

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Regular First Appeal No. 50/2020**  
**Rana Muhammad Sher**  
**Versus**  
**Capital Development Authority, etc**

**Appellant by:** Syed Husnain Ibrahim Kazmi, Advocate,  
**Respondents by:** Mr. Amir Latif Gill, Advocate,  
**Date of Decision:** 05.08.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant Regular First Appeal, appellant impugns the order & decree dated 23.01.2020 passed by the learned Civil Judge 1<sup>st</sup> Class, Islamabad-West, whereby while dismissing application under Order XXXIX, Rule 1&2 of the Code of Civil Procedure, 1908 ("CPC"), plaint was also rejected under Order VII Rule 11 CPC.

2. The facts, relevant for the disposal of the instant appeal are that on 27.03.2018, respondents-CDA conducted auction proceedings of Plot No.05, situated at Najam Market, Sector F-8/4, Islamabad. The appellant participated in the bidding process and was declared highest bidder against consideration of Rs.14,65,60,000/-. He deposited an amount of Rs.10 Million as token money, however, when it came to his knowledge that title of property is not clear, he moved application to the respondents to return token amount. The respondents instead of returning the token amount, vide letter dated 06.04.2018 directed the appellant to pay remaining sale consideration as per schedule. On 20.04.2018, 25.04.2018 and 26.04.2018, the appellant deposited another amount of Rs.26,640,000/- being 25% of the total price, however refused to deposit balance sale consideration as well as government taxes till the clearance of title of subject property. Ultimately, on

27.09.2018 the appellant filed suit for declaration and permanent injunction along with application under Order XXXIX Rule 1&2 CPC.

3. The respondents contested the suit as well as application under Order XXXIX Rule 1&2 CPC by filing written statement and written reply wherein they denied the claim of the appellant on legal as well as factual grounds. On 23.01.2020, learned trial Court dismissed the application and also rejected the plaint under Order VII Rule 11 CPC, hence the instant regular first appeal.

4. Learned counsel for the appellant contends that while deciding application under Order XXXIX Rules 1&2 CPC, plaint cannot be rejected under Order VII Rule 11 CPC; that the appellant was not provided an opportunity to advance arguments on the point of having no cause of action; that the plaint specifically discloses cause of action under Paras 14 & 15 and that when the questions of facts are disputed, the plaint could not be rejected without recording of evidence and in such eventuality, framing of issues is necessary; that the learned trial Court relied upon the written statement filed by the respondents contrary to law on the subject and that the learned trial Court committed material illegality, therefore, impugned order and decree is liable to be set aside. Learned counsel relied upon case laws reported as 2016 MLD 644, 2012 CLC 1998, 2005 CLC 1740, 2008 SCMR 236, 1994 SCMR 826, PLD 2008 SC 650, 2010 CLC 1603, PLD 2012 SC 247, 2015 CLC 536 and 2013 CLC 1641.

5. Learned counsel for respondents argued that the appellant had failed to comply with terms and conditions of the Provisional Acceptance of Bid Letter ("PAL"); that there was no stay order in the field; that the previous litigation had no effect on the auction made in favour of

the appellant and as for issue of absence of cause of action is concerned, the learned trial Court is competent to reject the plaint under Order VII Rule 11 CPC even while deciding application under Order XXXIX Rules 1&2 CPC.

6. Heard the learned counsel for the parties and examined the record with their able assistance.

7. Record reveals that the PAL regarding suit plot was issued to the appellant on 06.04.2018. According to Para 2, 3 & 4 of the said acceptance letter, the respondent accepted token amount of Rs.10 Million deposited by the appellant with further direction to deposit 25% i.e. Rs.26,640,000/- within ten days failing which the offer would be deemed to have been cancelled and the token money will stand forfeited. It was also mentioned that the balance 75% premium i.e. Rs.109,920,000/- had to be deposited in three equal installments of Rs.36,640,000/-, within 4, 8 & 12 months respectively from the date of issuance of said acceptance letter. It was also specifically mentioned that in case of failure of the appellant to make payment of due installments along with taxes, the acceptances of bid offer shall automatically stand withdrawn.

8. Record further reveals that the appellant had deposited 25% amount i.e. Rs.26,640,000/- by excluding token amount of Rs.10 Million on 20.4.2018, 25.04.2018 and 26.04.2018 respectively through cheques and pay orders but failed to deposit balance 75% in three equal installments within 4, 8 & 12 months i.e. up till 06.04.2019. No payment was made by the appellant in terms of balance 75% and it is also not his case that he had requested to deposit the said amount in the Court. All these facts coupled with the fact that the appellant had no title document except PAL, it cannot be said that

he had a *prima facie* good arguable case with balance of convenience and irreparable loss, therefore, findings to this effect are based on correct appreciation of material placed on record and need no interference.

9. The learned trial Court non-suited the appellant without mentioning any reason by simply observing that 'the averments of the plaint do not reflect cause of action against the defendant'. It is an admitted position that the appellant being successful bidder was offered the allotment of subject plot against consideration of Rs.14,65,60,000/-. The appellant initially deposited Rs.10 Million as token money and also 25% of the total amount i.e. Rs.26,640,000/-. The respondent not only recognized the said payment but also admitted in written statement that civil litigation initiated by the previous allottee regarding the subject plot is pending and that "the Defendant Authority auctioned the suit plot in auction of commercial plots held on 27, 28 & 29 March 2018 and the valuable rights accrued in favour of successful bidder which is present Plaintiff."

10. For the rejection of a plaint, on being no cause of action, the Court has to see the plaint in itself while in the present case, the plaint if examined, duly reveals from Paras-14&15 that cause of action in favour of the appellant is there, coupled with the fact that certain amounts of the appellant are with the respondents authority, side by side there is a litigation regarding suit plot, pending before the Court of competent jurisdiction, although there is no restraining order against the respondent authority in that litigation but taking into account these facts, at-least it can be safely held that there exists a cause of action in favour of the present appellant because there are certain questions, which require judicial determination by way of recording of

evidence after framing of necessary issues. The findings of the learned trial Court to this effect are not sustainable being contrary to the facts on record.

11. In view of above, the instant regular first appeal is partly allowed in terms that order regarding dismissal of application of temporary injunction is up-held while that of rejection of plaint is set aside. The learned trial Court shall decide the suit after framing necessary issues and recording evidence of the parties in due course, preferably within a period of six months. No order as to costs.

12. Before parting, it is necessary to mention that the observations made hereinabove are meant and restricted only to the extent of present appeal and shall have no impact upon merits of the case, to be decided by the learned trial Court.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran