

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Kausar Sultana Hussain

High Court Appeal No. 178 of 2022

FRESH CASE

1. For orders on CMA No.2586/2022 (U/S 149 CPC).
2. For orders on CMA No.2587/2022 (Fast Track matter)
3. For orders on CMA No.2588/2022 (Exemption)
4. For hearing of main case.

Appellant: Sultan Ahmed Hashmani
through Mr. Afaq Yousuf, advocate.

Respondents: Nemo for the Respondents.

Date of Hearing: 16.09.2022

Date of Short Order: 16.09.2022

ORDER

AQEEL AHMED ABBASI, J ; - Through instant High Court Appeal, the appellant has impugned an order dated 22.02.2022 passed by the learned Single Judge in Suit No.51 of 2017 on CMA No.5665/2018 filed under Order VII Rule 11 CPC on behalf of respondent No.1, whereby, the plaint of the suit has been rejected under Order VII Rule 11 CPC.

2. Learned counsel for the appellant after having read out the impugned order passed by the learned Single Judge has submitted that while passing the impugned order the learned Single Judge has failed to appreciate that Suit No.91 of 2011 filed by the appellant in the Court of Civil Judge, Thatta, seeking damages was not decided on merits, whereas, the plaint was rejected under Order VII Rule 11 CPC.

According to learned counsel, the issue agitated by the appellant by filing the above suit against the respondent require recording of evidence, framing of issues and the judgment and decree thereon accordingly, therefore, instead of rejecting the plaint on technical grounds, the controversy should have been decided after recording evidence. It has been further argued that sufficient cause of action has been disclosed by the appellant in the plaint, whereas, and the matter required recording of evidence, therefore, the impugned order is liable to set-aside and matter may be remanded to learned Single Judge to decide the Suit on merits in accordance with law.

3. Heard the learned counsel for appellant, perused the impugned order passed by the learned Single Judge, whereby, CMA No.5665/2018, filed on behalf of respondent No.1 under Order VII Rule 11 CPC has been allowed and the plaint has been rejected under Order VII Rule 11 CPC. From perusal of the impugned order passed by the learned Single Judge, it appears that after having taking cognizance of the admitted facts and the previous litigation between the parties in respect of same subject controversy, the learned Single Judge has been pleased to allow the application being CMA No.5665/2018 under Order VII Rule 11 CPC while recording detailed reasons in Paras 4 to 8 of the impugned order in the following terms:-

“4. The plaintiff again after exhausting the remedy upto Hon'ble Supreme Court, filed C.P No.D-3647/2010 before this Court, which too was dismissed in limine following Tanveer-ur-Rehman's case. This dismissal of petition was then followed yet again by a suit before Senior Civil Judge Thatta bearing Suit No.91/2011 wherein the plaint was rejected under Order VII Rule 11 CPC on 02.03.2012. The plaintiff preferred appeal bearing Civil Appeal No.28/2012 before the 2nd Additional District Judge, Thatta, which met the same

fate on 08.12.2012. The plaintiff did not lose hope and filed Second Appeal No.03/2014, however, that too was dismissed in limine on 19.05.2014, as being on concurrent findings. The matter for the second time was taken to Hon'ble Supreme Court wherein after arguing the matter at length, permission was granted to withdraw the petition, however, it was for the purpose of availing appropriate remedy. The appropriate remedy as "discovered" by the plaintiff was [3] in this suit for recovery of damages. This suit for damages was based on a claim of unlawful and illegal dismissal.

5. Not even remotely, after two complete rounds of litigation upto Hon'ble Supreme Court can it be imagined that the dismissal of the plaintiff could be held as unlawful and consequently damages could be granted in this suit. In the first round itself, the Tribunal and the subsequent Hon'ble Courts held that the dismissal was lawful. Granting damages on the preposition that it was an unlawful termination, would amounts to ignoring and bypassing the judgments of the Senior Civil Judge, Tribunal, this Court as well as Hon'ble Supreme Court. There is no cavil that the dismissal of the plaintiff from the service was held to be lawful and hence the plaintiff cannot count on the imaginary unlawful dismissal, as he claimed, to claim damages. The cause of action disclosed in the plaint is of 2015 when the petition for leave to appeal was withdrawn to enable him to seek appropriate remedy. The cause of action to claim damages ceased when his dismissal was held lawful and confirmed. Damages could only follow on the count of unlawful dismissal in terms of pleadings of plaintiff.

6. I do not find this to be a lawful remedy, since no cause of action is survived to claim such damages on alleged unlawful dismissal. I could only imagine to award damages provided his dismissal from service is held to be lawful which perhaps is not even remotely possible on

account of concurrent findings in two rounds of litigations upto Hon'ble Supreme Court. Thus cause doesn't survive.

7. Since cause of action does not survive, rather cease to exist in view of the aforesaid facts, I deem it appropriate to reject the plaint [4] under Order VII Rule 11 CPC on the basis of the averments raised in the plaint itself.

8. These are the reasons for the short order of even date, whereby the plaint was rejected.”

4. From perusal of hereinabove finding as recorded by the learned Single Judge, it appears that in view of admitted facts and the legal position as emerged on account of previous litigation and order(s) by the competent Court of jurisdiction on the same subject matter between the relevant parties, the learned Single Judge was justified to hold that no cause of action is surviving to claim the damages by the appellant on alleged unlawful dismissal from service. On the contrary, it has been held that dismissal from service was not unlawful, therefore, appellant is not entitled to claim any damages against the respondent No.1. It has further transpired that the plaintiff in the suit after having exhausted the remedies available upto the Honourable Supreme Court of Pakistan, filed a Constitutional Petition No.D-3647 of 2010 before this Court, which was also dismissed in limine by following the Tanveer-ur-Rehman's case. It has also come on record that claim of the damages by the appellant in the subject suit was based on the ground of unlawful and illegal dismissal from service, however, record shows that not even remotely, after two complete rounds of litigation upto Honourable Supreme Court, such dismissal could be held as unlawful and consequently damages could be granted in suit. While confronted with hereinabove factual and legal position as emerged in the instant case, learned counsel for the appellant could not submit any reasonable

explanation to justify the suit for damages, nor could point out any factual error or legal infirmity in the impugned order.

5. Accordingly, the impugned order passed by the learned Single Judge does not suffer from any error or illegality, hence does not require any interference by this Court, therefore, instant High Court Appeal was dismissed along with listed applications with cost of Rs.10,000/- vide our short order dated 16.09.2022 and above are the reasons for such short order.

JUDGE

JUDGE

*Nadeem/A.S. *