

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2031 of 2022

Date	Order with signature of Judge(s)
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19.09.2024

Mr. Adnan Ahmed, advocate for the plaintiff.
Mr. Shahbakht Pirzada, advocate for the defendant

Present suit was filed in 2022, ostensibly on behalf of the plaintiff ('M/s. Protech') by a person stated to be an authorized officer. Prima facie, the plaintiff is not a legal entity capable of suing or being sued.

CMA 8902/2023 was filed on 02.06.2023 by the defendant under Order VII Rule 11 CPC, seeking for the plaint to be rejected on the ground that the plaintiff cannot plead entitlement as is neither a natural nor juristic person. It was further stated that Order I Rule 11 CPC provide that a person whom any right to relief arises in respect of transaction may be a plaintiff in a suit. A proprietorship is a neither a natural nor juristic person, therefore, does not have capacity to sue.

Notice of the said application was issued and order dated 25.08.2023 demonstrates that the learned counsel for the plaintiff sought time to place documents on record to demonstrate that the plaintiff is in fact a juristic entity. No such documents were placed on record, instead the plaintiff filed CMA 15479/2023, being an application under Order I Rule 10 CPC, however, the same application, prima facie, sought not to add a party but to replace the plaintiff with another.

Notwithstanding, whether the said provision can be employed for such transmutation, the order dated 18.04.2024 records that the plaintiff's counsel was put on notice to satisfy this court as to how the said application can be entertained once the application seeking rejection of the plaint on the same ground had already been preferred.

Today learned counsel for the plaintiff submits that filing suit in the name of an admitted non entity was a bona fide mistake, therefore, the same may be rectified by this court in allowing CMA 15479/2023. This court has recently maintained in Judgment dated 12.09.2024 in JM 66 of 1999 that no relief can be granted to the non-existent person. The ratio thereof applies squarely in the present facts and circumstances.

The maintainability of suit is the question that is to be determined by the court at the very onset and whilst the law provisions for amendment of pleadings etc., the same ought not to be done to the manifest detriment of defendant or with a specific view to defeat the defense raised by the defendant. The suit is admittedly in the name of a non entity and it is unreasonable to comprehend that such a manifest infirmity escaped attention until the same was raised by the defendant.

Interestingly, the affidavit accompanying the plaintiff's application is not executed by the purported sole proprietor thereof. The suit is filed through an ostensible authorized attorney of the plaintiff, admittedly a non entity, and the affidavit herein is sworn by yet another attorney of the same non entity plaintiff. Irrespective of manifest infirmities befalling the

plaintiff's application, the *locus standi* of the deponent is also not sustainable.

Order VII Rule 13 CPC does not preclude presentation of a fresh plaint upon rejection, subject to the law, however, it could not be justified as to why the plaintiff's counsel is attempting to remedy a manifest infirmity vide resort to even more discrepant applications.

Be that as it may, in the present case, the plaintiff is admittedly not a legal person, hence, no case of entitlement per Section 42 of the Specific Relief Act, arises and neither can any cause of action be discerned. In view hereof, CMA 15479 of 2023 is dismissed and CMA 8902 of 2023 is allowed; the plaint herein is hereby rejected.

Judge