C.P.C.”*

In another case, Mst. Sharifan Bibi and others vs. Malik Sharif Parvez and others (**2008 SCMR 757**), the Honourable Supreme Court has held that;-

*“3. The learned counsel has not been able to show any illegality in the discretion exercised by the two learned Courts including the High Court in refusing to reject the plaint and opting to have the matter tried so that the rights of the parties could be identified and determined after a proper trial in the matter.”*

**7.** In light of the above legal framework and judicial pronouncements, it is evident that rejection of plaint, particularly in a summary suit under Order XXXVII CPC, is not a matter of discretion to be exercised lightly. The Courts are under a constitutional obligation to uphold the right to fair trial under Article 10A of the Constitution, which mandates that every litigant must be given a meaningful opportunity to present their case

unless clearly barred by law. Whether the suit ultimately succeeds or fails is a matter to be determined through adjudication, not at the threshold through a mechanical application of Order VII Rule 11 CPC. The guiding principle, as affirmed in both local and comparative jurisprudence, is that unless the plaint is manifestly barred or wholly devoid of a cause of action, it must proceed in accordance with law. To do otherwise would amount to denial of justice and an abuse of the summary process.

**8.** This Court finds no illegality or infirmity in the impugned order dated 12.10.2022 passed by IInd. Additional District Judge, Ghotki and do not find that it warrants any interference. The order passed by the trial court is well reasoned, consequently, this Civil Revision is hereby dismissed with no order as to costs. These are the reasons for the short order dated 05.05.2025 whereby this Civil Revision was dismissed.

Judge

ARBROHI