

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Ist Appeal No.61 of 2019**

Shad Jan  
Versus  
Iqbal Usmani

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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**Present: - Muhammad Shafi Siddiqui, J  
Jawad Akbar Sarwana, J**

For hearing of main case.

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**Dated 02.11.2023**

Ms. Rafat Mubeen, Advocate for the Appellant.

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A summary suit under Order-XXXVII Rule-2 CPC based on negotiable instrument/cheques was filed for the recovery of an amount of Rs.4.5 million. The two cheques and the slip disclosing reasons of it having been bounced were appended with the plaint.

The leave application along with an application under Order-VII Rule-11 CPC was filed and after hearing, the plaint was rejected. In some criminal proceedings, initiated under Section 489-F PPC, involving similar cheques, the respondent was acquitted on the count that the complainant had admitted that he had not produced any receiving of the amount given by him to the defendant/accused. Be that as it may, the reason that prevailed for rejecting the plaint is summarized in para-11 of the impugned order, which is necessary to be incorporated for convenience:-

*“11. In my humble view, the plaint is devoid of cause of action against the defendant as such the plaintiff has failed to substantiate the obligation of the defendant to pay him an amount of Rs.4500,000/-, not only this but has also failed to prove his initial ground that he had invested a huge amount of Rs.45,00,000/- with the defendant. In order to attract the provision of Order VII Rule 11 CPC only contents of plaint are to be ascertained and an incompetent suit should be laid at rest at the*

*earliest moment so that no further time is wasted over what has been bound to collapse later on. Hence benefited from the aforesaid principles of law I hereby invoke the provision of Order VII Rule 11 CPC and reject the plaint. The suit stands disposed of as dismissed having no cause of action against the defendants.”*

The above presumptive reason could hardly be a cause to reject the plaint that too in a summary suit based on negotiable instrument. The two cheques of the respondent were bounced and at the relevant time when the plaint was rejected, he was not under obligation to prove that he has made any initial investment against which two cheques were issued in the sum of Rs.4.5 million. The court felt that since the case of the appellant is bound to collapse later, therefore, there was no reason to keep the lis pending and hence rejected the plaint under Order-VII Rule-11 CPC.

We do not appreciate such understanding of law in a manner as narrated in para-11 of the impugned order. Leave application was pending and if at all the reasons incorporated in para-10 and 11 of the impugned order were of any convincing nature for the trial court, it could have formed reason for deciding a leave application, however, in no way a plaint in such a manner could be rejected nor could it be influenced by any finding of court proceeded under criminal jurisdiction. The court itself emphasized that he (appellant) has not “proved” his initial investment of Rs.4.5 million, however, no reason was assigned as to why such cheques were issued and how could such burden of “proving” such “investment” could be discharged at interim stage, if at all required to be discharged. Be that as it may, we would not like to go into details, as it might influence the trial or merit of the case, thus we are of the view that the impugned order is liable to be set aside and is being set aside. The instant Ist Appeal is

allowed, application under Order-VII Rule-11 CPC is dismissed and the case is remanded to the trial Court for its expeditious disposal in accordance with law.

JUDGE

JUDGE

Ayaz Gul