

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, BAHAWALPUR
BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

C.R. No. 568 of 2014/BWP

Shah Muhammad

Versus

The Province of Punjab and others.

JUDGMENT

Date of hearing: 07.06.2023.

Petitioner by: M/s. Nadeem Iqbal Chaudhary, Muhammad Tayyab Chaudhry, Ch. Muhammad Jamil, Shabana Nadeem, Ali Raza Basra and Dr. Malik Muhammad Hafeez Advocates.
Rai Mazhar Hussain Kharral, Assistant Advocate General.

Respondents by: Mr. Tahir Mehmood Jatoi, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.:- Through instant revision petition, petitioner has challenged judgment dated 29.05.2014, passed by learned District Judge, Bahawalnagar, whereby appeal filed by respondents No. 2 to 5 against order dated 24.04.2014 suspending implementation of order dated 07.02.2007, regarding change of design and size of outlet in question was allowed and plaint of the suit was rejected under Order VII Rule 11 CPC being barred by law.

2. Brief facts of the case are that petitioner filed suit for declaration along with permanent injunction, which was accompanied by an application for grant of temporary injunction. Learned Trial Court, vide order dated 24.04.2014 issued *ad-interim* injunctive order thereby suspending implementation of order dated 07.02.2007, which was assailed by respondents No. 2 to 5 by way of filing appeal. Learned Appellate Court, vide order dated 29.05.2014, proceeded to allow the appeal and rejected the plaint of the suit under Order VII Rule 11 CPC. Hence, instant revision petition.

3. Learned counsel for petitioner submits that impugned judgment rendered by the learned lower Appellate Court is against the law and facts. Adds that even the appeal filed by respondents No. 2 to 5 was not competent against an interim order and in given circumstances, petitioner's suit / plaint could not be rejected on the ground of limitation as from the stance taken up by the petitioner, it was for all intents and purposes a mixed question of law and facts, which could only be resolved after framing of issues. He adds that learned lower Appellate court has misinterpreted and misapplied the applicable law and has committed material irregularity and illegality. In support, he has referred to Jewan and 7 others v. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others (1994 SCMR 826), Haji Muhammad Shah v. Sher Khan and others (PLD 1994 Supreme Court 294), Mushtaq Hussain v. Province of Punjab through Collector Jhelum District and 6 others (2003 MLD 109), Anwar Khan v. Abbas Khan (2003 YLR 712), Iftikharul Haq v. District Canal Officer and others (2005 CLC 1740) and Mujahidabad Welfare and Development Organization JUTAL through Members v. Provincial Government through Chief Secretary Gilgit-Baltistan and others (2022 YLR 565).

4. Contrarily, learned Law Officer, while relying upon Kamran Industry (Pvt.) Ltd. V. Industrial Development Bank of Pakistan through Regional Manager, Regional Office, Lahore and 2 others (1994 SCMR 1970), defends the impugned judgment.

5. Arguments heard. Available record perused.

6. Petitioner filed suit for declaration along with permanent injunction contending therein that design and size of petitioner's outlet No. 12/6-R is approved as 12" dia pipe as per A-Form No. 4054 dated 31.05.2001, whereas A-form No. 512 dated 07.02.2007, whereof design and size of outlet has been altered as OC-OFRB and B=0.20, Y=0.7H, being against the law and facts, record, without issuance of prior notice and based upon *mala fide*, is liable to cancellation, wherein following ad-interim injunctive order was passed by learned Trial Court:-

"Preliminary arguments on the application for grant of interim injunction have been heard and record perused. In view of record /

documents attached with the suit and affidavit submitted by the petitioner, matter needs consideration, therefore, implementation of order dated 07.02.2007 is suspended. However, this order shall have no affect on any legal proceedings before any competent court / authority."

In appeal, learned Appellate Court set aside the above order and rejected the plaint *inter alia* on the ground that the suit was barred by limitation.

7. The question before this Court is whether the Appellate Court was competent to reject the plaint of the suit under Order VII Rule 11, C.P.C. while dealing with an appeal filed against grant of ad-interim injunction. No doubt an incompetent suit shall be taken off the file at its inception and plaintiff be allowed to retrace his steps. At the same time, it is settled law that plaint can be rejected even before summoning the defendants or later-on at any stage of suit proceedings but this power must be exercised by the Court where the plaint is pending or under challenge because scrutiny is only permissible pertaining to the matter pending before that Court. There is no cavil with the proposition that the plaint of a suit can be rejected by Appellate as well as Revisional Court, however, it was not proper to reject the plaint of the suit under Order VII, Rule 11 C.P.C. while dealing with an appeal filed against the order granting or refusing interim injunction. Admittedly, learned Appellate Court was not seized of the main suit as the same was pending before Learned Trial court. The scope of appeal before the learned Appellate Court was as to whether the appellant was entitled for the ad-interim injunction in accordance with law or not. In short, adjudication upon merits of lis / suit without its pendency before the appellate forum is restricted/prohibited. Reliance in this regard can also be placed upon has been taken from Nishan Ali v. Sher Muhammad and 3 others (2004 MLD 1809), Muhammad Iqbal v. Lahore Development Authority and others (2005 YLR 2167), Asghar Khan v. National Bank of Pakistan through president and others (2013 YLR 484), Ghulam Farid and others v. Province of Punjab and others (2013 MLD 77) and Malik Waseem Khokhar v. Taimur Kamal and others (2020 CLC 315).

8. Needless to observe here that there is striking difference between the scope of proceedings of an application for grant of temporary injunction in a pending proceeding and the rejection of the plaint under Order VII, Rule 11, C.P.C. on account of failure to disclose a cause of action in the plaint or the plaint being barred under some provision of law. The reason for different approach while rejecting a plaint under Order VII, Rule 11, C.P.C. is quite obvious. In the former proceedings, even if the Court reaches the conclusion that the plaintiff has failed to make out a *prima facie* case, it can only refuse to grant temporary injunction, but this rejection cannot result in the dismissal of the suit which proceeds to trial notwithstanding a finding by the Court that the plaintiff has failed to make out a *prima facie* case for grant of temporary injunction. On the contrary, if the Court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred under some law, the proceedings come to an end immediately and the plaintiff is non-suited before he is allowed an opportunity to lead evidence and substantiate his allegation made in the plaint. We are, therefore, of the view that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his / her case, is possible only if the Court reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct. Reliance is placed upon Jewan and 7 others v. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others (1994 SCMR 826).

9. In the present case, matter pertaining to grant of *ad-interim* injunctive order issued by the Trial Court was called-in-question before the Appellate Court might be on various grounds including non-maintainability of suit in its present form but Court of appeal while deciding the appeal ought to have confined itself relating to availability of its jurisdiction because the plaint was not pending before it, therefore, it should have refrained itself from making any definite opinion regarding the fate of the suit. No doubt, plaint of a suit can be rejected by Appellate as well as Revisional Court, however,

it was not proper for the learned Appellate Court to reject the plaint of the suit by invoking the provisions of Order VII Rule 11, C.P.C., while dealing with an appeal filed against issuance of *ad-interim* injunctive order, thus, exercise of jurisdiction by Appellate Court to reject the plaint of the suit not pending before it, being illegal, is liable to be set aside.

10. Resultantly, instant petition is **allowed** and impugned judgment dated 29.05.2014, passed by learned District Judge, Bahawalnagar is set aside. Consequently, appeal filed by respondents No.2 to 5 shall be deemed to be pending before learned Appellate Court against the order granting *ad-interim* injunction, which shall be decided within a period of **thirty days**. Parties are directed to appear before the Court of learned District Judge, Bahawalnagar on 19.06.2023.

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for reporting

Judge

A.H.S.