

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:
Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana**

High Court Appeal No.04 of 2025

Prof. Dr. Shamim Khurshid Hashmi
Versus
KDAOCHS Residents Welfare Association & others

Date	Order with signature of Judge
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1. For orders on CMA 51/25
2. For hearing of main case.
3. For orders on CMA 52/25

Dated: 14.01.2025

Mr. Abdul Qadir Khan for appellant along with Barrister Hasan Khurshid Hashmi, attorney of the appellant.

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This appeal is arising out of an order passed by learned Single Judge whereby an application under order VII Rule 11 CPC filed by the appellant in Suit No.1802 of 2018, which sought rejection of plaint, was dismissed.

We have heard the learned counsel and perused record.

Brief facts, relevant to decide instant High Court Appeal, are that KDA Officers Cooperative Housing Society Welfare Association, respondent No.1, along with its members/lessees filed suit for declaration that a thoroughfare/pathway, which is an amenity land meant for the people/residents of the Society, could not in any way be subjected to an allotment for an individual's benefit who has been arrayed as defendant No.6 in the suit and has filed this appeal.

The solitary ground on which the appellant seeks rejection of plaint is the effect of Section 70 of Cooperative Societies Act, 1925 which requires a 60-day prior notice to the Society, which notice was not issued. The application on the solitary ground was resisted and was eventually dismissed. The learned Single Judge in its detailed order has considered Section 70 as an ouster clause and has followed the approach of the superior Courts to retain their jurisdiction by virtue of frame of Section 9 of the CPC. At the time of filing of the suit Section 70 of the Societies Registration Act, 1860 was in vogue which is *pari materia* to Section 115 of the Sindh Cooperative Societies Act, 2020, currently effective.

Apart from the reasoning assigned by learned Single Judge in its treatment to ouster clause i.e. Section 70 above, it also provides that the subject suit must be of a nature that touches the business of society.

Section 70 as well as Section 115 of the *ibid* two statutes makes it obligatory upon the plaintiff to issue a notice in writing upon the Society followed by lapse of two months' time. Order VII Rule 11 CPC however does not require rejection of plaint in piecemeal if there are other necessary and proper parties arrayed in the suit. As is imperative in *Abbassia Cooperative Bank*¹ if the authority has not been legally constituted for the subject action or inaction or the authority being exercised by it, which are under challenge, are *coram non iudice*, a Civil Court's jurisdiction to maintain a *lis* against such a cause would be available along with cause of *mala fide* attempt, if pleaded and explained systematically followed by a violation of rule of natural justice.

The substantive part that deals with the relief claimed in the suit is conversion of an amenity area of the Society i.e. thoroughfare/

¹ *Abbassia Cooperative Bank v. Hakeem Hafiz Muhammad Ghaus* (PLD 1997 SC 03)

pathway of which amenity purposes was inevitable in terms of the approval of master plan of the society concerned. The conversion of such amenity area by the Society itself in the form of its allotment/lease to any individual is not within the domain of the Society unless a master plan is revised and approved by the authority concerned which could either be Karachi Development Authority, Master Plan Department or Sindh Building Control Authority; hence cancellation of such lease could at best be vest with the Civil Court.

In view of above we do not find any reason to interfere with the reasoning and findings assigned by the learned Single Judge while passing the order impugned in this appeal, in addition to the above ground of rejection of plaint in piecemeal. Consequently the appeal merits no consideration and the same is accordingly dismissed in limine along with listed applications.

Chief Justice

Judge