

**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

C.R. No.530 of 2023

Manzoor Elahi Versus Rehmat Ali

JUDGMENT

Date of Hearing:	18.09.2024
Petitioner by:	Malik Khurram Shehzad and Arshad Mahmood, Advocates.
Respondent by:	Mr. Tariq Mehmood Khan Advocate.

JAWAD HASSAN, J. Through this revision petition, the Petitioner/Defendant (the “Petitioner”) has impugned the judgments and decrees dated 25.07.2023 and 31.05.2023 passed by learned Courts below, whereby the suit for declaration filed by the Respondent/Plaintiff (the “Respondent”) was decreed.

2. Brief facts of the case are that the Respondent filed a suit for declaration alongwith recovery of possession of shop bearing No.B-VI/99 (detail of which is mentioned in the plaint) against the Petitioner, which was contested by him by filing written statement. Learned trial Court framed issues, recorded evidence of the Parties and ultimately decreed the suit vide judgment and decree dated 31.05.2023. Feeling aggrieved thereof, the Petitioner filed an appeal, which was dismissed vide judgment and decree dated 25.07.2023. Hence, this Petition.

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3. Malik Khurram Shehzad, learned counsel for the Petitioner has submitted that the learned trial Court while decreeing the suit did not properly decide issue No.4, which reads as follows:

4. *Whether the suit of the Plaintiff is liable to be dismissed under Order VII Rule 11 CPC?*

He further submits that the Petitioner/Defendant at preliminary stage objected to the maintainability of the suit being barred by law, limitation and jurisdiction; even issue No.4 was also framed but these facts have not been considered by the learned trial court. Added that it is well settled law that the issues are commonly framed, used or understood regarding prepositions of law or facts about which parties are at variance according to their pleadings, in determination, which further help to dispose of the cases. Learned counsel further argued that the learned Appellate Court also did not properly consider the claim of the Petitioner and the evidence produced by the Parties was not appreciated in its true perspective, hence, the impugned judgments and decrees are result of misreading and non-reading of evidence.

4. Conversely, Mr. Muhammad Tariq Khan, learned counsel for the Respondent has controverted the stance of the Petitioner and submitted that all the relevant issues were framed and suit was decreed in accordance with law. He further submitted that the Petitioner did not raise any objection regarding maintainability of the suit even after framing of *Issue No.4*. Added that the learned trial court clearly mentioned in the findings of the *Issue No.4* that “*this issue is neither pressed nor argued by learned counsel for the defendant.*”

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5. Arguments heard. Record perused.

6. Nub of the matter in this case is regarding maintainability of the suit, which was decreed by both the learned Courts below against the Petitioner. The basic argument of learned counsel for the Petitioner is that the Petitioner/Defendant at preliminary stage objected to the maintainability of the suit being barred by law, limitation and jurisdiction; even *Issue No.4* was also framed but these facts have not been considered by the learned trial court. Whereas the learned trial Court while giving findings on *Issue No.4* mentioned that the same is neither pressed nor argued by learned counsel for the defendant.

7. In order to resolve the controversy, this Court framed following moot points on 11.09.2023:

- (i) **Whether the Court is bound to decide the legal issues being not pressed?**
- (ii) **Whether the general issues of barring the suit without specifying limitation can be addressed by Court?**
- (iii) **Whether the issue of maintainability under Order VII Rule 11 CPC can be dealt with in general way?**

Now all these moot points will be decided one by one in accordance with law.

Moot Point No. I

Whether the Court is bound to decide the legal issues being not pressed?

8. It appears from the record and as argued by counsel for the Petitioner that in the written statement the Defendant/Petitioner clearly mentioned that the suit is not maintainable under Order VII Rule 11 CPC, whereupon Issue

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No.4 was framed. So, the Issue No.4 is purely based on “Question of Law”. The learned trial Court without properly deciding the issue in accordance with law simply mentioned in the findings that the same was neither pressed nor argued by the Defendant. Although it was the duty of the trial court to first decide whether the suit is **barred by law** or not, but the trial court decreed the suit on the basis of facts. The very first reference for deciding this moot point is based on Order XIV Rule 2 CPC, which reads as follows:

***2. Issues of law and facts.**--- Where issues both of law and fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.*

The above reproduced provision of law makes it amply clear that where an issue of law arises, that issue must be tried first. But this provision also specifies a condition that by deciding the said issue of law, the case or any part thereof may be disposed of. This conditional principle of application has been elaborated through numerous judgments of the Supreme Court of Pakistan wherein, it has been held that the provision of Order XIV Rule 2 CPC is mandatory though before trying the issue of law as a preliminary issue, the court has to be convinced that by doing so, fate of whole case can be decided. Issues of law which go to the root of the whole case and capable to be decided without evidence, the court should decide that issue first. It has further been held that if issues are not framed but allegations are made in the plaint and they are rebutted in the written statement, it is open to the court to

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allow the parties to lead evidence on such point and to give decision on it without framing any issue. Reliance in this regard is placed on the judgments reported as The Province of East Pakistan versus Hassan Askary (PLD 1971 S.C 82) and Messrs Zarkhaiz Agro Engineering and Services (Pvt.) LTD. Versus Messrs Sargodha Farms Aids (Pvt.) LTD. (2005 YLR 200). The interpretation of the provision of Order XIV Rule 2 CPC has put a clear condition, thereby leaving it to the discretion of the trial court to frame and decide the legal issue first or together with the issues pertaining to factual controversy. It has further been settled that it is open to the court to allow parties to lead evidence on legal issues without having it formally framed or whether pressed or not by the parties.

Moot Point No. II

Whether the general issues of barring the suit without specifying limitation can be addressed by Court?

9. Before divulging into this moot point, it is appropriate to reproduce the relevant provision in verbatim

11. Rejection of plaint.—*The plaint shall be rejected in the following cases:*

(a)

(b)

(c)

(d) Where the suit appears from the statement in the plaint to be barred by any law.

The fourth ground for rejection of plaint is ‘barred by law’. The ‘law’ means written law or statute law and is used in generic sense. Law means – a formal pronouncement of the will of a competent law giver. Law includes- constitution, statutes, judicial principles, rules, by-laws etc., which squarely

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falls within the ambit of clause (d) of Rule 11, Order VII CPC. Limitation is also of the ground which may bar filing of suit after lapse of the provided time. There is no express direction of law to frame a specific issue in respect of limitation, provided an issue in respect of Order VII Rule 11 is framed since it not only covers barring of the suit by any law under clause (d) rather it covers clauses (a),(b) and (c) Order VII Rule 11 as well.

Moot Point No. III

Whether the issue of maintainability under Order VII Rule 11 CPC can be dealt with in general way?

10. There is no cavil to the proposition that the question of maintainability is a mixed question of law and fact. Reliance is placed on the judgments reported as *Muhammad Chuttal versus Ata Muhammad through L.Rs* (2007 SCMR 373 SC) and *Fancy Foundation versus Commissioner of Income Tax, Karachi* (2017 PTD 1687 SC). The question of maintainability can therefore only be decided after inviting evidence of parties to the suit. So far as the question that the issue of maintainability under Order VII Rule 11 CPC can be dealt with in general way, the answer of which has already been evaluated in the moot point No.1 and 2 i.e. “it is open to the court to allow parties to lead evidence on legal issues without having it formally framed or whether pressed or not by the parties’ and ‘there is no express direction of law to frame a specific issue in respect of limitation, provided an issue in respect of Order VII Rule 11 is framed since it not only covers barring of the suit by any law under clause (d) rather it covers clauses (a),(b) and (c) Order VII Rule 11 as well.”

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11. Coming back to the instant revision petition, it is observed that the Petitioner agitated in the written statement that the suit of Respondent/Plaintiff is liable to be dismissed being barred by law. The learned trial Court, therefore, framed Issue No.4 in this respect in order to enable the parties, particularly petitioner to put forth the available evidence. The questions of limitation as well as of the maintainability were covered in Issue No.4. Obviously, these important factors could not be gone into by the lower forums summarily without framing of an issue and allowing parties to produce evidence thereon. But the learned trial Court while deciding the *Issue No.4* simply said that “*this issue is neither pressed nor argued by learned counsel for the defendant.*” Admittedly, the Petitioner/Defendant did not produce any evidence on this issue. However, as the Issue was based on a question of law, the Trial Court was duty bound to examine and decide it in light of the law and the judgments of the superior Courts. Instead, the Trial Court committed a legal error by deciding this significant issue in a few words, which is impermissible in the eyes of the law.

12. Resultantly, instant revision petition is **allowed**, the impugned judgments and decrees are set aside; and the matter is remanded to the learned trial Court to decide the lis afresh in accordance with law after affording opportunity being heard to both the parties.

(JAWAD HASSAN)
JUDGE

ZIA.UR.REHMAN