

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

C.P. No.D-1617 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE (S)
	1. For orders on M.A. No.6354/2022.
	2. For orders on office objections.
	3. For hearing of main case.

11.05.2022

Mr. Muhammad Jameel Khan, Advocate for the petitioner.

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1. Urgency is granted.

2&3. Learned counsel for the petitioner submits that an application under Order 7 Rule 11 C.P.C was dismissed by the Trial Court as well as by the Appellate Court despite the fact that the subsequent Suit was barred under Order 2 Rule 2 C.P.C. In an earlier Suit filed in the year 2016, two applications were preferred one by the plaintiff therein for withdrawal of the Suit under Order 23 Rule 1 C.P.C and the other by the defendant for the rejection of the plaint. The application for withdrawal of the Suit filed by the plaintiff therein was dismissed whereas application under Order 7 Rule 11 C.P.C was allowed. It is the case of the petitioner that after rejection of the plaint fresh Suit cannot be maintained. Order 7 Rule 13 does not preclude presentation of fresh Suit. It provides that the rejection of a plaint on any of the grounds mentioned under Order 7 Rule 11 C.P.C shall not of its own force preclude the plaintiff from presenting a fresh case in respect of the same cause of action, hence no interference as far as the concurrent findings of two Courts below, is required, which substantially dismissed the application under Order 7 Rule 11 C.P.C in a subsequent Suit. In so far as the contention of the learned counsel for the petitioner that no appeal was preferred against the withdrawal of the Suit is concerned, it was never required since the application for the withdrawal of the earlier Suit was dismissed. Petition being misconceived is dismissed with no order as to costs.

JUDGE

JUDGE