

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.30 of 2025

<i>Date</i>	<i>Order with signature of Judge</i>
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Fresh Case

1. For orders on CMA No.1546/2025
2. For orders on office objection a/w reply of Counsel at 'A'
3. For orders on CMA No.1547/2025
4. For hearing of main case.
5. For orders on CMA No.1548/2025

03.03.2024.

Mr. Arshad Jamal Siddiqui, advocate for applicant.

1. Urgency disposed of.
- 2-5. This Civil Revision Application is directed against the judgment & decree dated 17.12.2024 passed by VIth Additional District Judge, Karachi-East in Civil Appeal No.206 of 2024 whereby the order of the Trial Court dated 17.05.2024 rejecting the plaint of Suit No.2439 of 2023 under Order 7 Rule 11 CPC was maintained.

The necessary facts giving rise to this Revision Application are that the Applicant / Plaintiff filed Suit No.2439 of 2023 against respondents for Declaration, Restoration of Facilities, Injunction & Recovery of Rupees Six Crore as damages against the respondents. Applicant is claiming to be the owner of the two flats bearing No.401 & 406, situated at Aashiyana Hills Apartments, Block-17, Gulshan-e-Iqbal, Karachi and was regularly paying the maintenance charges, but in October 2019 the Union of the project enhanced the maintenance charges from Rs.3500/- to Rs.4500/- which was not accepted by the applicant, however in February 2022 the applicant voluntarily agreed to pay the enhanced maintenance subject to justification by the Union, but till August when the Union failed to give the justification, the applicant enhanced the maintenance charges only to Rs.500/- as per his own estimate. In February, 2023 the Union again enhanced the maintenance charges from Rs.4500/- to Rs.5500/- without any justification however, the applicant started to pay the maintenance at the rate of Rs.5000/- per month. In May 2023 a Renovation Committee was set-up to carry out the white washing the project and demanded Rs.75,000/- from each flat but the applicant refused to pay contribution whereupon the applicant was threatened for withdrawal of general facilities like lift, gate access, intercom and garbage and cleaning and in October, 2023 these facilities were practically withdrawn which caused serious damage and injury to the reputation of the applicant. Consequently, the Applicant filed Civil Suit No.2439 of 2023 in the Court of Senior Civil Judge-XII, Karachi-East, which was dismissed on the application of the defendant No.5 (present respondent No.5) filed under Order VII Rule 11 read

with Section 151 CPC vide order dated 17.05.2024. Said order was challenged by the applicant by filing Civil Appeal No.206 of 2024, which was also dismissed vide order dated 17.12.2024 passed by the Additional District Judge-VI, Karachi-East. Hence, this Revision Application.

Learned counsel for the Applicant argued that the order, judgment and decree passed by the courts below are contrary to the facts and law; that the observations of the Courts below are against the contents of the memo of plaint while rejecting plaint and the appeal in slip shod manner; that both the Courts below erroneously held that no allegation of disconnection of facilities was noticed as per Nazir's report; that the dispute between the parties should always be decided on merits and technical knockout are always discouraged by the Superior Courts; that both the Courts below have failed to consider that despite payment of monthly maintenance and its arrears the respondents committed wrong doing and illegal acts in the shape of disconnection of necessary facilities against the applicant even otherwise, the impugned order, judgment and decree have been passed in a haphazard, hasty and mechanical manner without taking into consideration the relevant laws. Learned counsel lastly prayed for allowing the instant Civil Revision Application.

I have heard learned counsel for the applicant and perused the material available on record carefully.

Precisely, the case of the applicant before the Trial Court was that the basic utilities inter-alia water connection has been stopped. Record reflects that the Trial Court appointed the Nazir to inspect the property and submit his report in this regard. Such report was furnished by the Nazir, which denies the allegations of the applicant and reflects that basic facilities were being provided to the applicant. Counsel for the applicant when asked that whether objections to the Nazir report has been filed, to which he very candidly conceded that no objection to such Nazir report has been filed.

Before going into further discussion it would be conducive to reproduce the relevant portions of the impugned order and judgment hereunder:

Relevant portion of the order dated 17.05.2024 passed by Senior Civil Judge-XII, Karachi-East in Civil Suit No.2439 of 2023.

"I have considered the averments of plaint & its annexure. From careful perusal of record, it reveals that the plaintiff has filed this suit for Declaration, Restoration of Facilities, Injunctions and Recovery of Rs.6,00,00,000/- as Damages by alleging that plaintiff is owner of the suit property i.e. Flat No.401, Aashiana Hills Apartment situated in Block-17, Gulshan-e-Iqbal, Karachi and residing there since the year 2016 and later on he also acquired the Flat No.406. The plaintiff has alleged that he is paying all maintenance charges regularly but in the month of October, 2019 the Union have enhanced the maintenance amount of Rs.3,500/- to Rs.4,500/- per month without any Justification. The plaintiff has alleged that in the month of October. 2021 the defendant's Union

Body start colouring of building and demanded Rs.50,000/- per flat to meet the expenses of white wash, He further alleged that in the month of February, 2022 the meeting between plaintiff and Union Committee was held on issue of none payment of maintenance at enhance rate but defendants did not give satisfactory reply and justification of enhance maintenance of the building. He further alleged that due to dispute of enhance maintenance and renovation work of the building the defendants have disconnected the facilities for the plaintiff. It is admitted fact that the plaintiff is owner of the Flat No.401 & 406, Aashiana Hills Apartment situated in Block-17, Gulshan-e-Iqbal, Karachi and residing there from the month of March, 2016, however, the dispute between the plaintiff and defendants were arises on issue of enhancement of maintenance charges as well as renovation of the building. The plaintiff has alleged that his facilities were disconnected by the defendants but in order to ascertain such contentions of the plaintiff, this court has appointed the Nazir as Commissioner vide Order dated 06.12.2023 and as per Nazir report dated 13.01.2024 the plaintiff is enjoying all the facilities of the building. So far as the dispute with regard to enhancement of maintenance charges is concerned, since the plaintiff is resident of the building, therefore, he is under obligation to pay the maintenance charges as being paid by the all other residents of the building. It is also matter of record that the learned counsel for the plaintiff filed a statement dated 20.01.2024 stating therein that the plaintiff has paid the maintenance charges from the month of September, 2023 to January, 2024. Since, the plaintiff has filed the present suit mainly on the point of disconnecting of facilities by the defendants and as per report of Nazir/Commissioner dated 13.01.2024 the plaintiff is enjoying the all facilities, therefore, the plaintiff has no cause of action to file the suit against the defendants.

7. So far as the contentions of the learned counsel for the plaintiff with regard to the recovery in respect of damages of Rs.5,00,000,00/- for causing derogation, defamation and mental torture is concerned, it well established principle of law that if the main relief is barred by law then the incidental and consequential relief has to go away along with it and the suit is liable to be dismissed on such account. Therefore, plaintiff is not entitled for relief of damages.

8. In view of the above discussion, I am of the considered view that the plaintiff has no cause of action to file the present suit against the defendants, hence, the application under Order VII Rule 11 CPC read with Section 151 CPC, filed by the Defendant No.5 is hereby allowed, consequently, suit plaint is hereby rejected under Order VII Rule 11 CPC, alongwith listed applications, with no Order as to costs”.

Relevant portion of the Judgment dated 17.12.2024 passed by VIth Additional District Judge, Karachi East in Civil Appeal No.206 of 2024

“After hearing the learned counsels for both sides, I have perused the record. The appellant is mainly praying for restoration of amenities/general facilities in the project. It is the settled law that in order to decide application under order 7 R 11 CPC the contents of the plaint are to be looked into. In the plaint, it is own statement of appellant that he had not accepted the enhancement in the maintenance charges fixed by the Union. It is also the statement of the appellant that he on his own accord enhanced the rate of maintenance at Rs.500/- instead of Rs.1000/-. It is also own statement of appellant that he had refused to pay the renovation contribution of Rs.75000/- which was collected by the Committee

from the residents of the project for white wash. The contents of the plaint show that the appellant used to adopt a non-cooperative behavior with the other residents of the Project. The appellant is mainly praying for restoration of amenities/facilities but it is general principle of law that when the conduct of the applicant or his agent has been such as to disentitled him to the assistance of the court, injunction cannot be granted. It is also pertinent to note here that the Nazir of the court visited the subject project i.e. Aashiyana Hills Apartments, Block-17, Gulshan-e-Iqbal, Karachi and it has come on record that the appellant and his family members have been using the lift in the project as well the water connection of the flats of appellant is also operational. The gate-keeper also opened the main gate for female members of appellant's family. In these circumstances, the appellant has no cause of action to file the instant suit and the learned trial court rightly rejected the plaint.”

In the light of the above discussion, I find no illegality or irregularity in the impugned order, and same requires no interference. The instant civil appeal merits no consideration and same is hereby dismissed, with no order as to costs.

The aforesaid findings of the Trial Court as well as Appellate Court answer all the objections so raised on behalf of the Applicant and I do not see any misreading and or non-reading of the material placed before the Court(s) below.

The provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the Applicant to succeed under Section 115, C.P.C., he has to show that there is some material defect in procedure or disregard of any rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a court in exercise of such jurisdiction. It is settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not in Revision.

It is also well settled law that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law. It may be observed that in the trial of judicial issues i.e. suit which is on the face of it incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under law should not be allowed to further encumber legal proceedings¹.

¹ Ilyas Ahmed v. Muhammad Munir and 10 others [PLD 2012 Sindh 92].

Perusal of record reflects that the Trial Court has examined the material available on record and after hearing the learned counsel for the parties dismissed the suit of the Applicant on the application of the defendant No.5 under Order VII Rule 11 CPC, so also Appeal was also dismissed and now he has attempted to re-open the case through this Civil Revision Application under Section 115 CPC which is not permissible under law.

No illegality or infirmity has been shown to call for interference in the impugned decisions. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. In the circumstances, this Civil Revision Application is found to be meritless and is accordingly dismissed *in limine* alongwith pending applications.

JUDGE

Naveed PA