

IN THE HIGH COURT OF SINDH AT KARACHI**First Appeal No. 19 of 2020**

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

Farhan Ahmed Khan**.....Appellant**through Syed Khizar Askar Zaidi,
Advocate

vs

Farhan Rafique & another**.....Respondents**None for the respondent no. 1.
Barrister Sandeep Malani, A.A.G.
for respondent No. 2Date of hearing : 15th January, 2024Date of judgment : 15th January, 2024**JUDGMENT**

OMAR SIAL, J. Farhan Ahmed Khan (the appellant in these proceedings) filed Suit No. 2 of 2017 against Farah Rafique (the answering respondent in these proceedings and the ex-wife of Farhan Ahmed Khan) seeking damages and compensation, as he claimed that Farah Rafique had defamed him. The learned 5th Additional District and Sessions Judge, Karachi Central, however, on 17.01.2020, rejected the plaint under Order 7 Rule 11 C.P.C. on the ground that the plaint did not disclose any cause of action.

2. We have heard the learned counsel for the appellant and the learned Assistant Advocate General and perused record. The answering respondent and her counsel both remained absent. Our observations and findings are as follows.

3. Before filing Suit No. 2 of 2017 (from which this appeal arises), Farah Rafique had filed a Family Suit No. 847 of 2016 in the Court of the learned 2nd Family Judge, Karachi Central, seeking maintenance and dowry. On 18.02.2017, Farah Rafique withdrew the Suit because she was not interested in further pursuing her claim. Farhan Ahmed Khan, however, was distraught at the allegations levelled against him by his ex-wife in Suit no. 847 of 2016 and on 29.03.2017, through his counsel, served a legal notice on Farah asking her to pay him compensatory damages for mental shock and agony she had caused him. Suit No. 2 of 2017 was filed, as no apology or compensation was made.

4. When we asked the learned counsel why the learned trial court rejected the plaint, the counsel replied that no paragraph outlining the cause of action was incorporated in the plaint. It is with much respect that we are of the view that the argument of the learned counsel was not correct. A review of the record reflects that paragraph 17 of the plaint, which was filed, although not happily worded, does satisfy the technical requirement for the cause of action to be revealed. In any case, the existence or absence of a cause of action is to be discovered from the sequential allegations in the plaint, not from a particular para specified for this purpose or any other document. Reference in this regard may be made to **President Zarai Taraqiati Bank Limited vs Kishwar Khan and others (2022 SCMR 1598)** and **Muhammad Fazil vs Mst. Resham Jan and another (1983 CLC 1165)**. The court has to presume that every averment made in the plaint was true; therefore, the power to reject a plaint under order 7 rule 11 in relation to discovering a cause must only be exercised if a court concluded that even if all the allegations made in the plaint were proved the plaintiff would not be entitled to any relief. Reference may be made to **Abdul Waheed vs Mst. Ramzanu and others (2006 SCMR 489)**.

5. We are not satisfied with the arbitrary manner in which the learned trial court rejected the plaint. An error crept into the order impugned when the learned court recorded that Suit No. 847 of 2016 had been disposed of due to a compromise. The record reflects this was not the case. Farah

Rafique withdrew the Suit because she did not want to pursue it. Further, the learned trial court, while tacitly acknowledging that the contents of the plaint in Suit No. 847 were prima facie defamatory, dismissed the plaint on the presumption (based on the written statement filed by Farah Rafique) that perhaps it was the counsel of Farah Rafique who had incorporated the alleged defamatory content in the plaint and that she could have been unaware of the contents as she did not speak English. Perhaps that was the case, but that was upon Farah Rafique to prove during the trial. The presumption made by the learned trial court, based on the written statement filed, was not lawful, appropriate or sufficient to show that no cause of action had accrued, and thus, the plaint should be rejected.

6. Given the above, the impugned order is set aside, and the matter is remanded back to the learned trial court to decide the matter afresh after hearing both sides. The learned trial court is expected to conclude this exercise within four weeks of this order.

JUDGE

JUDGE