

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Civil Revision No. 92/2020.

Muqarab Khan Niazi and another.

Versus

Ashfaq Ali, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.03.2020.	Mr. Imran Yousaf Khan Niazi, Advocate for petitioners.

Through this Civil Revision, the petitioners have assailed the order dated 06.11.2019, passed by learned Civil Judge, 1st Class (East), Islamabad, whereby application U/O VII Rule 11 CPC as well as objection petition on report of local commission have been dismissed.

2. Learned counsel for the petitioners *inter-alia* contends that respondents No.1 to 3 have filed a suit for damages of Rs.15,00,00,000/- (Rupees Fifteen Crore only) for selling out a constructed house No.170, Phase IV, Bahria Town, Islamabad which was not completed in accordance with standard and design; that petitioners have filed an application U/O VII Rule 11 CPC regarding maintainability of suit and in the earlier proceedings a local commission was appointed by the trial Court, who has submitted a report dated 24.07.2018 in which petitioners have filed objections

but both these petitions have been dismissed without considering the law on the subject; that entire suit has nothing to do with respondent No.2, which is not maintainable due to the fact that relationship between the parties is based upon agreement to sell which was executed by petitioner No.1 only and respondents have pleaded the petitioner No.2 without any legal justification; that suit house was transferred much prior to the filing of suit and respondents after enjoying the premises for a considerable time filed the suit for damages and got a report of the engineer in their favour, whereby objections have not been adjudicated, nor even petitioners have been allowed to substantiate their case in a proper manner.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioners are mainly aggrieved with two sets of proceedings i.e. dismissal of their application U/O VII Rule 11 CPC, which has been dealt by the learned trial Court separately with the following reasons.-

It is settled legal position that primarily the averments made in the plaint are to be looked while adjudicating an application under Order VII rule 11 CPC along with other material available on record. Perusal of plaint shows that the claims of

plaintiff pertain to financial/physical or mental loss as borne by the plaintiffs due to the acts/omissions on the part of defendants. The claims as alleged by the plaintiff requires pro and contra evidence by both the parties and the same cannot be decided in a summary manner. The averments made in the plaint duly establish a valid cause of action in favor of plaintiffs. Moreover, the defendants remained failed to agitate any other ground as available under Or. VII rule 11 CPC for rejection of instant plaint. In view of said, instant application is dismissed.

5. While considering the above order, passed by the trial Court dated 06.11.2019, it clearly spells out that trial Court has considered the contention of the petitioners and held that cause of action for filing of the suit is available and the question of financial and mental loss has to be decided after recording of pro and contra evidence of the parties and as such there is no illegality in the said order, which has been passed after due appreciation of law.

6. I have also attended the second ground for filing of the instant civil revision which is against the order of rejection of objection petition on the report of local commission which was prepared and filed before the trial Court on the basis of order dated 13.07.2018, whereby local

commission has to determine the present condition of the suit premises and as such the very appointment of local commission was not objected by the petitioners, therefore, any objection on the report has to be seen in the light of legal position determined by the trial Court after recording of evidence of both the parties and similar view has been rendered by the trial Court through the impugned order in the following manner:-

Report of local commission was duly submitted on 24.07.2018, thereafter, instant objection petition was filed. Perusal of objections raised by the defendant no.1 shows that primarily the same pertains to the factual controversies between the parties which is yet to be determined by the court after recording of evidence of both the parties. Furthermore, it is settled legal position that report of local commission is not admissible evidence and the same is to be subjected to the test of cross examination at the relevant stage. In view of said, instant objection petition is dismissed. Instant application and order thereon is made part of the main file.

7. While considering the above background, there is no cavil to the proposition that report of local commission has not yet been considered as conclusive proof rather the trial Court has rightly appreciated the law that the said

report is subject to "test of cross-examination at the relevant stage" this aspect has left nothing in favour of the petitioners to agitate the matter at this pre-mature stage.

8. In view of above position, the effect of report will only be considered by the trial Court after recording of pro and contra evidence of the parties in the final judgment, whereby petitioners have equal opportunity to cross-examine the local commission to check his veracity on its report, therefore, instant civil revision is misconceived and the same is hereby dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid