

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

**C.R.No.81 of 2016**  
**Apex Consulting Pakistan through Mudabbir Haneef & another**  
**VERSUS.**  
**Tanveer Hussian**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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24.02.2016	<b>Malik Saleem Iqbal, Advocate for the petitioners</b>
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Through the instant Civil Revision Petition, the petitioners, M/s Apex Consulting Pakistan etc., have impugned the Order dated 28.01.2016, passed by the Court of learned Civil Judge 1st Class (West), Islamabad, whereby the petitioners' application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("CPC"), was dismissed.

2. On 23.09.2015, the respondent, Tanveer Hussain, had instituted a suit for recovery and damages against the petitioners before the learned Civil Court. This suit was contested by the petitioners by filing a written statement on 12.11.2015. On the same day, the petitioners also filed an application under Order VII, Rule 11 CPC, wherein it was pleaded that the suit showed malafide intentions, ulterior motives, misrepresentations and baseless facts; that the suit was neither maintainable nor in a proceed-able form; that the suit did not disclose a cause of action; that the respondent/plaintiff in the suit had concealed material facts and tried to deceive the learned Civil Court; that the

plaintiff in the suit had no locus standi for recovery of damages, and; that the learned Civil Court had no jurisdiction to adjudicate upon the suit.

3. Vide Order dated 28.01.2016, the learned Civil Court dismissed the said application under Order VII, Rule 11 CPC and directed the respondent to submit an amended plaint in accordance with the provisions of Order VII, Rule 1 CPC. The learned Civil Court adjourned the matter to 27.02.2016 for the filing of an amended plaint.

4. Learned counsel for the petitioners submitted that as the suit filed by the respondent was not in accordance with the requirements of Order VII, Rule 1 CPC, the same was liable to be rejected. He submitted that the said suit neither had a specific clause regarding the cause of action, nor set out the facts establishing that the Court had jurisdiction in the matter. It was further submitted that the suit did not state the value for the purposes of court fee and jurisdiction. In making his submissions, the learned counsel for the petitioners placed reliance on the cases of Ramprasad Chimanla Vs. Hazarimull Lalchand reported as A.I.R. 1931 Calcutta 458, and Muhammad Yasin Khan & 04 others Vs. Azad Government of Jammu and Kashmir through Chief Secretary & 03 others reported as 1991 MLD 2295 High Court (Azad J & K).

5. I have heard the arguments of the learned counsel for the petitioners and

perused the necessary documents as well as the case law relied on by him.

6. The judgment in the Ramprasad Chimanla's case lays emphasis on the requirement in Order VII, Rule 1 CPC for the plaintiff to set out in the suit, the particulars of the facts constituting the cause of action, when it arose and whether the Court had jurisdiction. As the suit was held to be lacking in these essential particulars, the plaint was returned in order that it may be amended and presented again to the Court. In Muhammad Yasin Khan's case, the Hon'ble High Court of Azad Jammu & Kashmir, rejected the plaint under Order VII, Rule 11 CPC, because the suit was held to be barred under Section 11 CPC. The matter between the parties had been contested earlier before the competent forum and stood decided up to the level of the High Court. Thus, it is my view that the case law relied upon by the learned counsel for the petitioners is not applicable to the instant case.

7. In essence the case of the petitioners is that the plaint should have been rejected by the learned Civil Court due to the non-observance of certain requirements contained in Order VII, Rule 1 CPC. Now Rules 1 to 8 of Order VII CPC deal specifically with the contents of the plaint which have to be complied with for the purpose of institution of a suit. Order VII, Rule 1 CPC provides for particulars which have to be contained in the plaint. Order VII, Rule 1 CPC, is extracted below:-

"1. Particulars to be contained in plaint.-- The plaint shall contain the following particulars:-

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of the claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits." (underlining is mine)

8. I am of the view that the said clauses being procedural in nature would not cause the rejection of the plaint if they are not complied with unless the party despite having been given an opportunity by the Court to rectify the deficiency fails to do so or no triable issue is made out in the plaint. The provisions contained in Order VII, Rule 1 CPC, are directory and not mandatory in nature. Omission to comply with any of the said provisions would not render a suit invalid but that an opportunity was required to be given by the Court to the plaintiff to cure the defect by supplying the omission. Failure to comply with Order VII, Rule 1 CPC would not render the suit non-est. The deficiencies in the plaint pointed out by the learned counsel for the petitioners were mere procedural errors which were capable

of being cured. Hence, if the suit suffers from any of the defects listed in Order VII, Rule 1 CPC, the Court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done, the Court will have the liberty or the right to reject the plaint.

9. Rules of procedure are held to be handmaids of justice and while the language employed by the draftsman of procedural law may be liberal or stringent, the fact remains that the object of prescribing procedure is to advance the cause of justice. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations to meet the ends of justice. It has been repeatedly expressed by the Superior Courts that in various decisions that rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. In the case of Javaid Iqbal Vs. Abdul Aziz, reported as PLD 2006 SC 66, it has been held at Paragraph 10 of the said judgment as follows:-

"10. The Code of Civil Procedure 1908 (hereinafter referred to as the Code) was enacted to regulate the proceedings before the civil Courts. Provisions contained in the Code are mainly rules of procedure. It is well-settled that all procedural laws are subservient to the cause of justice and, therefore, such laws neither limit nor control the power of the Court to pass an order or decree, which is necessary to do complete justice in the facts and circumstances of the case. Construction of procedural law in a manner, which tends to obstruct the

course of justice, must be avoided as far as possible. The authors of the Code were fully conscious of the underlying object of procedural law and, in all probability in order to remove and dispel all doubts in this regard, categorically provided in section 151 of the Code that "nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court."

10. The suit filed by the respondent is fairly detailed and contains particulars as to the breach of contract alleged to have been committed by the petitioners. Thus, it is clear that the respondent, in his suit, disclosed the facts constituting the cause of action to institute the suit against the petitioners. The mere fact that the respondent failed to incorporate a separate clause in his plaint under the title of "cause of action" was not sufficient to reject the plaint. In the case of Gulistan Textile Mills Limited Vs. Askari Bank Limited, reported as PLD 2013 Lahore 716, it has been held that elements of a cause of action were: first, the breach of duty owing by one person to another; second the damage resulting to the other from the breach. "Cause of action" has been held from the earliest time to include every fact, which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse.

11. Furthermore, the suit, with reasonable detail, quantifies the damages, which the respondent claims to have suffered on account of the alleged breach. The fact that the respondents have their residence in

Islamabad is also clearly seen in the title of the suit. As the suit was at its initial stages, I don't see any prejudice being caused to the petitioners by the impugned order. It cannot be said that the suit was meaningless or bound to prove abortive or should not be permitted to occupy the time of the court.

12. It is settled law that where valuation has been omitted from the suit, it may be permitted to be inserted by an amendment. This is exactly what the learned Civil Court has done. The petitioners will have a full chance to condescend to the particulars contained in the amended plaint by filing an amended written statement. In the case of Abdul Qadir Vs. Sher Muhammad, reported as 2010 MLD 1596, in the plaint, the suit had not been valued for the purpose of fixation of court fee and assessment of jurisdiction, which was required to be made under O. VII, R.1 (i), CPC. It was held by the Hon'ble Balochistan High Court that no suit could be rejected in case suit was under-valued or insufficiently stamped, until and unless opportunity was given to make good the deficiency to the plaintiff. It was further held that in case the plaintiff fails to make good the deficiency in the time fixed by the court, the plaint would be rejected. In the case of Zakya Begum Vs. Mir Janat Shah, reported as 2012 YLR 1515, an attorney was verbally authorized to file suit and later on that authority was re-affirmed by executing power of attorney in his favour, on the basis of which amended plaint was filed later on by the same attorney. It was held by the Hon'ble

Peshawar High Court that if there was any irregularity, that was rectified by principal later on. In the case of Abdul Waheed Vs. Ramzanu, reported as 2006 SCMR 489, during the pendency of a suit before the trial Court, the plaintiffs filed an application for amendment of the plaint and the defendants filed an application for the rejection of the plaint for having no cause of action. The trial Court dismissed the application filed by defendants and allowed the plaintiffs to amend the plaint. The appellate Court set aside the order passed by trial Court and rejected the plaint. This order was maintained by the Hon'ble Peshawar High Court. It was held by the Hon'ble Supreme Court of Pakistan that where a cause of action was disclosed in the plaint, the plaintiff had a right to have a fair trial of his case, to produce evidence and to have a judicial opinion of a Court on merits of his cause. The plaint could only be rejected when the averments made therein, if accepted, did not entitle plaintiff to a relief or if there was no room for any other possible approach to the case and no triable issue was made out. It was, further, held that the trial Court was justified to dismiss the defendants' application under Order VII, Rule 11 CPC whereas the appellate Court and High Court erred in law to reverse the same. The Hon'ble Supreme Court of Pakistan set aside the orders passed by appellate Court and the Hon'ble High Court and restored that of the trial Court.



13. Furthermore, in the case of Javaid Iqbal Vs. Abdul Aziz, reported as PLD 2006 SC 66, a plaintiff had instituted a suit for declaration seeking ownership of an immovable property on the basis of an agreement to sell. The suit and the appeal were dismissed by the trial court and the appellate court on the ground that the agreement to sell did not create any right, title or interest in the immovable property. The Hon'ble Lahore High Court in exercise of revisional jurisdiction set aside the concurrent judgments of the courts below and remanded the case to the trial court with a direction to the trial court to treat the suit of the plaintiff as one for specific performance of the agreement to sell and also allow the necessary amendments to be made in the plaint. The judgment of the Hon'ble High Court was upheld by the Hon'ble Supreme Court of Pakistan.

14. When the plaint and the written statement are seen in juxtaposition, it is quite apparent that the assertions made by the respondent have been controverted and denied by the petitioners. The learned Civil Court was correct in holding that substantially mixed questions of law and facts are involved in the matter, the resolution whereof requires the recording of evidence to be adduced by the parties during the trial.

15. It is to be appreciated that the learned Civil Court has not condoned the omissions to comply with the requirements of Order VII, Rule, 1 CPC relating to filing of plaints

but has required rectification from the respondent by filing an amended plaint, in an endeavor to eliminate a procedural delay in the disposal of a civil matter. As I do not see any jurisdictional error or infirmity in the impugned order dated 28.01.2016, the revision petition is dismissed in limine with no order as to costs.

**(MAINGUL HASSAN AURANGZEB)  
JUDGE**

**APPROVED FOR REPORTING**

**Qamar Khan\***

**(JUDGE )**