

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
MA No.33 of 2019
RA No.15 of 2019

Date	Order with signature of Judge
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1. For hearing of CMA No.3489/2019 (U/o.XLI)
2. For hearing of main case

18.02.2020

Mr. Muhamamd Ali Lakhani, advocate for the appellant.
Mr. Zeeshan advocate for Respondent No.1 & 2.
Mr. Abdul Moiz Jaffri, advocate for Respondent No.3.

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After having heard learned counsel on question of **Order VII Rule 11 CPC** and going through the record it appears that at least suit for damages against Respondent No.1 was not maintainable by virtue of the fact that university is not a natural person. A case of damages cannot be filed against a juristic person. The Respondent No.1 is deleted from the array of defendants in terms of **Order 1 Rule 10(2) CPC**. Respondent No.2 & 3 have been sued by name with certain allegation of their conduct or expression or otherwise, which has caused some grievance to the appellant need to be decided on merit. Learned counsel have tried to rely on different documents which they have filed with their written statement to non-suit the appellant by claiming that on the basis of these document “cause of action” has extinguished before the plaint was filed. This is question of fact that whether such documents have rendered the “cause” not available and it can be decided only when the applicant is confronted with these documents in the witness box. The applicant has already gone through the said documents filed with written statement. First burden of proof would be on the respondent to show that in view of these documents, the applicant cannot press for damages. The documents filed by the respondents in defense have created a

controversy of facts which need to be proved in evidence. It is settled law that controversies of fact, which needs to be decided by the Court have to be decided after recording of evidence. The spirit of the provision of **Order VII Rule 11 CPC** is to see the plaint whether is barred by "LAW". It does not envisage to be treated as barred by the "DOCUMENT" filed by the defendant to deny allegations in the plaint.

In view of the above, both the impugned orders are set aside and the case is remanded to the trial Court with directions to proceed with the suit for damages only against Respondents No.2 & 3. Respondent No.2 may file written statement by next Saturday i.e. **29.02.2020** and parties should appear before the trial Court, the suit should be decided by the trial Court on merit within three months from **29.2.2020**.

JUDGE

SM