ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.480/2019

Malik Jahangir Ahmed
Versus
Ahmed Naveed Naimat

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.12.2019	**Ms. Safina Sarfaraz, Advocate for the petitioner**

Through the instant civil revision petition, the petitioner, Malik Jehangir Ahmed, assails order dated 29.10.2019 passed by learned Civil Judge 1st Class, Islamabad (West) whereby the learned Civil Court dismissed his application under Order VII, Rule 11 C.P.C.

2.   The facts essential for disposal of this petition are that the respondent/plaintiff instituted a suit for "declaration, cancellation of documents (oral agreement, cheque No. CD-36175602 and affidavit dated 14.03.2018), temporary and permanent injunction" against the petitioner/defendant. On 22.05.2019, the petitioner filed a written statement and moved an application under Order VII, Rule 11 C.P.C., which was contested by the respondent through reply dated 12.09.2019. The learned trial Court, after hearing the parties, dismissed the said application vide order dated 29.10.2019. The petitioner has assailed the said order in the instant petition.

3.   Learned counsel for the petitioner submits that subject matter of the suit is cheque No.CD-36175602, which was issued against an admitted liability in furtherance of partnership business; that the said cheque was dishonored on presentation due to insufficiency of funds; that on the complaint of the petitioner, F.I.R.No.155/19 under Section

489-F P.P.C. has been registered against the respondent; that the suit for cancellation of the said cheque has been instituted maliciously in order to influence the investigation in the criminal case; that with the filing of the F.I.R. the suit for cancellation of document has become infructuous; that the respondent sought cancellation of an oral agreement which is not permissible under Section 39 of the Specific Relief Act, 1877 ("the Act 1877"); that since there is no written agreement therefore Section 39 of the Act 1877 does not apply; and that the cheque has already been dishonoured and F.I.R. has been lodged.

4.   Learned counsel further submitted that the suit of the respondent is not competent as it does not disclose a cause of action; that suit for cancellation of a dishonored cheque is not maintainable due to the ongoing criminal proceedings; that after lapse of six months the cheque stood expired therefore its cancellation was not justified; that F.I.R. being a public document registration of criminal case is not required to be proved through evidence; and that the order passed by the learned trial Court is not a speaking order which caused grave miscarriage of justice. Learned counsel prayed for the petition to be allowed and for the impugned order dated 29.10.2019 to be set-aside and for the plaint to be rejected.

5.   I have heard the contentions of the learned counsel for the petitioner and have perused the record with her able assistance.

6.   The facts leading to the filling of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

7.   I have gone through the petitioner's

application under Order VII, Rule 11 C.P.C. In the said application, the petitioner's position is that the suit is not maintainable since the subject matter of the suit (i.e. cheque No.CD-36175602) and issuance of the said cheque was in the knowledge of the respondent and criminal proceedings are in progress regarding the same. Now it is trite law that the civil and criminal proceedings can continue side by side as they both relate to different laws and can be instituted simultaneously.

8.   There is no legal bar on the institution of a civil suit for cancellation of a document which is also the subject matter of criminal proceedings because not only the object of proceedings is different but also the standard and onus of proof is different in the civil and criminal proceedings. In holding so, I derive guidance from the law laid down in the case of <u>Seema Fareed Vs. State (2008 SCMR 839)</u> wherein the Hon'ble Supreme Court observed as follows:-

> "*It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction*"

9.   As regards the petitioner's contention that under Section 39 of the Act 1877, only cancellation of a written instrument is permissible while the respondent, in his suit, sought cancellation of an oral agreement, suffice it to say that competence of the suit is to be determined by seeing the entire

suit as the respondent has also sought declaration besides the cancellation of several documents, including the oral agreement.

10.   In paragraph 12 of the suit, it was pleaded that the cheque in question was obtained from the respondent through coercion by the police officials while he was in custody. The respondent is to be given an opportunity to prove this by adducing evidence. This is an added reason why the plaint could not be rejected. Furthermore, the question as to whether or not any serious injury was caused to the respondent, within the meaning of Section 39 of the Act 1877, requires factual inquiry and the learned trial Court could not decide the same on the application for rejection of plaint.

11.   In view of the above, the instant petition is dismissed *in limine* with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*