

**IN THE HIGH COURT OF SINDH AT KARACHI****Suit NO. 1602 of 2002**

Plaintiff :AdnanAbid,  
through: Mr. Muhammad Rehman Ghaus, Advocate.

Defendants :Munaf Attara and others  
Through Khawaja Shamsul Islam, Advocate for  
Defendant No.1.

C.M.A. No. 12536 of 2012

Date of hearing : 01.04.2015.

Date of announcement: 28.04.2015

**ORDER**

**SALAHUDDIN PANHWAR, J.** Through instant application i.e. CMA No. 12536 of 2012, the plaintiff prayed as under:

“...to pass order restraining the Defendants, their persons, subordinates/officials and any other persons acting for an/or under them from committing illegal acts in violation of laws in respect of approved layout plan and from transferring, alienating and/or creating any third party interest and disposing of the suit property in question i.e Commissioner Plots No.SR-1 to SR-50 (total 50 plots) measuring 100 Sq. yards each in their project A.A. Construction company situated at Sector 13-A, Hawksbay, Scheme 43 Karachi and/or from taking any action/doing any thing which may be detrimental to the interest/right of the plaintiffs...”

2. Succinctly, facts as set out in the plaint are that plaintiff on the basis of a meeting held with defendant No.1, agreed to purchase commercial plots No.SR-1 to SR-50 (total 50 plots) each of 100 Sq. yards at rate of Rs.200,000/- each plot in project of defendant No.1 situated in Sector 13-A, Hawksbay, Scheme No.42, Karachi. A letter to this effect was signed by both the parties on same date i.e 15.11.2011. The plots in question were earmarked in the

layout plan, finally approved by Town Planner, Karachi Lyari Development Authority. On 15.11.2011, on payment of full amount, the allocation letter/receipt was issued in favour of plaintiff and physical possession was handed over vide acknowledgment letter dated 15.11.2011. It is further claim of plaintiff that delivery of possession of plots in question was acknowledged by defendant No.1 alongwith sale deed dated 05.01.2011 regarding immovable property i.e plots in question conveyed to defendant No.1 by one Bashir Hassan vide duly registered sale deed wherein schedule of property, has been transferred to defendant No.1. Defendant No.1 also provided a copy of letter of consolidation of private land falling in KDA Scheme 42, Hawksbay dated March, 1988 to show that plots in question in fact had come within the KDA Scheme known as Hawksbay which subsequently been transferred to Lyari Development Authority as per record, such is also significant from the approval of the layout plan of the land owned by defendant No.1. Total area within the layout plan in favour of defendant No.1 is meant for carving out of the plots. Approval of layout plan was duly given by the Lyari Development Authority (Planning Department) and thus a letter of approval to this effect dated 27.11.2010 also appears to have issued by the Assistant Director (P) LDA.

3. It was agreed between plaintiff and defendant No.1 that after development of the plot in question and the provision of utilities i.e electricity, gas and water and sewerage, soon after the possession, according to the standard laid down by the defendant No.2, the leases of the plots in question will be executed and the same will be carried out before 15.12.2012 but till today no development work even has commenced at the above said site and no building/ construction/development activity could be carried out in the circumstances of this case. Even the commitments made by the

defendant No.1 with the plaintiff so far have not been meted although full payment has been received in respect of the commercial plots in question as a result the plaintiff has suffered huge losses as even no lease deeds have been executed in favour of the plaintiff in spite of insist of plaintiff to this effect and thus the plaintiff has suffered losses to the tune of Rs.200 millions. Since the entire payments have been made and the defendant No.1 is obliged to execute the lease documents and in this regard the defendant No.1 were reminded of their obligations but through a letter dated 03.11.2012 received from defendant No.1 it is apprehended that the execution of the lease of the commercial plots in question is not in sight as the defendant No.1 have failed to explain the 'unavoidable circumstances' which have been faced by them and thus intervention of this Honourable court is solicited.

4. In above back ground, the plaintiff sought following relief (s):-

- A) It be declared that the defendants (defendant) No.1 is bound to abide by the terms and conditions of the purchase/allotment and allotment receipt both dated 15.11.2011 issued in favour of the plaintiff in respect of Commercial plots No.SR-1 to SR-50 (total 50 plots measuring 100 Sq.yds. each in their project A.A Construction Company situated at Sector 13-A, Hawksbay, Scheme 42, Karachi, as per green marked as shown in the layout plan and in accordance with the provisions of Sindh Building Control Ordinance, 1979 and the rules framed thereunder;
- B) Direct the defendant No.2 to perform its statutory duty in accordance with Sindh Building Control Ordinance, 1979 and the rules framed there-under and supervise the activities of the defendant No.1 to carve out the plots, develop the same and execute leases to the respective allottees including the plaintiff in respect of Commercial Plots No.SR-1 to No.SR-1 to SR-50 (total 50 plots) measuring 100 sq.yards each in their project A.A Construction Company situated at Sector 13-A, Hawksbay, Scheme 42, Karachi;
- C) Direct the defendants (defendant) No.1 to specifically perform his part of contract in terms of purchase/allotment and allotment receipt both dated 15.11.2011 issued in favour of the plaintiff in respect of Commercial Plots No.SR-1 to No.SR-1 to SR-50 (total 50 plots) measuring 100 Sq.yds. each

in their project A.A Construction Company situated at Sector 13-A, Hawksbay, Scheme 42, Karachi by executing sale deed lease deed/transfer deed in respect of Plot No.SR-1 to SR-50 on chunk of land admeasuring 71.42 acres Sector 13-A, Scheme No.42 as earmarked in the layout plan approved by the defendant No.2 dated 27.11.2010 and the plots in question are marked with the green marking as shown in annexure P-3;

- D) Grant damages against the defendants (defendant) No.1 to the tune of Rs.200 million for not fulfilling the commitments made by it which has resulted in loss of millions of rupees and so also mental agony and torture;
- E) Restrain the defendants (defendant) No.1 from transferring/alienating or otherwise dealing in the project of which the above said layout plan has been approved in the name of A.A. Construction Company by the defendant No.2 and further be pleased to restrain the defendant No.2 from revising and otherwise and/or making any change in the layout plan duly approved by the defendant No.2 as shown in annexure P/3 and/or taking any action which may be detrimental to the interest of the plaintiff;
- F) Cost of the suit and any other relief which this Hon'ble Court may deem and fit and proper may be awarded.

5. Against the above application (CMA12536/2012), the objections in shape of counter affidavit were filed on behalf of defendant No.1(ii) wherein maintainability of the suit was attacked at the very out set while raising preliminary legal obligations i.e:

- i) *no privity of contract between plaintiff and defendant No.1;*
- ii) *suit is without any cause of action;*
- iii) *suit is barred under section 25 to 28 of Contract Act; section 54 and 56 of Specific Relief Act;*

It was further claimed that suit is filed on fabricated, managed and manipulated document(s). Previously, plaintiff's father Muhammad Abid, his brother FarazAbid and one of their employees namely MujtabaYounus, by committing forgery and fraud, secretly retrieved and stole old/cancelled blank letter heads of defendant No.1's company; forged documents and filed

a suit No.1111/2011 before this court which, however, ended in compromise.

It was claimed in objections that signature of plaintiff, if compared with signature on power of attorney, will show that same are altogether different; alleged cheques are not in name of defendant No.1 or his partner rather are bearer which, per bank statement, were got encashed by Muhammad Zahid, holding CNIC No.42191-024985-1, who got nothing to do with defendant No.1, his partner or even with their company. Allocation of 50 plots through a single receipt/document is also against established practice. It was asserted that since as per plaintiff's own version there has not been any development hence delivery of possession is *prima facie* speaks malafide. It was denied that there had been any payment by plaintiff. It was further claimed that market value of the plots in question is about 80 crores then how and why same could be sold for Rs.1 crore only. The documents were claimed as forged one. The contents and claims of the plaintiff were also denied and it was prayed for dismissal of application alongwith suit.

6. The plaintiff also filed rejoinder against counter objections wherein sticking with his stand of making payment of Rs.10 Millions. He further claimed that Muhammad Zahid Ali received the amount which was deposited in account of GhulamHussain, the representative of defendant No.1. Letter dated 15.11.2011 alongwith letter of allotment dated 16.11.2011 and deposit slips of Habib Bank Ltd. Adam Jee Nagar showing account of GhulamHussain were also submitted. The plaintiff further denied the allegations and claims of the defendant No.1(i) and also claimed that constitution of A.A construction company was not known and the defendant has to file statement in this regard. In the end the plaintiff claimed irreparable loss while referring to explanation, provided under Section 12 of the Specific Relief Act.

7. The learned counsel for the plaintiff has argued that the plaintiff has prima facie case in his favour; since payment of consideration is evident therefore balance of convenience also lies with the plaintiff. If the injunction is not granted the defendants may cause serious prejudice to the plaintiff which otherwise are to be protected hence it was concluded to grant injunction in favour of the plaintiff. In support of contention the reliance was placed on **BASHIR AHMAD v. MUHAMMAD YOUSAF**[1993 SCMR 183] , **ALI MUHAMMAD KHAN v. RIAZUDDIN KHERA** [PLD 1981 Karachi 170] (on point of oral agreement), **UMEED ALI v GOVERNMENT OF SINDH** [PLD 2007 Karachi 224], **SHAHBAZ AFGHAN v. STATE** [1993 SCMR 683] (court fee stamps on Multifarious suit), **SALEEM AHMAD v. KHUSHI MUHAMMAD**[1974 SCMR 519], **ZEENAT BEGUM v. JAN MIR KHAN** [1986 CLC 2923], **SHAHZADA MUHAMMAD UMAR BEG v. SULTAN MAHMOOD KHAN** [PLD 1970 SC 139], **MUHAMMAD MATIN v. DINO MANEKJI CHINOY** [PLD 1983 Kar. 387], **MAQBOOL AHMAD v. FARZAND ALI SHAH**[1990 CLC 1756], **YUSUF HUSSAIN SHIRAZI AND ANOTHER v. LT.-COL. MUHAMMAD ALAM SHAIKH** [PLD 1966 Kar. 472], **ABOO NOOR MUHAMMAD v. GENERAL IRON & STEEL WORKS LTD., KARACHI** [PLD 1973 Kar. 234], **SHAHEEN CONSTRUCTION COMPANY v. FAUJI FERTILIZER BIN QASIM LTD.** [2015 MLD 304].

8. The defendant No.3, on his turn, also stoutly objected maintainability of suit and insisted that in absence of an agreement suit for specific performance does not sustain. Reliance has been placed on the case laws reported as **ASIF RAZA MIR v. MUHAMMAD KHURSHID KHAN**[2011 SCMR 1917], Sqn. Ldr. (R) **UMEED ALI KHAN v. Dr. (Mrs.) SULTANA IBRAHIM** [2007 SCMR 1692], **KHURSHID BIBI v. Rana MUHAMMAD**

YAQOOB [2006 YLR 2317], REHMAT ALI v. FAQIR MUHAMMAD [2005 YLR 301], BHOOOL CHAND v. PORT QASIM AUTHORITY [2005 CLC 476], FIDA HUSSAIN v. JALAL KHAN [2002 CLC 1339] & KARACHI SHIPYARD AND ENGINEERING WORKS LIMITED v. MUHAMMAD SHAKIR SHEIKH [1993 CLC 330].

9. I have heard the respective sides and have gone through the available material.

10. Since question of the maintainability of the suit is strongly pressed, therefore, it would be in all fairness to decide this issue first because for deciding an injunction (interim order under Order 39 r 1 & 2 CPC) '*prima facie*' case is one of the ingredients which *undeniably* has nexus with maintainability of a lis. Therefore, in all fairness, I would like to attend the question of maintainability of suit *first*.

11. It is not disputed that the plaintiff has set his claims against the defendants with reference to his '**offer**' and '**acceptance**' thereof by the defendants i.e '**Allocation/Allotment**' and '**consideration**', paid by the plaintiff through cheques to the defendants for subject matter. There can be no denial to the legal position that to maintain a suit, arising out of a contract and consequences thereof, the *prima facie* existence of the contract is necessary, which is to be examined with reference to Section 10 of the Contract Act, 1872. The Section 10 of the Act gives the status of '**contract**' to those (documents/agreements) which qualify to test of:

- i) *it should be with free consent of '**parties**';*
- ii) *it should be for a lawful '**consideration**';*
- iii) *it should not be declared to be '**void**'*

The terms '*parties*', '*lawful consideration*' and '*void*' are always to be given due weight and meaning. The deliberate use of '*parties*' is sufficient to *prima*

*facie* disclose the intention that the document (agreement) must reflect the **'free consent'** of all the parties which agree either to do or not to do certain acts or omissions. This has the logic that consent of one cannot legally bring **'third party'** under any legal obligation or duty. Proving the **'free consent'** is dependent upon establishing the same but to infer its *prima facie* existence the document (agreement) must be shown to be having **'signature'** of **'parties'**, agreed to bind themselves to the terms and conditions of the document (agreement). The term **'lawful consideration'** is also of significance that even the **'free consent'** of parties would not give a document (agreement) the status of **'contract'** if the **'consideration'** is not lawful. Further, in the case of Farzand Ali v. KhudaBux [PLD 2015 SC. 187], it is held that:-

*“agreement to sell immovable property was a contract and the first, and the foremost requisite of a contract (agreement) was that the parties should have reached agreement---Where a contract was reduced into writing, not only should it be founded upon the imperative elements of offer and acceptance, but its proof was also dependent upon the execution of the contract by both the contracting parties i.e. by signing or affixing their thumb impression, so that it should reflect and establish their "consensus ad idem", which obviously was the inherent and basic element of the meeting of the minds, which connoted the mutuality of assent, and reflected and proved the intention of the parties thereto, non-execution of the agreement to sell by the vendee meant that in law and fact there was no contract (agreement).”*

12. At this juncture germane to state that **'it is not the assent of one or thousands to make a thing lawful but the law alone'**, on the principle that *“what one cannot get directly (lawfully) the same cannot be obtained indirectly (unlawfully)*. The term **'void'** needs not be confused it means that an agreement which is not **'enforceable'** under the law for any legal restriction(s).

13. Before going further into details of the matter, the peculiar circumstances of the matter in hand, insists to first refer the provision of Order VI of the Code which defines the **'pleadings'** and obligations of parties to *prima facie* say his/her case. A reference to Order-VI rule 2 of the Civil Procedure Code which reads as:



*'Pleading to state material facts and not evidence.--Every pleading **shall** contain, and contain only, a statement in a concise form of the **material facts** on which the party pleading **relies for his claim or defence**, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively-Dates, sums and numbers shall be expressed in figures.'*

In continuity, the rule-4 of the same Order of the Civil Procedure Code is also necessary which is:-

*'4.Particulars to be given where necessary. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) **shall be stated in the pleading.**'*

The deliberate use of word '**shall**' in said provisions is sufficient to show that such obligation is '**mandatory**' in nature which is with an object put the opposite onto a complete notice of all facts so as to respond the same in pleading by defendant. The importance of '**pleading**' can further be gathered from fact that '**Issues**' are to be settled from such pleadings which (issues) are proved or disproved within four corners of the **pleadings**. In short, no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of pleading'. It would be conducive to refer the case laws on that proposition:

In the case of Muhammad Nawaz @ Nawaza&Ors v. Member Judicial Board of Revenue &ors (2014 SCMR 914)

*'7. ....Granted that averments made in pleadings do not constitute evidence but the evidence led in their support must be consistent therewith. Anything stated outside the scope of such averments cannot be looked into. The rule of secundum allegataet probata, not only excludes the element of surprise, but also precludes the party from proving what has not been*

alleged or pleaded. This Court, in the cases of '*Government of West Pakistan (Now Punjab) through Collector, Bahawalpur v. Hail Muhammad*' (PLD 1976 SC 469) "*Messrs Choudhry Brothers Ltd. Sialkot v. The Jaranwala Central Co-operative Bank Ltd. Jaranwala*' (1968 SCMR 804), '*Binyameen and 3 others v. Choudhry Hakim and another*' (1996 SCMR 336) and '*Major (Tetd.) Barkat Ali and others v. Qaim Din and others*' (2006 SCMR 562), held that **no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of pleading**.

(underlining is provided for emphasis)

In the case of Taj Muhammad Khan through L.Rs & another v. Mst. Munawar Jan & 2 others (2009 SCMR 598).

"6. ....as provided in Rule 4 of Order VI, of C.P.C., **if a plea has not been taken in the plaint, no amount of evidence can be looked into upon such pleadings not specifically taken up in the plaint.** Reference in this context can be placed on the cases of Siddik Mahmood Shah v. Mst. Saran and others, AIR 1930 PC 57. In *Government of West Pakistan v. Haji Muhammad*, PLD 1976 SC 469, it was held that a plea of fact not pleaded, no case can be founded thereon. In another case *Abdul Karim v. Muhammad Akram*, 1995 CLC 130, a legal proposition has been laid down that he who alleges a fact has to prove the same and the ingredients of fraud have to be narrated and stated by the person alleging the same. Further reference can be made to the case of *Tom Boevey Barrett v. African Products Ltd.* AIR 1928 PC 261 .....'

(Underlining has been supplied for emphasis)

In the case of Messrs ESSA Engineering company pvt. Ltd. & another v. Pakistan Telecommunication company Ltd. & another (2014 SCMR 922)

'17..... As noted above pleadings of the parties are the benchmark of their respective claims on which issues are drawn and evidence is led which is restricted to the issues struck between the parties alone and not beyond them. If any evidence beyond the purview of issues does come on record, no party can on such evidence set up altogether a new case and press the same for getting relief merely on basis of an out of context evidence.....'

14. Having said so, now I would revert to examine the *prima facie* of the case with reference to the pleadings (plaint), pertinent to mention that while

examining the prima facie case (cause of action) only the averments of the plaintiff or undisputed documents/facts are to be taken into consideration. Thus, I shall confine myself to averments of plaintiff and documents, so relied and produced by plaintiff himself.

15. As per pleading the plaintiff has claimed to have made the payment (consideration) through cheques, mentioned in his letter of offer so also in the allocation/allotment dated 15.11.2011. The second para of letter of the plaintiff reads as:-

'As agreed amongst us, I hereby enclose Rs.10,000,000/- (PKR Ten Million Only) by cheques nos. 0121522 to 0121526 dated 15.11.2011 HBL. Tariq Road branch, Karachi as full &Finalpayment against the purchase/Allotment of the above commercial plots.'

The payment of the '**consideration**' was claimed by the plaintiff through said cheques and even such claim was further insisted by attaching/annexing the allocation/allotment of the said plots, purported to be issued by defendants on same date i.e 15.11.2011 as consideration was shown to be made through referred cheques which were issued by Mst. AmbreenNomanand not by plaintiff himself. Further, the perusal of the pleading of the plaintiff reveals that *prima facie* he had claimed the payment through said cheques. In utter disregard to this specifically pleaded claim, plaintiff took summersault while submitting rejoinder wherein claiming that cheques were encashed by his (plaintiff's) manager Muhammad Zahid and were deposited in account of one Mr. Ghulam Hussain Halari. To support this, the plaintiff through his '**rejoinder**' to counter objections of the defendants, attached new documents which were never referred in the pleading nor were attached with the plaint. A reference to such documents is

necessary. The letter dated 15.11.2011, submitted with rejoinder reads as under:-

“It is to inform you that the cash cheques no.0121522 to 0121526 dated 15.11.2011 drawn on Habib Bank Limited, Tariq Road Branch, Karachi have been given to you against the purchase of above said plots, **however, my accountant Mr. Muhammad Zahid** who use to deal the banking affairs, informed me that the above cheques were **presented for encashment by a person namely Mr. Ghulam Hussain** who claimed himself as your nominee and wanted to transfer the cash funds online in his account and I upon your telephonic confirmation for this arrangement for encashment, allowed Mr. Zahid to facilitate this online transfer’.

Therefore, I request you to issue me **Final Allotment Letter confirming** receipt of the above payment **or refund my paid amount immediately.**

*Prima facie* the above letter is a contradictory pleaded stand of ‘**conclusion of contract**’, claimed through letter dated 15.11.2011 whereby cheques were sent to defendants and allocation/allotment dated 15.11.2011. Thus, the plaintiff specifically claimed to have paid consideration through said cheques. If the cheques were sent by plaintiff, as per claimed first letter dated 15.11.2011 (attached with plaint and referred in allocation/allotment of same date) then the cheques should have been in name of the defendants or least in name of the company’s account but should not be in name of the ‘**Manager of the plaintiff himself**’ which, however, is the admitted stand of the plaintiff himself. Candidly, the plaintiff has / had raised his claim on allocation/allotment dated 15.11.2011 (attached with plaint) to show payment of consideration, acknowledged by defendants, through such cheques which, *however*, stood denied by the plaintiff himself subsequently.

16. Besides, the above letter dated 15.11.2011 (placed with rejoinder) specifically contains phrase ‘**presented for encashment by a person namely**

**Mr. GhulamHussain'**. If the cheques were never authorizing any body except 'Mr. Zahid' then how the cheques were presented by said 'Mr. GhulamHussain'. As well, the plaintiff has produced third page of the allocation/allotment with his rejoinder. This page is not the same as that of first allocation/allotment, attached by the plaintiff with his plaint. To make position clear the relevant portion thereof titled under 'N.B' is given hereunder in a comparative manner.

<b><u>IN FIRST ALLOCATION</u></b>	<b><u>IN SECOND ALLOCATION</u></b>
<p>1. In case of female applicant having no source of income, the particulars of her husband/guardian should be given;</p> <p>2. The owner should countersign item 14 and 15 while accepting the application form as token of approval of the rice and choice of the units applied for;</p> <p>3. The approved form of documents including terms and conditions, specification, application form and schedule of payment shall from part of the Agreement for the allotment of the units and will be signed both by owner and the applicant;</p> <p><b><u>4. The owner hereby confirms that the above mentioned total 50 commercial plots are hereby allotted/sold and now there is no dues or out standings against the applicant.</u></b></p>	<p>1. In case of female applicant having no source of income, the particulars of her husband/guardian should be given;</p> <p>2. The owner should countersign item 14 and 15 while accepting the application form as token of approval of the rice and choice of the units applied for;</p> <p>3. The approved form of documents including terms and conditions, specification, application form and schedule of payment shall from part of the Agreement for the allotment of the units and will be signed both by owner and the applicant;</p> <p><b><u>4. We have already received above cash bearer cheques and the same were encashed and and deposited in the account no.0877-79000697-01 of our nominee Mr. GhulamHussain for our benefits &amp; convenience.</u></b></p>

The perusal of the clause-4 of both documents of the plaintiff goes to lead to an undeniable conclusion that plaintiff himself claiming two entirely different modes of payment of '**consideration**' meaning thereby that he assumes an attitude of reprobation towards his own previous stand, not tenable in law for all purposes, revolving and relating to **administration of justice**.

17. The '**pleading**' of the plaintiff is clear that he *at no place* referred such material fact or documents to prove '**consideration**' and even at no place said '**Mr. GhulamHussain**' was claimed to be '**agent**' of the defendants in whose personal account the '**consideration**' was deposited. Since, as already discussed, the plaintiff cannot *legally* be allowed to prove what was not pleaded and if evidence is led even then the same cannot *legally* considered. Thus, this results into a *prime facie* conclusion that first claimed '**conclusion of contract**' has been dropped by the plaintiff himself while he (plaintiff) is not legally permitted to prove subsequently claimed conclusion of contract hence in either case the plaint shall fail. I am conscious that a fact, if asserted by one and denied by other, becomes a question of fact, requiring evidence. However, this principle shall not apply where the party *prima facie* contradicts/denies himself then legal consequences thereof can well be considered even without recording evidence. This is so, because a '**denied act/document by the party, asserting or relying thereon, shall absolve the rival to deny or disprove the same**'.

18. Be as it may, even for sake of brevity the subsequently claimed conclusion of the contract is taken as correct yet the case of the plaintiff is not likely to succeed as perusal of document (allocation/allotment attached with plaint) would show that it does not bear the signature of the defendants or their authorized '**agent**' at relevant place of signature, provided in such

allocation/allotment. This denies the '**privity of contract**' between the two. Not only this but payment of consideration to the defendants, per the documents of the plaintiff himself, is not *prima facie* appearing nor likely to be proved even if the evidence is allowed to be led because payment is subsequently claimed to be made in personal account of one **Mr. Ghulam Hussain** hence this shall not bring the defendants (a company) into any liability because such person (Mr. Ghulam Hussain), was never claimed to be '**agent or authorized person**' of the defendant (company). An out of context or new evidence or document, at subsequent state of trial, is neither permitted nor could be taken into consideration. The reliance on this legal position can safely be placed on the case of Muhammad Nawaz @ Nawaza&Ors v. Member Judicial Board of Revenue &ors (2014 SCMR 914), wherein held:

**'7.....no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of pleading'. (underlining is for emphasis)**

In another case of Taj Muhammad Khan through L.Rs & another v. Mst. Munawar Jan & 2 others (2009 SCMR 598)

**"6. ....as provided in Rule 4 of Order VI, of C.P.C., if a plea has not been taken in the plaint, no amount of evidence can be looked into upon such pleadings not specifically taken up in the plaint'**

Further, in the case of MessrsEssa Engineering Company Pvt. Ltd. & another v. Pakistan Telecommunication company Ltd. & another (2014 SCMR 922), wherein it is held that:

**'17..... no party can on such evidence set up altogether a new case and press the same for getting relief merely on basis of an out of context evidence. (underlining is for emphasis).**

The legal position being crystal clear on this aspect that the '**consideration**' and '**privity of contract**', even if evidence is allowed to come on record, shall not be proved. Thus, in absence of *prima facie* proof of payment of consideration the agreement (contract) is void and not enforceable under the law within meaning of Section 25 of the Contract Act.

19. Since there can be no denial to the legally established principle of law that where the plaintiff fails to make out a *prima facie* cause of action his plaint cannot sustain because the object of the powers conferred upon the trial Court under Order VII, Rule 11 CPC is that the Courts must put an end to the litigation at the very initial stage when on account of some legal impediments full-fledged trial will be a futile exercise. Reliance can safely be placed on the case, reported as NOOR DIN v. ADDITIONAL DISTRICT JUDGE, LAHORE [2014 SCMR 513]

20. In result of above conclusion, I am left with no option but to reject the plaint without any further discussion on interlocutory application(s), including the instant CMA which, in consequent to rejection of plaint, stood dismissed automatically.

Note: Underlining as provided hereinabove is for the emphasis only.

JUDGE