

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 3869 of 2012

Date	Order with signature of Judge
------	-------------------------------

Present :

Mr. Justice Irfan Saadat Khan

Mr. Justice Nadeem Akhtar

1. For orders on CMA No.29449/2013 {U/O XXXIX R 2(3) CPC} :
2. For hearing of CMA No.40885/2012 {U/O XXXIX R 1 & 2 CPC} :
3. For hearing of CMA No.20838/2013 {U/O XXXIX R 1 & 2 CPC} :
4. For Katcha Peshi :

Syed Masroor Ahmed Alvi, advocate for the petitioner.

Mr. Zayyad Khan Abbasi, advocate for respondent No.1.

Mr. Miran Muhammad Shah, Addl. A.G. Sindh for respondent No.2.

Date of hearing : 29.04.2014.

.....

NADEEM AKHTAR, J. – Through this Constitutional Petition, the petitioner has impugned the order passed on 24.12.2012 by the Vth Additional District Judge Karachi East in the respondent No.1's Civil Revision No.69/2012, whereby the order passed on 02.05.2012 by the trial Court in the petitioner's Suit No.235/2012 dismissing the application filed by respondent No.1 for rejection of the plaint was set aside, and the plaint in the petitioner's said Suit was rejected.

2. The relevant facts of the case are that the petitioner filed Suit No.235/2012 against respondents 1 to 5 for declaration, specific performance and permanent injunction. The case of the petitioner / plaintiff, as averred in the plaint, was that, vide agreement to sell dated 20.08.2007, respondent No.1 agreed to sell his agricultural lands in Survey Nos. 5, 6 and 509, collectively measuring 6-14 acres, situated in Deh Deg, Tappo Deg Road, Taluka Shah Faisal, District Karachi (**'the suit property'**), to the petitioner in consideration of Rs.6,375,000.00 at the rate of Rs.1,000,000.00 per acre. After a part payment of Rs.2,500,000.00 by the petitioner, the possession of the suit property was handed over to him. It was

agreed by the parties that the petitioner will pay Rs.1,000,000.00 to respondent No.1 on 20.08.2008, and Rs.1,000,000.00 on 20.08.2009 ; and the balance amount of Rs.1,875,000.00 at the time of registration, transfer and mutation of the suit property in his favour. It was alleged by the petitioner that respondent No.1 refused to perform his agreed part of the contract, and in this background, the Suit was filed by him.

3. Respondent No.1 filed his written statement, wherein the plaintiff's claim, and the assertions and allegations made by him, were denied. It was averred that the Suit was not maintainable, and the same was based on forged documents. An application under Order VII Rule 11 CPC was also filed by respondent No.1 for rejection of the plaint, to which counter affidavit was filed by the petitioner. The grounds urged by respondent No.1 in his said application were that the Suit was based on forged documents ; the petitioner had not come to Court with clean hands ; no cause of action had accrued to the petitioner for filing the Suit ; and, the Suit was barred under Sections 12, 42 and 56 of the Specific Relief Act, 1877. After hearing the parties, the said application was dismissed by the learned trial Court vide order dated 02.05.2012, by holding that the plaint did disclose a cause of action ; and the grounds on which rejection of the plaint was sought by respondent No.1, required evidence. Being aggrieved with the said order, respondent No.1 filed Civil Revision Application No. 69/2012 which was allowed through the impugned order by the learned Revisional Court, resulting into rejection of the plaint of the Suit filed by the petitioner. After observing some discrepancies in the attestation of the agreement to sell, the plaint was rejected by the learned Revisional Court on the sole ground that there were malafides on the part of the petitioner.

4. We have heard the learned counsel for the parties, and have also examined the record with their able assistance. At the very outset, it may be observed that the finding of the learned Revisional Court that the plaint was liable to be rejected on the ground of malafides on the part of the plaintiff, is contrary to law and is not sustainable. The plaint can be rejected only under Order VII Rule 11 CPC, and that too only if it does not disclose a cause of action as provided in Clause (a) thereof ; or where from the statements made in the plaint, the Suit appears to be barred by any law, as provided in Clause (d) thereof. Clauses (b) and (c) of Order VII Rule 11, which relate to valuation of the Suit and payment of court fee, are not relevant in the instant case. Malafides on the part of the plaintiff is not one of the

grounds for rejection of the plaint enumerated in Order VII Rule 11 CPC, nor can the plaint be rejected on such ground.

5. A bare perusal of the plaint shows that the petitioner had specifically pleaded therein that there was an agreement between the parties in respect of the suit property ; the sale consideration agreed by the parties and the part payments made by the petitioner to respondent No.1 were disclosed in the plaint ; he had pleaded that respondent No.1 committed breach of the agreement as ; and finally, the plaintiff had alleged that respondent No.1 avoided and refused to complete the sale in his favour despite all his efforts. It is well-settled that for the purpose of rejection of the plaint, the averments and allegations made in the plaint are to be examined, and if upon a bare perusal thereof and assuming the same to be true, a cause of action is spelt out from the plaint, it cannot be rejected. The accompaniments of the plaint and other undisputed material on record can also be looked into for this purpose. In Pakistan Agricultural Storage and Services Corporation LTD. V/S Mian Abdul Latif and others, **PLD 2008 Supreme Court 371**, the Hon'ble Supreme Court was pleased to hold that the term 'cause of action' represents all the requisites and facts which are necessary for the plaintiff to prove before he can succeed in a Suit. In the instant case, the petitioner had pleaded all such facts and had made all such allegations in the plaint, which were required to be pleaded and made in a Suit for specific performance of an immovable property. It is also well-settled that where a cause of action is disclosed, the question as to whether the plaintiff will be able to prove it or not, is irrelevant for deciding an application for rejection of the plaint. The learned Revisional Court failed to appreciate this important aspect of the case, which was rightly noticed and appreciated by the learned trial Court while dismissing the application for rejection of the plaint.

6. The allegations and counter allegations by the parties clearly indicate that they are at variance on questions of fact which could not be resolved without recording their respective evidence. This equally important aspect of the case was also noticed and appreciated by the learned trial Court while dismissing the application for rejection of the plaint, but the learned Revisional Court failed to appreciate the same. We are of the view that the plaint could not be rejected in these circumstances without affording adequate opportunity to the parties to adduce evidence and without providing them chance of hearing. This view expressed by us is supported by (1) Q.B.E. Insurance (International) Ltd. V/S Jaffar Flour and Oil Mills Ltd. and others, **2008 SCMR 1037**, (2) Mst. Karim Bibi and others V/S Zubair and others, **1993 SCMR 2039**, (3) Muhammad Younis Arvi

V/S Muhammad Aslam and 16 others, 2012 CLC 1445 (Supreme Court AJ&K)
and (4) Muhammad Afzal V/S Muhammad Manzoor and 40 others, 2013 YLR 85
(Supreme Court AJ&K).

7. In view of the above discussion, the impugned order, being illegal and of no legal effect, cannot be allowed to remain in the field and is liable to be set aside. Resultantly, this petition must succeed. These are the reasons of the short order announced by us on 29.04.2014, whereby this petition was allowed with no order as to costs, the listed applications were disposed of, and the learned trial Court was directed to decide Suit No.235/2012 filed by the petitioner preferably within three (03) months from the date of receipt of this order. It is clarified that the learned trial Court shall decide the matter on merits, strictly in accordance with law, and without being influenced with that the observations made and the findings contained in this order.

J U D G E

J U D G E