

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Appln.No.S-44 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on CMA-446/2021

For orders on CMA-447/2021

For hearing of main case.

11.03.2021.

Mr. Faisal Farooque Thaheem, advocate for applicants.

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1. Urgency granted.

2&3. The facts in brief necessary for disposal of instant Civil Revision application are that a suit to enforce his right of pre-emption was filed by the private respondents; the plaint whereof was rejected on filing of an application u/s VII Rule-11 C.P.C by learned Vth Senior Civil Judge, Hyderabad vide his order dated 29.03.2019, it was impugned by the respondents by filing an appeal; it was accepted by learned 8th Additional District Judge, Hyderabad. Consequently, the matter was remanded to learned trial Court for its disposal on merit vide his judgment dated 8th February, 2021. It is impugned by the applicants before this Court by way of filing instant Civil Revision Application.

It is contended by learned counsel for the applicants that the plaint was incompetent as no law to enforce right of preemption is introduced in Sindh Province; the plaintiffs were having no cause of action and the requisite demands were not made by them in accordance with law; therefore, learned appellate Court ought not to

have directed the learned trial Court for decision of the suit on merit. By contending so, he sought for setting aside of the impugned order after notice.

I have considered the above arguments and perused the record.

It is settled by now that the plaint could only be rejected on the basis of averment made therein and not otherwise. The plaint could be rejected when it does not disclose the cause of action and not for the reason that the plaintiffs are having no cause of action. It is wrong to say that there is no pre-emption Law in Sindh, it is governed by Chapter-XIII of the principles of Muhammadan Law. If, the requisite demands were not made by the plaintiffs in accordance with law then such controversy being factual could only be resolved after recording evidence. In these circumstances, learned appellate Court was right to set-aside the order of learned trial Court directing disposal of the case on merits. No illegality is apparent which may justify making interference with the impugned order, by this Court in exercise of its revisional jurisdiction. Consequently, instant Civil Revision Application being misconceived is dismissed in limini.

JUDGE