

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.307 of 2021

Sajjad Haider, etc.
Versus
Syed Ali Rizwan Kazmi, etc.

JUDGMENT

Date of hearing:	<u>03.04.2025</u>
Petitioners by:	Mr. Qaisar Qadeer Qureshi, Advocate
Respondents No.1 & 2 by:	M/s. Muhammad Yasir and Muhammad Atif Nawaz, Advocates

MALIK JAVID IQBAL WAINS, J. Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”), the petitioners have challenged the consolidated judgment dated 13.10.2020, passed by the learned District Judge Rawalpindi whereby revision petition filed by respondents was accepted by rejecting the plaint of petitioners/plaintiffs under Order VII Rule 11 CPC by setting aside order dated 14.11.2019 passed by the learned Civil Judge, Rawalpindi, however the other revision petition challenging order dated 19.11.2019 of trial court was dismissed being infructuous by the same impugned judgment.

2. Brief facts of the case are that the petitioners instituted a suit for recovery of Rs.19,100,000/- alongwith profit alleging therein that respondent No.1 is running a Real Estate business under the name and style of Syed Property and Builders in different sectors of Bahira Town Housing and Commercial Schemes in Rawalpindi/Islamabad, who is allottee of plots No.539/540 and got site plan approved for construction of commercial building under name and style of Syed Gold Mall and he approached petitioners, under the inducement offer of handsome profit, to invest in his

project. Further averred in the plaint that in terms of agreement dated 11.04.2015, petitioner No.2 paid rupees twenty-five million through bank channel, which was duly acknowledged by respondents and as per agreement, respondents had to return the principal amount alongwith agreed profit. Initially, respondents paid sum of Rs.2.00 million to petitioners as per agreement and also adjusted ten million in shape of a plot in Bahria Enclave, Islamabad but later on, resiled from the agreement. It is also averred in the plaint that respondents themselves issued a statement of account regarding investment, payment and adjustment on 27.04.2018 in which claim of petitioners has been acknowledged, however, the petitioners are continuously contacting respondents and insisting for return of amount but in vain. Alongwith the plaint, the petitioners also filed an application under Order XXXVIII CPC to attach the properties of respondents on the ground that respondents are trying to sell out their properties to avoid payment/liabilities while fleeing away from the jurisdiction of the trial court.

3. The respondents filed written statement accompanying application under Order VII Rule 11 CPC that the nature of matter between the parties is contractual and as per agreement respondents are not bound to render accounts, hence petitioners have no cause of action, therefore, plaint is liable to be rejected as suit is not maintainable in its present form and the revisional court rightly passed the impugned judgment.

4. The trial court dismissed the application under Order VII Rule 11 CPC and accepted the application filed by petitioners under Order XXXVIII CPC vide order dated 14.11.2020. The respondents preferred separate revision petitions before the learned District Judge, Rawalpindi, challenging the said order, who vide consolidated judgment dated 13.10.2020 accepted the revision petitions and rejected the plaint under Order VII Rule 11 CPC filed by the respondents whereas the other revision petition challenging order dated 19.11.2019 was dismissed being infructuous by the same impugned judgment.

5. Arguments heard. Available record perused.

In order to settle down the controversy, the following legal questions arise for determination:

1. Whether the plaint sufficiently discloses a cause of action as required under Order 7 Rule 11(a) CPC?
2. Whether the Revisional Court acted beyond its jurisdiction under Section 115 CPC?
3. Whether the Revisional Court's decision is contrary to established judicial precedents?

6. Under Order VII Rule 11(a) CPC, a plaint can only be rejected when it does not disclose a cause of action and if the plaint contains essential facts demonstrating a legal injury, it cannot be rejected summarily under Order VII Rule 11 CPC. Even otherwise, a plaint shall be rejected "where it does not disclose a cause of action." This provision functions as a threshold filter to prevent frivolous, vexatious, or legally untenable claims from being subjected to full trial proceedings. A cause of action is a bundle of essential facts which, if traversed, give the plaintiff the right to seek legal remedy from a court of competent jurisdiction. These facts must, on their own, give rise to a legally enforceable right and must disclose a legal injury attributable to the defendant. In Read case¹, Lord LOPES, LJ, observed as follows:

"I agree with the definition given by the Master of the Rolls of a cause of action, and that it includes every fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action. In the present case the plaintiff could not possibly succeed without proving the assignment; it would be useless for him to prove the mere delivery of the goods. The assignment was therefore part of his cause of action, and that part of the cause of action arose within the City."

This principle has become a global cornerstone in civil procedure systems where courts demand that a suit must stand on the face of the plaint alone, without recourse to defence pleas or extraneous evidence at this stage.

In T. Arivandandam² case, the Indian Supreme Court held as under: -

¹ Read case v. Brown [(1888) 22 QBD 128 (UK)]

² T. Arivandandam v. T.V. Satyapal [AIR 1977 SC 2421]

“...The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled.....”

Under the United Kingdom Civil Procedure Rules (CPR), courts have similar discretion to strike out a statement of case under Rule 3.4(2)(a), holding that:

"The statement of case discloses no reasonable grounds for bringing or defending the claim."

In Three Rivers District Council v. Bank of England [2001 UKHL 16], the House of Lords observed that a claim must disclose some reasonable cause of action; otherwise, it is liable to be struck out to protect the integrity of judicial resources.

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss for failure to state a claim is similar to Order VII Rule 11(a) CPC. In Bell Atlantic Corp. v. Twombly, **550 U.S. 544 (2007)**, the U.S. Supreme Court held that a complaint must contain enough factual matter, accepted as true, to state a claim to relief that is plausible on its face.

7. A plaint must disclose, clear legal injury, right enforceable by law, and sufficient factual foundation to warrant judicial examination. Where these elements are present, rejection under Order VII Rule 11(a) CPC is unsustainable and impermissible. Conversely, where a plaint is vague, speculative, or based on irrelevant assertions lacking legal basis, rejection is not only permissible but necessary to prevent judicial abuse.

8. The cause of action doctrine under Order VII Rule 11 CPC is a procedural safeguard grounded in both domestic and international jurisprudence. Courts must exercise this power judiciously, ensuring that genuine claims proceed while legally unsustainable suits are filtered at inception.

9. This aligns with the constitutional mandate under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 for fair trial and due

process, balanced against the judicial obligation to avoid wastage of court time on meritless claims.

10. In the present case, the trial Court correctly held that the plaint contained a clear assertion of legal rights and legal injury, thus satisfying the requirement of a cause of action but the revisional court ignored this fundamental principle and wrongly exercised jurisdiction by treating the application as it was a final determination of the case. It is established principle of law that while dealing with the application under Order VII Rule 11 CPC, only the contents of plaint must be examined, and not the defence's stance.

11. In the case in hand, it could not have been held that the plaint does not disclose any cause of action or that relief claimed is undervalued. While alleging cause of action, the petitioners in their plaint have specifically narrated this fact in para No.16 of the plaint, which is reproduced as under: -

"That cause of action firstly accrued on 11.04.2015 when petitioner No.2 entered into agreement with respondents and secondly on 08.04.2016 when petitioner No.2 entered into agreement with respondents, thirdly on 08.10.2016 when the payment became due towards the respondents and lastly two weeks ago when the respondents refused to pay actual investment alongwith profit to the petitioners, which was settled as per agreement dated 08.04.2016."

12. The authenticity and execution of agreements dated 11.04.2015 and 08.04.2016 between the parties is not denied by the respondents which have been admitted in Para Nos.4, 9 and 10 of their written statement. Relevant condition of the agreement dated 08.04.2016 is reproduced as under: -

"یہ کے فریق اول چھ ماہ بعد فریق دوم کی انویسٹ شدہ اصل رقم بمع منافع فریق دوم کو واپس کرنے کا پابند ہے"

13. In this case, the plaint contained material facts, cause of action and a valid claim, thereby requiring adjudication on merits. The Revisional Court acted in contradiction to established principle of law by rejecting the plaint prematurely. Thus, the order of the Revisional Court is legally unsustainable and must be set aside.

14. In the present case, the trial Court acted within its jurisdiction in dismissing application under Order VII Rule 11, as the plaint discloses a cause of action. The revisional court, instead of identifying a jurisdictional defect, reassessed factual matters, which is beyond the scope of Section 115 C.P.C. A Revisional Court is not meant to act as a second court of appeal. It can interfere only if there is a jurisdictional defect or material irregularity in the subordinate court's order. Since no jurisdictional defect was present in the trial Court's decision, the revisional court's interference was unwarranted and illegal.³. In Abdul Khaliq's case⁴ it was held as under: -

"18. Additionally, the revisional Court in its impugned judgment also seems to have not taken into account the limited scope of its jurisdiction under Section 115, C.P.C which is primary mean for correction of jurisdictional defects in the proceedings or some patent illegality irregularity affecting the merits of the case and not merely for substituting and replacing its own findings with the findings of the appellate Court, unless the same were found to be arbitrary, perverse, fanciful and based on misreading or non-reading of material pieces of evidence, which is not the position of the case in hand."

15. After careful consideration, this Court finds that, the trial court correctly dismissed the application under Order VII Rule 11 CPC, as the plaint discloses a valid cause of action whereas the revisional court acted in excess of its jurisdiction under Section 115 CPC by interfering in a well-reasoned order without identifying a jurisdictional defect, as such the revisional court's decision is illegal and contrary to settled Supreme Court jurisprudence.

16. The Hon'ble Supreme Court of Pakistan has repeatedly held that if a plaint raises any triable issue, it cannot be rejected summarily as Order VII Rule 11 CPC is a harsh provision and should be applied cautiously, only in cases where no legal claim is made out, and suit should not be dismissed at the preliminary stage if there exists even a slight doubt about the cause of action.⁵

³ Hakim ud Din through L.Rs and others v. Faiz Bakhsh and others (2007 SCMR 870)

⁴ Abdul Khaliq (deceased) through L.Rs v. Ch. Rehmat Ali (deceased) through L.Rs. and others (2012 SCMR 508).

In President Zarai Taraqiati Bank's case⁶, the Hon'ble Supreme Court of Pakistan has held as under: -

"9...It is well settled that Order VII, Rule 11, C.P.C. enlightens and expounds rejection of plaint if it appears from the averments articulated in the plaint to be barred by any law or disclosed no cause of action. The court is under obligation to must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the court may reject the plaint. With the aim of deciding whether the plaint discloses cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents. In case of any mix question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial. This Rule does not justify the rejection of any particular portion of the plaint or in piecemeal as the concept of partial rejection is seemingly incongruous to the provisions of Order VII, Rule 11, C.P.C. Astute drafting for creating illusions of cause of action are not permitted in law but a clear right to sue ought to be shown in the plaint...."

17 It would be further advantageous to seek guidance from the case Misree Khan's case⁷ wherein the Hon'ble Supreme Court of Pakistan has comprehend the controversy involved in the matter, relevant part is reproduced as under: -

3...Before proceeding further, we take a pause to say that rejecting the plaint under Order VII, Rule 11, C.P.C. is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to exercising power under Order VII, Rule 11, C.P.C. are stringent. This Court has consistently held that the averments in the plaint must be read as a whole to determine whether it discloses a cause of action or whether the suit is barred under any law. This includes a bar created due to the lapse of the limitation period. At the stage of exercise of power under Order VII, Rule 11, C.P.C., if the averments in the plaint ex-facie do not disclose a cause of action or on a reading thereof, the suit appears to be barred under any law; the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial..."

Same view has also been reiterated by the apex Court in Abdul Waris v. Muhammad Yousaf (PLD 1997 Supreme Court 366) and in Saleem Malik v. Pakistan Cricket Board (PCB) and 2 others (PLD 2008 Supreme Court 650).

⁵ Mst. Karim Bibi and others v. Zubair and others (1993 SCMR 2039).

⁶ President, Zarai Taraqiati Bank Limited, Head Office, Islamabad v. Kishwar Khan and others (2022 SCMR 1598)

⁷ Misree Khan and others v Abdul Ghaffoor and others (PLD 2025 Supreme Court 24).

18. Admittedly revisional court's power under Section 115 CPC is limited to correct jurisdictional errors. It cannot reassess facts or act as an appellate court. Revisional jurisdiction is supervisory in nature and should not be exercised as an appellate power. If the subordinate court has decided a matter based on reasonable grounds, interference is unwarranted.

19. In view of foregoing reasons, this petition is **accepted**, and the judgment dated 13.10.2020 passed by Revisional Court in C.R. No.302 of 2020 is **set aside**. Resultantly, plaint of suit is **restored** before the trial court for adjudication on its own merits after recording evidence of the parties and decision in accordance with law, without prejudice from the findings of this Court. Furthermore, C.R. No. 183 of 2020 which was not decided on merits by the Revisional Court, is hereby restored and shall be deemed pending before the Revisional Court, who shall decide the said application after hearing both parties, strictly in accordance with the law without prejudice from the findings of this Court. The parties shall bear their own costs.

(MALIK JAVID IQBAL WAINS)
JUDGE

APPROVED FOR REPORTING

JUDGE