Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal No.23 of 2024

Present
Mr. Justice Muhammad Jaffer Raza

Muhammad Sadiq……..….. Appellant.

Versus

Muhammad Hassan and another…….…….Respondents

Mr. Haji Akber, Advocate for the Appellant.
Mr. Adnan Asif Mangi, Advocate for Respondent.

Date of Hearing: 10.04.2025
Dated of Order 10.04.2025

JUDGMENT

MUHAMMAD JAFFER RAZA – J **:** Instant Misc. Appeal has been preferred by the Appellant impugning the Order dated 20.01.2024, which was passed on an application filed by the Respondent under Order VII Rule 11 CPC in Suit No.03 of 2023. Brief facts of the case are as follows: -

2. Suit No.03/2023 was filed by the Appellant with the following prayers: -

> "It is therefore, most respectfully prayed that this Honourable Court may kindly be decreed the instant suit in favour of the plaintiff and against the defendants with cost as under:-
>
> 1) That, the plaintiff is the exclusive owner/proprietor and having copy rights of above-mentioned content the most famous "***Sufiyana Kalam"*** Song, titled" **Jaanam *Fid-e-Haideri"*** and lyrical and musical rights are reserved by the plaintiff.
>
> 2) That, defendants No.1 & 2 has no publishing right title or authority to use, release and upload the above said property or content, song of plaintiff or to get any kind of benefit from it, in any manner whatsoever and his said act ma also be declared to be illegal and without lawful authority and they may also be bound to remove the uploaded plaintiff content.
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> 3) That, defendant No.1 & 2 be permanently restrained to further use, release or take any kind of benefit by way of the plaintiff's content/property.

4) That, Defendant No.1 be directed to pay amount of Rupees 10 million (PKR.10,000,000) as damages to plaintiff.

5) That, Defendant No.2 may also be directed to removed/delete the Song/Sufiana Kalaam from YouTube channel of the defendant No.1, and also shall not reinstated on YouTube again on his channel "MAK Production".

6) That, any other relief which this Honourable Court deems fit and appropriate under given circumstances of the case may also be awarded to the plaintiff."

3. Thereafter, an application was moved under Order VII Rule 11 CPC by the Respondent and the same was allowed vide Impugned Order.

4. Learned counsel for the Appellant states that the Impugned Order is beyond the permissible scope of Order VII Rule 11 CPC as the learned Intellectual Property Tribunal, Sindh and Balochistan at Karachi **("Learned Tribunal")**, has gone into the disputed questions of facts and has placed deep reliance on the written statement filed by the Respondent and the same was not permissible under the scope of the above noted provision.

5. Conversely, learned counsel for the Respondent has argued that the application filed under Order VII Rule 11 CPC was correctly allowed as the suit filed by the Appellant has been filed by concealment of facts and the Appellant has not disclosed an earlier agreement between the parties in the said suit. He has further stated that the Notification relied upon in furtherance of the suit mentioned above, is "fake". It was further averred that according to Section 56 of the Copyright Ordinance 1962 **("Ordinance")**, the copyright is infringed only when a person without the consent of the owner of the copyright uses the same. It was further argued that Section 57 of the Ordinance fair dealing with Dramatic, Musical or artistic work etc to review, would not constitute infringement of copyright.

6. I have heard the learned counsels and perused the record. Before delineating on the Impugned Order it will be expedient to reproduce certain excerpts: -

"The said circumstances shows that the plaintiff has filled this suit with concealment of facts by showing the defendant as stranger whereas he was fully aware that he has executed the affidavit/agreement in favour of defendant No.1/Respondent No.1 for using his Sufiyana Kalam Song "Janam Fida-e-Haideri" as Annexure C of written statement which is an admitted document but he deliberately did not disclose the actual facts in the plaint brought it on record only to get the relief from this Tribunal whereas, the defendant No.1 used this Sufiyana Kalam Song "Janam fida-e-Haideri" with his written permission and consent which shows that the plaintiff has approached to this court with unclean hands, concealment of facts and misrepresentation.

It is pertinent to mention here that according to section 56 of the copyright, the copyright infringement would be when any person without the consent of the owner of the copyright used the same and according to section 57 of copyright the fair dealing with Dramatic, Musical or artistic work etc to review, would not be the infringement of copyright."

7. The scope of the noted provision was delineated in the case of ***Haji Abdul Karim v. M/s. Florida Builders Pvt. Ltd***[1] and it is on those principles that the instant Miscellaneous Appeal shall be adjudicated. Relevant parts of the judgment are reproduced below: -

8. At this stage it would be appropriate to carry out an analysis of Order VII, Rule 11oftheCodeofCivilProcedure1908. The said provision is reproduced below:

"(11) Rejection of plaint. ---The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action.

(b) Where there life claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law.

This is an important provision of law which has often been construed in a wide-ranging series of cases. The interpretation applied thereto falls within a wide spectrum and some of the important case-law will be examined by us at a later stage. Prior to doing so, however, it is important to carry out an analysis of the precise language used in the statute. The salient features contained in the provision are the following;

(i) The words used are "rejection of plaint". In other words the legislature has deliberately refrained from providing that the suit should be "dismissed". A distinction has thus been drawn between adismissal of a suit

[1] PLD 2012 SC 247

and the rejection of a plaint and it is this distinction which needs to be elucidated.

(ii) *The opening words indicate that it is mandatory on the court to reject the plaint if one or more of the four clauses is found to be applicable. This is made clear by the use of the word "shall" in the opening phase.*

(iii) *The first clause need not detain us for long since it contains a clear statement that in case the plaint does not disclose a cause of action it is to be rejected. The next two clauses, namely, clauses (b) and (c) relate to the valuation of the plaint and the stamp duty to be affixed thereon and again do not require much discussion. It is the last clause, namely (d) In relation to which most of the litigation has taken place. It is this, therefore, which requires a careful analysis.*

(iv) *Clause (d) has three constituent elements. The first part uses the important word "appears", the second part relates to statements madein the plaint, (i.e. there is no reference to the written statement) and the third part states the inference to be drawn if a suit "appears" from the statement in the "plaint" to be "barred" by any law. This read in conjunction with the opening words of Rule 11 make it mandatory on the court to reject the plaint.*

Right at the inception it needs to be stated clearly that Order VII, Rule 11, C.P.C. cannot be properly construed in isolation. In Order tounderstand the theory of law underlying it reference has to be made to its complementary provision, namely, Order VII, Rule13, C.P.C. which is reproduced below: --

"13. Where rejection of plaint does not preclude presentation of fresh plaint.--- The rejection of the plaint on any of the grounds hereinabove mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

Rule 13 states the consequence of the rejection of the plaint. It is, in brief, to keep the right of the plaintiff alive to present a fresh plaint even if based on "the same cause of action" notwithstanding the rejection of the plaint. This is a distinctly unusual provision. It will be seen immediately that this marks a clear distinction from the provisions of section 11, C.P.C. which not merely imposes a legal baron an unsuccessful plaintiff but actually takes away the jurisdiction of the court to try any suit or issue in which the matter directly or substantially in issue has also been in issue in a former suit between the same parties litigating under the same title in a court of competent jurisdiction which has been "heard and finally decided". This is of course the well known principle of res judicata which is one of the foundational principles of our procedural law. It follows that in Order VII, Rule 11 read with Rule 13 the concept of rejection of a plaint isclearly distinct from that of a suit which is decided and disposed of inthe normal course by a court of competent jurisdiction after recording evidence. The question which therefore arises is, what is the reason for this distinction and why has it been created? What has to be determined is, firstly the exact scope and ambit of Order VII Rule 11, and secondly, the effect of an Order passed rejecting the plaint in accordance therewith.

9. *We have already noticed that the court is bound by the use of the mandatory word "shall" to reject a plaint if it "appears" from the statements in the plaint to be barred by any law. What is the significance of the word "appears"? It may be noted that the legislative draftsman has gone out of his way not to use the more common phraseology. For example, in the normal course, one would have expected that the language used would have been "where it is established from the statements in the plaint that the suit is barred by any law" or, alternatively, "where it is proved from the statement in the plaint that the suit is barred by any law". Neither of these alternatives was selected by the legislative draftsman and it must be assumed that this was a deliberate and conscious decision. An important inference can therefore be*

drawn from the fact that the word used is "appears". This word, of course, imports a certain degree of uncertainty and judicial discretion in contradistinction to the more precise words "proved" or "established". In other words the legislative intent seems to have been that if prima facie the court considered that it "appears" from the statements in the plaint that the suit was barred then it should be terminated forthwith. The great advantage of this would be twofold: --

(a) On the one hand the defendant would be saved from the harassment of being subjected to a prolonged and costly trial including the leading of evidence which could be extended over a considerable period of time. Secondly, a great deal of valuable court time would also be saved from being wasted. This second consideration is of special importance considering the extent to which the courts are at present clogged with an enormous amount of arrears. Thus the idea, in brief, would be to bury the suit at its inception. This therefore, appears to bethe rationale for the use of word "appears" as against the more strongwords "established" or "proved". A further reason why the latter words have not been used is, of course, that normally they would be used if evidence had been recorded. That would then be a definitive finding by the court based on evidence and after examination of the lawin the light thereof.

(b) At the same time we have to consider the matter from the other point of view as well. It is important that injustice should not be caused to a plaintiff merely because, for example, of defective drafting in the plaint. No irretrievable loss should be caused to a plaintiff in the event of a plaint being rejected merely on the basis that it "appears" to be barred. It is for this reason that the legal status of rejection of a plaint has not been equated to that of a judgment and decree given after the recording of evidence. In the latter case section 11 and the principle of res judicata become applicable whereas in the present case that principle has been expressly excluded by the provisions of Order VII, Rule 13. It needs to be emphasized that the languageofRule13isexplicitinclarifyingthatafreshplaintcanbe filed in respect of the very same cause of action in relation to which the plaint was earlier rejected. This interpretation reconciles the language of Rule 11 and Rule 13 with that of section 11 of the C.P.C. by providing a valid rationale for the differentiation. A further pointer in the same direction is to be found if the definition of decree contained in section 2, C.P.C. is taken into account. In common practice the words judgment and decree are often used more or less synonymously. However, these two concepts are completely distinct in terms of clauses (2) and (9) of section 2, C.P.C. Clause 9 defines a "judgment" as meaning merely the grounds given by a judge for arriving at the conclusion embodied in a decree. (Emphasis added)

8. The Honourable Court before parting with the judgment laid down clear and unambiguous guidelines in paragraph number 12. The same are reproduced below: -

"12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.

Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time

> *being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.*
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> *Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in Order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.*
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> *Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint."(Emphasis added)*

9. I have examined the Impugned Order and it is held that the Impugned Order is beyond the permissible scope of Order VII Rule 11 CPC as set out in the case of **Florida Builders** (supra). It is evident that the learned Tribunal has not given any consideration to the scope of Order VII Rule 11 CPC and embarked on adjudicating disputed questions in a summary manner, without recording evidence. The "awareness" of the Appellant and the alleged "concealment" cannot conceivably be grounds for rejection of the plaint. In light of what has been held above, the Impugned Order is hereby set-aside, consequently the matter is remanded back of the learned Tribunal for deciding the same on merits after recording of evidence. The learned Tribunal is further directed not to be influenced with the findings in the Impugned Order. Accordingly, instant Misc. Appeal is allowed in the above terms with no order as to cost.

J U D G E

Nadeem