

ORDER SHEET

**IN THE HIGH COURT OF SINDH, KARACHI**

**Suit No.1026 of 2005**

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Order with signature of Judge

1. For hearing of CMA No.1206/10 (u/o 7 rule 11 CPC)
2. For orders on Commissioner Report dated 28.12.2011

**20.09.2012**

Mr. Ghulam Ali, Advocate for plaintiff

Mr. Haroon Shah, Advocate for defendant

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1. This is a suit for Damages. The plaintiff has given details of his claim in Paragraph No.16 of the plaint, which reads as under:-

- i) Damages for dishonoring  
the plaintiff's salary cheque

for the month July, 2002

Rs.5,000,000.00

- ii) Damages for causing

	mental torture to plaintiff during period 15.06.2002 to 23.08.2002 by wrongly keeping him away from office	Rs.10,000,000.00
iii)	Damages for causing loss for service to plaintiff equivalent to amount of legitimate expectancy of getting Golden Handshake/ VRS Package	Rs.10,000,000.00
iv)	For punitive damages for misappropriating files, papers, valuable and title deeds from plaintiff's Locker No.1124	Rs.30,000,000.00
v)	Damages for causing loss of opportunity to plaintiff which deprived him of getting job in Citibank	<u>Rs.22,500,000.00</u>
	Total	Rs.77,500,000/-

According to the plaintiff, the cause of action was accrued on 23.08.2002, when the defendant obtained resignation from the plaintiff under duress, coercion and by force, thereby causing loss

of service to the plaintiff. The suit was instituted in this court on 20.08.2005.

The learned counsel for the defendant has filed application under order VII rule 11 CPC, on the grounds that the plaintiff has no cause of action against the defendant to file the suit as he has already received his full and final settlement dues from the bank. It is further averred that this is a suit for damages which ought to have been filed within a period of one year hence the suit is time barred.

The learned counsel for the defendant pointed out Annexure-I, J and L to the plaint and argued that the plaintiff voluntarily tendered his resignation and also indemnified the bank from all claims. While in Paragraph 11 of the plaint, the plaintiff has stated that resignation was obtained forcibly under duress and coercion as according to him he was threatened that if he will fail to sign the

document, he will be dismissed from service for misconduct which will disentitle him to the payment of gratuity and Provident Fund.

So far as the first ground of Order VII Rule 11 CPC application is concerned, that cannot be decided at this stage as it is a well settled principle of law that while deciding an application under order VII rule 11 CPC, the contents of the plaint should be looked into. The term cause of action means a bundle of facts which the plaintiff has properly described in the plaint. The case of the plaintiff is for damages which requires evidence and if the contents of the plaint are looked into, it cannot be said that the plaint does not disclose any cause of action,

The next ground raised by learned counsel for the defendant is in relation to limitation. Learned counsel for the defendant relied upon Article 28 of Limitation Act which relates to the compensation for an illegal or irregular or excessive distress and one year limitation is provided for filing the suit. In addition to this, he has also referred

to Article 36 which relates to compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not specially provided for. Suit under this article is required to be instituted within two years when malfeasance, misfeasance or nonfeasance takes place.

Keeping in view the contents of the plaint, I am of the view that the point of limitation in this case is a mix question of law and fact and the same cannot be decided without evidence. At this stage it cannot be held that Article 28 and or Article 36 of the Limitation Act are applicable or the suit is time barred.

Both learned counsel pointed out that on 29.11.2010, eleven consent issues were settled by this court. Issue No.1 relates to cause of action and issue No.2 relates to point of Limitation. Commissioner has already been appointed in this case and the plaintiff has also filed affidavit-in-evidence and now the matter is fixed for cross-examination of the plaintiff.

Since no case is made out for rejection of the plaint. The application is dismissed.

**J U D G E**