

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
(Constitutional Jurisdiction)

C.P No. S-1046 of 2025  
(Old Number D-2886 of 2017)

*‘Syed Shahjahan Shah vs. Haji Bismillah Khan and others’*

|                      |   |                                                                                       |
|----------------------|---|---------------------------------------------------------------------------------------|
| Petitioner           | : | Through Obaid-ur-Rehma Khan, Advocate along with Mr. Bahadur Jahangir Khoso, Advocate |
| Respondents          | : | Nemo                                                                                  |
| Date of Hearing      | : | 21.05.2026                                                                            |
| Date of Announcement | : | 18.07.2026                                                                            |

**ORDER**

**MUHAMMAD HASAN (AKBER), J.-** The Judgment dated 07.03.2017 passed by the learned District and Sessions Judge, Karachi South in Civil Revision No.147 of 2016 [**‘Impugned Judgment’**] has been challenged, whereby plaint of petitioner’s Suit No.782 of 2011 *‘Syed Shahjahan Shah versus Munawar Ali and others’* has been rejected by the learned Revisional Court under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**‘CPC.’**).

2. Heard and perused the record. The pithy facts of the case are that it was claimed in the plaint are that the Petitioner and the Respondent No.2 entered into a business transaction whereby the Petitioner had advanced gold to the Respondent No.2 for trading purposes, the value of which was approximately Rs.5,23,42,000/-, and in lieu thereof the Respondent No.2 was to return the principal amount along with profit in the form of gold. Upon failure of the Respondent No.2 to honour his obligations, an arrangement was reduced into writing through an *Iqrarnama* dated 30.06.2010 (**‘Iqrarnama’**), which provided a structured mechanism for adjustment of liability and transfer of properties as surety and in case of default. According to the plaint, when the Respondent No.2 reneged, the amounts already paid and the properties, including the plot and the flat in Dubai, were to be appropriated towards liquidation of the outstanding liability, and thereafter, Shop No.2 situated at Al-Fatima Plaza, Paria Street, Ghulam Hussain Kassim Quarters,

Kharadar, Karachi [**Suit Property**] was to be transferred in favour of the Petitioner, as agreed under the *Iqrarnama*. On 03.03.2011 a public notice was published by the Petitioner in Daily Dawn, and on 07.03.2011, the Plaintiff claims that a conveyance deed was prepared by him, followed by a legal notice dated 08.04.2011 and finally, the subject Suit was filed on 14.04.2011, wherein he claimed for the transfer of the Suit Property in his name. The Respondent No.1 filed an application under Order 1 Rule 10 CPC. on 22.11.2011, claiming that he had filed Suit No.572 of 2011 (**‘the Respondent No.1’s Suit’**) in the Hon’ble High Court of Sindh at Karachi, on the basis of an agreement dated 23.12.2010 purportedly executed between the petitioner and the Respondent No.2 for the sale and purchase of the Subject Property. The Petitioner, upon discovering these facts, instituted an application under Order 1 Rule 10 CPC 1908 in the Respondent No.1’s Suit 572 of 2011.

3. On 03.03.2012, the Respondent No. 1 filed an application under Order VII rule 11 CPC. in petitioner’s suit, which was rejected on 24.12.2012. Respondent No.1 thereafter filed an application under Order XXIII Rule 3 CPC. on 29.05.2014 for withdrawal of his own Suit No.572 of 2011, which was allowed on 11.06.2014. Shortly thereafter, on 30.06.2014, a sale deed was executed by the Respondent No.2 in favour of Respondent No.1, while the petitioner’s suit was pending. Respondent No.1 filed a Revision Application bearing No.15 of 2013 against the order of dismissal of his application under Order VII rule 11 CPC. on 24.12.2012 in the Court of the Vth Additional District Judge, Karachi, South, whereby the matter was remanded on 16.09.2014 for a decision afresh on the said application. The said application was again dismissed on 05.08.2016, and finally on 07.03.2017, the learned Revisional Court allowed the second Revision Application No.147 of 2016 filed by the Respondent No.1 and rejected the plaint through the Judgment, which has been assailed in this petition.

4. Before delving into facts, it is imperative to firstly understand the scope and applicability of Order VII Rule 11 CPC. in light of the principles settled by the superior Courts of Pakistan, which enunciate the following guidelines:

- (i) The Court has to presume the facts stated in the plaint as correct.
- (ii) nothing more than the averment of the plaint has 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 concluding 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 for rejection of 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. The above principles have been enumerated in the cases of Rehmat Hussain and Media Max.<sup>1</sup>

(ix) That with the aim of deciding whether the plaint discloses a cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents, as held in Jehangir Akhter case.<sup>2</sup>

(x) that in case of any mixed 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 Kishwar Khan case.<sup>3</sup>

(xi) Moreover, factual inquiry regarding averments in the plaint is not permissible.<sup>4</sup>

(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 the merits of his cause;

(xiii) In Dost Muhammad and other cases<sup>5</sup> it was concluded that even in the 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.

(xiv) It has also been held that the Court cannot take into consideration pleas raised by the defendant in his defence, as at that stage the pleas raised by the defendant 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, as held by the Supreme Court in the case of Jewan and others.<sup>6</sup> It was further held that the rejection of the 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) In the case of Saleem Malik<sup>7</sup> 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 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 defence plea raised therein for rejection of the plaint;

(xvi) In Mushtaq Ahmad Khan case<sup>8</sup> it was 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 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, 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 a proper trial i.e. settlement of proper issues and recording of evidence and opportunity of cross-examination.

5. Perusal of the plaint in the present case shows that it is for the implementation of the terms of the *Iqrarnama*. Firstly, the learned revisional Court rejected the plaint without even firstly ascertaining the *locus standi* of Respondent No.1 as a *bona fide* purchaser for value without notice of the prior agreement, and without ascertaining the validity of the Sale Deed dated 30.06.2014 executed *pendente lite* between Respondents 1 and 2 during the pendency of the Petitioner's Suit, proceeded to accept his application. It was also not considered that until such transaction of the purported sale deed was declared valid, Respondent No.1, who is not even a party to the *Iqrarnama* dated 30.06.2010, the applicant lacked *locus* to assail the validity, enforceability or alleged vagueness of the *Iqrarnama*. Needless to mention that a stranger to a contract cannot be permitted to question the intrinsic terms thereof or seek to have the same declared void. Especially an agreement which has been executed in part. As held in '**Sabina Alim vs. The Additional District Judge, Lahore**' (2026 MLD 201):

*"It is also a rule that the transferee if impleaded as a party cannot specifically raise any independent ground for relief but could only defend the suit on the grounds available to the transferor and that he will acquire no better title than the transferor and that the suit if decreed will inure for the benefit of the plaintiff and against the Transferee who will be bound by the decree passed in the suit."* (Emphasis supplied)

6. Again, in '**Muhammad Ashraf Butt versus Muhammad Asif Bhatti**' (PLD 2011 SC 905), the Hon'ble Supreme Court recorded that:

*"Ordinarily, it is true, that the decree of a court binds only the parties and their privies in representation of estate. But he who purchases during the pendency of a suit, is held bound by the decree that may be made against the person from whom he derives title .... Where there is a real and fair purchase, without any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy; for otherwise alienations made during a suit might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim, pendente lite, nihil innovetur; the affect of which is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them."*

1. '*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)
2. '*Jehangir Akhter V. Inayat Ahmed*' (1990 CLC 1053)
3. '*President, ZTBL, Islamabad V. Kishwar Khan and others*' (2022 SCMR 1598)
4. '*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*'.
5. '*Dost Muhammad V. Ghulam Nabi*' (1990 MLD 164), '*N. A. Shah Riyar V. Messrs Conforce Ltd., Lahore and another*' (1981 CLC 1009), '*Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi*' (PLD 1976 Karachi 21).
6. '*Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others*' (1994 SCMR 826)
7. '*Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others*' (PLD 2008 SC 650).
8. '*Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another*' (PLD 1989 Lahore 320)

7. Without making any detailed comments on the terms of the *Iqrarnama*, lest it may prejudice the rights of either party before the learned trial Court, suffice it to say that the contents of the plaint read with the terms of the *Iqrarnama* clearly spell out the description and value of the property, so also the mechanism in case of default by the parties and therefore, a clear cause of action was made out, taking the plaint away from the domain of Order VII rule 11 CPC. The *Iqrarnama* does not appear to be a simple agreement for sale but a composite financial arrangement involving repayment and conditional transfer and therefore, ought to have been considered in the same spirit. The agreement appears to be a contingent contract, whereby the transfer of the Subject Property was dependent upon failure of the Respondent No.2 to discharge his liability. As held by the Honourable Supreme Court in **(2012 SCMR 345)**: “*the law allows enforcement of a contingent contract, after the event upon which it was contingent, has happened*” and that the party seeking enforcement “*has only to establish that the event has occurred*”. The *Iqrarnama* thus became liable for execution only when the Respondent No.2 defaulted in making the payments as per its terms. The agreement appears to be certain and executable. The learned revisional Court, by rejecting the plaint at the threshold, foreclosed the Petitioner from proving these documents and establishing his independent rights and claims. The distinct nature of the two Suits and the independent cause of action raised by the Petitioner were not analysed. The impugned Judgment and Order are therefore in an illegal exercise of jurisdiction and in error of the provisions of section 11 and Order VII Rule 11 CPC, hence unsustainable.

8. As already discussed above, the scope of Order VII Rule 11 CPC. is confined to the averments made in the plaint and the documents annexed therewith, and no defence, much less a defence raised by a third party, can be looked into for rejection of the plaint. It is settled that the Court is to confine itself to the plaint for the purposes of Order VII Rule 11 CPC. and cannot travel beyond the same. The learned Revisional Court has thus clearly acted beyond its jurisdiction. Moreover, the finding that the *Iqrarnama* is void under Section 29 of the Contract Act, 1872, at the stage of hearing of application under Order VII rule 11 CPC., was wholly misconceived and uncalled because while dealing with commercial and business contracts, especially those already acted upon, the Court should be very slow in finding defects and to reject them as meaningless as held in ‘**Uttam Singh Dugal and Co. Pvt. Ltd. vs Hindustan Steel Ltd.**’ (AIR 1982 MP 206) and ‘**Indraraj Singh vs Chaitram**’ (AIR 1929 Nagpur 194). Even where certain terms are not expressly stated, the Court must give business efficacy to the agreement and infer intention from conduct, as it has been held that where it was apparent that the parties intended to be bound, it might be permissible to imply a term to give the agreement such business efficacy. [2019 SCMR 711 (UKSC)]. Lastly, in case of disputed questions of fact and law, an application under Order VII Rule 11 of the CPC, 1908 requires outright dismissal, as held in **(2022 SCMR 1598), (PLD 2008 SC 650) (2019 CLC 1721) [2020 PLC (C.S.) 138]**. While rejecting the plaint, the impugned Judgment by the learned Revisional Court is in illegal exercise of jurisdiction beyond the domain of Order VII rule

11 CPC., and therefore the ratio settled by the Hon'ble Supreme Court in '*Misree Khan versus Abdul Ghaffoor*' (PLD 2025 SC 24) is applicable. Hence, the instant Petition is very much maintainable.

9. The upshot of the above discussion is that this petition is allowed; the impugned Judgment dated 07.03.2017 is hereby set aside; the plaint in Civil Suit No.782 of 2011 is restored to its original position; and the learned trial Court is directed to decide the said suit on merits, in accordance with the law, based upon evidence produced by the parties. Since a substantial period of fifteen (15) long years has already passed from the date of filing of the Suit, the learned trial Court is directed to conclude the proceedings and pass Judgment on merits, within a period of 60 days from the date of receipt of this Order, without allowing any unnecessary adjournments to either side, with a copy of the Judgment to be submitted with the MIT of the Court.

This petition is, therefore, allowed in the above terms with no order as to costs.

**JUDGE**