

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.314 of 2023
(Muhammad Iqbal Vs. Tufail Ahmed & others)

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

16.04.2025

Mr. Rehan Kayani, advocate for appellant
Mr. Rajesh Kumar, advocate for respondent No.1
Mr. Muhammad Kamran Baloch, AAG

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JUDGMENT

Muhammad Iqbal Kalhoro, J:- This appeal is filed against an order dated 20.07.2023 passed by learned Single Judge of this Court in Suit No.1309/2021 returning the plaint u/s VII Rule 10 CPC to be filed in the Cooperative Court holding that the jurisdiction in the case was with the said Court established under the Sindh Cooperative Societies, Act, 2020.

2. Learned counsel for the appellant has argued that the appellant had filed a suit for reliefs, among others, seeking cancellation of a registered sale deed in favour of defendant No.1/respondent No.1, which the Cooperative Court has no jurisdiction to adjudicate upon; that Cooperative Court is competent to decide all the disputes, other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes, which come within the domain of Act, 2020; that nowhere in the entire Act, 2020 the Cooperative Court has been empowered to cancel the registered documents, which is the exclusive domain of the Civil Court, hence, impugned order returning the plaint to be filed before Cooperative Court is not sustainable in law.

3. His arguments have been rebutted by the learned counsel for the respondents and learned AAG by referring to Rule No.53 of Sindh Cooperative Societies Rules, 2020 to explain that all the disputes, including the one the resolution of which appellant is seeking in the suit, can be tried by the Cooperative Court. According to them, the issue whether the dispute in respect of Cooperative Societies are to be tried by the Civil Court or by the Cooperative Court has already been settled by this Court in a number of cases. At the same time, learned counsel for the respondents has submitted that in compliance of the impugned order, the plaint was returned to the Cooperative Court, where he filed an application u/o VII Rule 11 CPC, which

application has been allowed and consequently the very plaint has been rejected, hence, this appeal has become infructuous.

4. Learned counsel for the appellant, however, has asserted that against the order rejecting his plaint, he has already filed the appeal, and in case this appeal is disposed of as having become infructuous in view of the order rejecting the plaint and tomorrow his appeal against O VII Rule 11 CPC is allowed, he will not have a remedy before any Court to agitate the point of jurisdiction of the Cooperative Court. According to him, his entire case is that the Cooperative Court has no jurisdiction and the suit is to be tried by the Civil Court.

5. We have heard the parties and perused the material available on record. At this juncture, when the very plaint, the return of which to the Cooperative Court has been called into question by appellant, has been rejected and is no more in the field, our view is that this appeal has technically become infructuous. Because, even if we decide the appeal positively, it would be of no consequence, the plaint which has been rejected U/O VII Rule 11 CPC will not be revived, until and unless the appeal against such order is decided in favour of the appellant. But if the appeal is dismissed, our order will remain in limbo, inexecutable.

6. Keeping in view this dilemma, instead of appreciating the arguments of learned counsel on merits and determine as to whether the relief sought by him in the suit is adjudicable by the Civil Court or by the Cooperative Court, we dispose of this appeal considering it to have become infructuous because the plaint is not extant. But at the same time, we must observe that in case the appellant is successful in appeal filed against the order rejecting his plaint and the suit is revived before the Cooperative Court, he would be within his rights to raise the issue of jurisdiction of the Cooperative Court before it by moving a relevant application. If the view of appellant is accepted by the Cooperative Court and it comes to a conclusion that the jurisdiction to adjudicate upon the matter lies with the Civil Court and not with it, it would be competent to order for return of the plaint to be filed before the relevant Civil Court.

This High Court Appeal is disposed of in above terms along with pending application(s).

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