

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
HCA NO. 248 / 2015

Date	Order with signature of Judge
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- 1) For orders on CMA No. 2694/2015.
- 2) For hearing of main case.

27.10.2015.

Mr. S. Ali Ahmed Tariq Advocate for the Appellant.

Through instant appeal the appellant has impugned order dated 21.5.2015, passed by a learned Single Judge of this Court, whereby, the Plaint in Suit No. 401 of 2013 has been rejected under Order VII Rule 11 CPC, with cost of Rs. 40,000/-.

Counsel for the appellant contends that the learned Single Judge while passing the impugned order has failed to appreciate that the subsequent Suit filed by the appellant was in respect of a different cause of action, and, the prayer sought in the subsequent Suit was also materially different as against the earlier Suit. Counsel further contends that the appellant is though admittedly a tenant of the respondent(s) by virtue of agreement dated 16.10.1977, however, since the appellant had advanced substantial amount of rent as advance for construction purposes and by virtue of Clause 6 of such agreement, there was a tenant's charge on the property in question. Counsel submits that it is a settled law, that even if one issue is triable by the Court, the plaint must not be rejected under Order VII Rule 11 CPC.

We have heard the Counsel for appellant and perused the impugned order as well as the record. It appears that the plaint has been rejected through the impugned order not for the reason that the issue raised on behalf of the appellant was not triable, but for the reason that the Suit itself was barred by the provision of Order II Rule 2 CPC, as the appellant though has, sought a differently worded relief, but in fact it is in respect of the same dispute as well as the property, and therefore, the appellant ought to have sought all the relief(s) at the time of filing of the first Suit, and, in case of failure, it is to be presumed that the appellant had chosen to relinquish or has forgiven such relief(s) which could have been sought while filing the first Suit. The learned Single Judge after a thread bare examination of the relief(s) sought in both the Suits, has come to the conclusion that at this stage, it was not open to the appellant to file another Suit on the same subject matter, by adding a claim of damages and increasing the pecuniary jurisdiction so as to being the lis before this Court, as the appellant was legally required to bring the whole

claim while filing the first Suit before the Court of Senior Civil Judge. It further appears that the first Suit bearing No. 999 of 2007 already stands dismissed by the trial Court vide judgment dated 23.5.2013, and during pendency of such proceedings another Suit bearing No. 401 of 2013 had been filed before this Court on 3.4.2013. Moreover, when confronted, Counsel for the appellant could not controvert that admittedly the appellant is a tenant, whereas, in rent proceedings order for ejection was passed against the appellant, which on appeal was remanded, against which a petition being No. S-70 of 2010 was filed which was also dismissed and after remand of the matter in the first round of litigation between the parties, the matter is pending. Perusal of the record reflects that in fact the appellant who is admittedly a tenant has initiated proceedings by filing frivolous Suits against the owner of the property on one ground or the other, just to thwart the rent proceedings. Such conduct of the appellant does not appear to be justified to us and is to be deprecated; compelling us to observe that if the rent proceedings have been delayed or suspended due to pendency of these proceedings, we direct the concerned Court to decide the same expeditiously and within reasonable time but not later than 60 days from today.

In view of such position, we are of the view that the impugned order is correct in law, whereby the plaint has been rightly rejected being hit by the provisions of Order II Rule 2 CPC, whereas the Counsel for the appellant has not been able to point out any illegality or perversity in the impugned order so as to disturb the same. Accordingly, instant appeal being misconceived in facts and law is hereby dismissed in limine with cost of Rs. 50,000/- which shall be deposited with the Nazir of this Court in the account of Sindh High Court Clinic within 10 days hereof and compliance report shall be placed on record for our perusal.

To come up on 12.11.2015.

JUDGE

JUDGE

ARSHAD/