

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 401 of 2007

Suit No.402 of 2007

&

Suit No. 419 of 2007

Plaintiffs : Through Mr.Umer Hayat Sandhu, advocate.

Defendants : Mr. Jam Habibullah, State Counsel.

For hearing of CMAs No. 10324/2011, 10325/2011 & 10326/2011

Date of hearing : 22.05.2015.

Date of announcement : 25.05.2015

O R D E R

SALAHUDDIN PANHWAR - J :-Through this order I am going to decide the captioned applications, filed in three suits on common ground by the plaintiffs, whereby seeking refund of the court fee stamps.

2. Learned counsel for the plaintiffs *inter alia* contended that above captioned- plaints were rejected by a common order dated 17.2. 2009 hence the plaintiffs are entitled for refund of the court fee stamps. The reliance has been placed on the case law, reported as **RIAZ-UD-DIN vs AQEEL UR REHMAN SIDDIQUI**PLD [1993 SC 76].

3. I have heard the learned counsel for the plaintiffs/ applicants - and have also gone through the record.

4. The provision of Section 13 of the Court Fees Act (VII of 1870) insists that where the plaint is *rejected* on any of the ground mentioned

in the Code or where a suit is remanded in appeal on any of the grounds mentioned in rule 23 of Order XLI of the Code then order for refund of court fee stamps be made. The deliberate use of term '*rejection*' of plaint is *prima facie* speaks about an exercise of jurisdiction by the Court under Order 7 rule 11 CPC. Insist for refund of court fees in such cases is so that '*rejection*' of the plaint is an independent discretion of the Court which is not subject to filing of an application by other side (defendant) therefore, law believes that such order should be passed at very initial stage. The record shows that though matter remained pending for considerable period but neither written statements were filed nor the court was burdened to frame the Issues and record evidence. Mere pendency of an incompetent suit for a considerable period would not disentitle a party from refund of the court fees as it was/is always the duty of the Courts to reject an incompetent suit at its inception.

5. Thus, keeping the mandatory provision of Section 13 of the Court Fees Act and fact of rejection of the plaints at initial stage of the proceedings, I am inclined to accept the application. The Office is *accordingly* directed to return the Court Fees along with a Certificate authorizing the plaintiffs alone to collect the amount of such Court Fees from quarter concern.

SAJID

JUDGE