

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

Date

Order with Signature of Judge

PRESENT:

**MR. JUSTICE ADNAN-UL-KARIM MEMON, J.
MR. JUSTICE ZULFIQAR ALI SANGI, J.**

C.P. No. D-1589 OF 2026

Zakir Hussain

versus

M/s. Dehli Raiyan Cooperative Housing Society Ltd and others

Date of hearing and order:- 27.04.2026

Mr. Amanullah, advocate for petitioner.

Mr. Ali Safdar Depar, Assistant AG

Syed Muhammad Saulat Rizvi advocate for respondent No.1

ORDER

Zulfiqar Ali Sangi, J. - Through the present Constitutional Petition, the Petitioner has assailed the legality, validity, and propriety of the Order dated 23.12.2023, rendered by the Vth Senior Civil Judge, Karachi-West & Special Court for Cooperative Societies, Karachi Division, established under Section 117 of the Sindh Cooperative Societies Act, 2020, in Society Suit No. 1014/2023.

2. By way of the impugned Order, the trial Court allowed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, filed by Respondent No.1, and, as a consequence thereof, rejected the plaint in Society Suit No. 1014 of 2023 (Re: Zakir Hussain v. M/s. Dehli Raiyan Cooperative Housing Society Limited). The Petitioner has, inter alia, prayed that this Court may graciously be pleased to call for the record and proceedings of the case to satisfy itself as to the correctness, legality, and propriety of the impugned Order, and, after affording an opportunity of hearing to the parties, be pleased to set aside the same.

3. It is pertinent to observe that a learned Single Judge of this Court, vide Order dated 16.03.2026, converted Misc. Appeal No.14 of 2024 into the present Constitutional Petition for placement before the Constitutional Bench.

4. Briefly stated, the facts giving rise to the present matter are that the Petitioner instituted Society Suit No. 1014/2023 before the trial Court against the Respondents, seeking relief in the nature of declaration, possession, cancellation of documents, and permanent injunction with respect to Plot No. R-614, situated in Dehli Raiyan Cooperative Housing Society, Karachi. Upon issuance of notice, Respondent No. 1 appeared and filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, praying for rejection of the plaint on the grounds that the suit was barred by limitation, was not maintainable in view of the provisions of the Specific Relief Act and Section 10, C.P.C., that a Constitutional Petition on a related subject matter was pending adjudication before this Honourable Court, and that the Appellant lacked locus standi, his name not being reflected in the list of bona fide members. The trial Court, without recording evidence and without properly appreciating the controversy involved, allowed the said application and rejected the plaint vide impugned order dated 23.12.2023. Being aggrieved thereby, the Petitioner has assailed the said order through the instant proceedings.

5. Learned counsel for the Petitioner submitted that the impugned order is erroneous, untenable in law, and violative of the settled principles governing rejection of a plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. It was contended that the application filed by Respondent No. 1 was adjudicated in a cursory and mechanical manner, without proper application of judicial mind. Counsel further argued that the issues pertaining to limitation, locus standi, and alleged statutory bars constitute mixed questions of law and fact, which necessarily require the framing of issues and recording of evidence, and thus are not amenable to summary determination at the threshold. It was further contended that the earlier Constitutional Petition pending before this Court relates to enlistment in the voter list and is clearly distinguishable from the present suit, which seeks reliefs of declaration, possession, and cancellation of documents; therefore, the objection regarding the bar under Section 10, C.P.C., or the doctrine of lis pendens is misconceived and inapplicable. Learned counsel also submitted that the Respondent Society had itself

previously taken the stance that the matter falls within the jurisdiction of the Cooperative Court. Counsel maintained that the Petitioner, being a prior allottee, has been unlawfully divested of his vested rights through mala fide and fraudulent transfers of the suit property, which allegations necessitate adjudication through a full-fledged trial. Lastly, it was contended that the rejection of the plaint has occasioned a grave miscarriage of justice by denying the Petitioner an opportunity to adduce evidence; hence, the impugned order is liable to be set aside and the suit restored for decision on merits.

6. Conversely, learned counsel appearing on behalf of the Respondents, along with the learned Assistant Advocate General, strongly opposed the petition, contending that it is not maintainable within the constitutional jurisdiction of this Court, as the Suit filed by the Petitioner hit by inordinate delay and laches. They have also taken the plea that the Constitutional Petitions are also pending before this Court on the subject issue, therefore, the Suit was not maintainable.

7. We have heard the learned counsel for the parties and have carefully perused the material available on record with their able assistance.

8. Upon hearing the parties, the questions arise for determination are: (i) whether the plaint could be rejected at the threshold on the ground of limitation; (ii) whether the question of locus standi could be conclusively determined without recording evidence; and (iii) whether the pendency of a Constitutional Petition operates as a bar to the instant suit.

9. It is a cardinal and well-entrenched principle of civil jurisprudence that, while adjudicating upon an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the scope of inquiry available to the Court remains strictly circumscribed and confined to the averments, assertions, and disclosures contained within the four corners of the plaint itself. The Court, at this preliminary stage, is neither vested with the jurisdiction nor permitted in law to embark upon an examination of the defence set up by the opposite party, nor can it take into consideration any extraneous material, documents, or assertions which do not form an integral part of the plaint as filed by the plaintiff. The legislative intent underlying Order VII Rule 11, C.P.C. is to ensure an expeditious filtration of

plaints which, on the face of their own averments, are liable to be rejected on the grounds enumerated therein, without necessitating a roving or fishing inquiry into disputed questions of fact or the merits of the defence. It is further observed that this settled proposition has consistently been reaffirmed by superior Courts, which have unequivocally held that the defence of the defendant, howsoever plausible or compelling it may appear, is wholly irrelevant at the stage of deciding an application under Order VII Rule 11, C.P.C. The Court is obligated to assume the contents of the plaint to be correct in their entirety and to determine, on such assumption alone, whether the plaint discloses a cause of action, is barred by law, or falls within any of the contingencies contemplated under the said provision. Any deviation from this limited scope amounts to a jurisdictional error and renders the impugned order legally unsustainable. In this context, it is of paramount importance to emphasize that the Court cannot travel beyond the plaint by referring to documents, annexures, lists, or materials that have not been filed along with the plaint or expressly incorporated therein. The consideration of such external material would not only defeat the very object of Order VII Rule 11, C.P.C. but would also result in prejudging the matter without affording the parties a proper opportunity to lead evidence, thereby causing serious miscarriage of justice. The adjudication under this provision is intended to be summary in nature and is not meant to substitute a full-fledged trial.

10. In the present case, however, the trial Court has manifestly transgressed the settled boundaries of its jurisdiction by placing reliance upon certain documents, lists, and materials which neither form part of the plaint nor can be legitimately considered at this preliminary stage. Such reliance is *ex facie* contrary to the settled principles of law governing the exercise of powers under Order VII Rule 11, C.P.C. and vitiates the impugned order. The Court below has, in effect, undertaken an impermissible evaluation of material extraneous to the plaint, thereby converting what is intended to be a summary scrutiny into a quasi-trial on merits. This approach is legally untenable, as it disregards the binding principles laid down by the superior judiciary and undermines the procedural safeguards embedded in the Code. By taking into account material outside the plaint, the trial Court has not only exceeded its jurisdiction but has also caused prejudice to the plaintiff, whose case ought to have been examined strictly on the basis of the pleadings as presented.

Therefore, the impugned order, having been passed in violation of the settled legal position governing Order VII Rule 11, C.P.C., is liable to be set aside, and the matter requires reconsideration strictly in accordance with law, confining the inquiry exclusively to the contents of the plaint without reference to any extraneous material whatsoever.

11. The Trial Court has erroneously held the suit to be barred by limitation on the assumption that the cause of action accrued in the year 2010. Such a finding is legally unsustainable inasmuch as the plaint expressly contains averments pertaining to fraudulent transfer of the subject property and mala fide conduct on the part of the defendants. In cases involving allegations of fraud, it is a well-settled principle of law that the period of limitation does not commence from the date of the alleged transaction, but rather from the date on which the plaintiff first acquires knowledge of such fraud. Furthermore, the plaint is either silent or, at best, ambiguous with regard to material particulars, including the exact date of dispossession and the point in time when the plaintiff gained knowledge of the impugned transaction. These are essential questions of fact which cannot be conclusively determined without recording evidence. It is trite law that where the issue of limitation is dependent upon disputed questions of fact requiring adjudication, the plaint cannot be rejected at the threshold in a summary manner. Consequently, the impugned finding of the Trial Court is premature, misconceived, and liable to be set aside.

12. The conclusion arrived at with regard to the alleged absence of locus standi on the part of the Petitioner is, with utmost respect, premature, untenable, and contrary to the settled principles of law governing adjudication of disputed questions of fact. The Petitioner has categorically asserted, both in pleadings and supporting material, that he is an original allottee, thereby claiming a vested legal right and interest in the subject matter of the dispute. Such an assertion, prima facie, confers upon the Petitioner the requisite standing to invoke the jurisdiction of this forum. The issues pertaining to the Petitioner's membership status and the validity of the alleged allotment are themselves seriously contested and form the core subject matter of the present proceedings. These questions are neither ancillary nor incidental in nature; rather, they go to the very root of the dispute and necessitate a thorough and comprehensive examination. In such circumstances, it is a well-established principle that matters involving disputed facts, particularly those requiring verification of documents,

examination of records, and assessment of competing claims, cannot be summarily decided at a preliminary stage. Furthermore, the determination of whether the Petitioner is indeed an original allottee entails an inquiry into factual matrices, including but not limited to the examination of allotment records, membership registers, correspondence, and other relevant documentary evidence. Such an exercise inherently requires the recording of evidence, including oral and documentary, and affording the parties an adequate opportunity to substantiate their respective claims through due process of law. Any finding on the issue of locus standi, in the absence of a full-fledged inquiry and without the benefit of evidence, is legally unsustainable and liable to be set aside. The question of locus standi in the present case is inextricably linked with the disputed questions of fact concerning membership and allotment, and as such, cannot be conclusively adjudicated in isolation or at a preliminary stage without causing grave prejudice to the Petitioner. In view of the foregoing the issue of locus standi be deferred and adjudicated only after the parties have been afforded a fair opportunity to lead evidence and the matter has been examined on its merits in accordance with law.

13. It is a well-settled principle of law that the mere pendency of a Constitutional Petition before a superior court does not, in and of itself, operate as a bar to the continuation of civil proceedings under Section 10 of the Code of Civil Procedure, 1908. The application of Section 10, C.P.C., is contingent upon the strict fulfillment of its essential prerequisites, namely that the previously instituted suit or proceeding must be between the same parties or their privies, litigating under the same title, and that the matter in issue in the subsequent suit must be directly and substantially in issue in the former proceedings. In the absence of such identity of parties and complete similarity of issues, the statutory bar contemplated under Section 10 cannot be invoked. In the present context, the Constitutional Petition pending adjudication pertains to distinct questions of law and reliefs which are not identical to those raised in the suit before the trial Court. Furthermore, the parties involved in both proceedings are not the same in all material respects, nor are they litigating under the same title or capacity. The reliefs sought in the Constitutional Petition are of a constitutional and discretionary nature, whereas the proceedings before the trial Court involve adjudication of civil rights and liabilities, thereby rendering the scope and nature of both proceedings fundamentally different. It is also pertinent to note that

Section 10, C.P.C., is to be construed strictly, as it imposes a restriction on the jurisdiction of a competent court to proceed with a matter otherwise properly instituted before it. Such a provision cannot be extended by implication or applied in a mechanical manner merely on the basis of the pendency of another proceeding, particularly when the essential conditions prescribed by law remain unfulfilled. In view of the foregoing the trial Court has fallen into a patent error of law in holding that the pendency of the Constitutional Petition attracts the bar under Section 10, C.P.C. The impugned finding is thus legally untenable, misconceived, and liable to be set aside, as it is not supported by the settled principles governing the application of Section 10, C.P.C., nor by the factual matrix of the case.

14. A careful and meaningful perusal of the impugned order unequivocally demonstrates that the trial Court has transgressed the well-defined limits of its jurisdiction at the stage of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. It is manifest from the record that the trial Court has not confined itself to the averments contained in the plaint alone, which is the sole permissible scope of inquiry at such preliminary stage, but has instead embarked upon an unwarranted and premature examination of disputed and contentious questions of fact. In doing so, the Court has placed reliance upon extraneous material, which lies beyond the pleadings of the plaintiff, and has effectively undertaken an adjudicatory exercise that necessarily requires the recording of evidence and full-fledged trial. It is a settled and well-entrenched principle of law that, while adjudicating an application under Order VII Rule 11, C.P.C., the Court is obligated to restrict its consideration strictly to the contents of the plaint and the documents annexed therewith. The defense set up by the defendants, as well as any disputed questions requiring evidentiary substantiation, are wholly irrelevant at this juncture. The jurisdiction under the aforesaid provision is summary in nature and is to be exercised sparingly, only in cases where the plaint, on the face of it, fails to disclose a cause of action or is barred by any law. The trial Court, however, has clearly deviated from these established principles by delving into controversial factual controversies, assessing the merits of the case, and pre-judging issues that can only be resolved after the parties are afforded an adequate opportunity to lead evidence. Such an approach not only undermines the procedural safeguards embedded in the Code but also results in grave miscarriage of justice, as it deprives the parties of their

fundamental right to have their case adjudicated upon after due trial. The impugned order, therefore, suffers from patent illegality, material irregularity, and jurisdictional error, rendering it unsustainable in the eyes of law.

15. For the foregoing reasons, and in view of the settled legal position, this petition is hereby allowed. Consequently, the impugned order dated 23.12.2023 is set aside in its entirety. The application filed under Order VII Rule 11, C.P.C., stands dismissed, and the plaint is restored to its original position, to be proceeded with in accordance with law. The trial Court is further directed to resume the proceedings from the appropriate stage, to frame the necessary issues arising out of the pleadings of the parties, and to afford them full opportunity to adduce their respective evidence. The matter shall thereafter be decided strictly on merits, uninfluenced by any observations made in the impugned order. In the interest of expeditious disposal, the trial Court is directed to conclude the proceedings, as far as practicable, within a period of two (02) months from the date of receipt of this order.

JUDGE

JUDGE