

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. C.R. 106 - 2011

Syed Kamran Hussain

Titled

Vs

P.T.C.L and another.

- (a) Judgment approved for reporting ☒ Yes / ☐ No
- (b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made. Yes / ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

[Signature]
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No.106/2011

Syed Kamran Hussain

versus.

P.T.C.L and another.

Date of hearing : 22.5.2012

Petitioner by : Sheikh Khizer ur Rasheed, Advocate.

Respondents by : Mr.Khurram Shahzad Chugtai, Advocate (for respondent No.1) Mr.Nazeer Abbasi Standing Counsel, Iftikhar Ahmed (Allottee) and Qaiser Mehmood, Joint Estate Officer.

NOOR-UL-HAQ N. QURESHI J.- The judgment and decree passed by learned Civil Judge Islamabad dated 04.4.2011 and judgment passed by learned Additional District Judge Islamabad dated 18.12.2011 have been impugned. The trial court has rejected the plaint under Order VII Rule 11 CPC and learned Appellate Court maintained the same, therefore, the instant writ petition is preferred assailing both the judgments.

2. The petitioner being employee of PTC prior to 01.1.1996 thus his right is protected by the judgments of Hon'ble Supreme Court of Pakistan.

3. The petitioner was allowed quarter No.16-C old No.3 vide allotment letter dated 08.10.2008, wherein he is residing along with his family. The rent of said quarter is regularly being deducted

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from his salary which is paid by department to the department. The residences in the pool of PTC were allotted to the respective employees who are now enjoying the possession under valid allotments. After the promulgation of Pakistan Telecommunication (re-organization) 1996 the Estate department has raised a question regarding allotments of employees including the petitioner who was served with a notice of vacation.

4. Originally the Estate Department put the residences in to the pool for defunct PTC now PTCL and instantly the due amount is being paid with regard to the rent of quarters on their demand.

5. The petitioner on receipt of notice filed a suit before the learned trial court seeking declaration, permanent and mandatory injunction which was agitated by respondents by filing preliminary objections. Since an application for injunction was also pending for hearing with the suit and learned trial court upon hearing such application rejected the plaint of petitioner under Order VII Rule 11 CPC.

6. Appeal preferred against the said judgment but same too was dismissed with similar observations relying upon the material placed before the trial court by respondents/defendants. The learned counsel for petitioner at the very outset argued that besides the case of petitioner on sound footings case mainly on the very technical grounds. Therefore, parties confined their arguments firstly upon the legality with regard to the judgment passed by learned trial court while entertaining application under Order 39 Rule 1, 2 CPC rejected the plaint of petitioner on the documents submitted in support of written statement.

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7. Learned counsel for the petitioner argued that it is well settled principle of law that plaint can not be rejected by the court trying the suit while entertaining defenses disclosed in the written statement which is contrary to the scheme of law as envisaged by Order VII Rule 11 CPC itself. He thus relied upon the following case law in support of his contentions :-

1987 MLD 511 Karachi, 2010 YLR 1725 Karachi,
1995 MLD 332 Karachi, 2003 PLC (C.S.) 56 Karachi,
2008 YLR 1405 Lahore, 2005 CLC 1740 Lahore

8. Learned counsel appearing for respondents have mainly contended that the status of petitioner earlier being entitled for allotment now after promulgation of re-organization Act 1996, none of employee of PTCL is entitled to retain the accommodation. He argued that accommodation Rules provide the eligibility of entitlement which now the petitioner and other employees have lost such their eligibility as such the allotments earlier kept in pool which as a procedure prescribed were used to allot to the employees of PTC itself. But now such allotments have no legal sanctity. As such the employees of PTCL can not retain such premises allotted to them earlier. He argued that the rights of petitioner and other employees are protected by the judgment of Hon'ble Supreme court only to the extent of their service benefits but not to the extent of eligibility for allotment of premises which can only be allotted to the government servants on eligibility.

9. Learned counsel for the respondents argued that now the petitioner on opting, such their service for PTCL can not claim the entitlement or eligibility as government servant for retaining the

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possession of premises/quarters/flats allotted to them earlier as arrangements internally decided between two departments.

10. He argued that the amount so demanded from PTCL in respect of rent of premises payable towards the department which is being deducted by them from their salaries is otherwise legally to be deposited with Estate office and such demand is not beyond to any proviso of law. He argued that such admission can not entitle the petitioner and other employees as their legal right to continue their possession under the garb of such payment.

11. I have heard the arguments at length as well as perused the record, carefully gone through the orders passed by both the courts below and authorities submitted for learned counsel for petitioner.

12. So for the concern of technical issue raised whereby the scope of Order VII Rule 11 CPC is to be seen. Order VII Rule 11 CPC provides that the plaint shall be rejected in the following cases:-

- a) When plaint does not disclose cause of action.
- b) The under valued claim is not corrected within a period stipulated by the court.
- c) The insufficient stamp with regard to the relief claimed, required by the court is not submitted within due time specified by the court.
- d) The statement with regard to the claim of suit in the plaint is barred by law.

 13. From the perusal of above scheme of law 'a' & 'd' referred above are required to be considered related the subject issue but rest two 'b' and 'c' are irrelevant.

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14. So for the concern of cause of action if not disclosed, such an issue is not involved in the case nor same has been taken into consideration by the trial court while rejecting the plaint under Order VII Rule 11 CPC.

15. While referring the judgment passed by trial court it appears that learned trial court has mostly relied upon the documents annexed with the written statement and technical aspect has not been elaborately discussed. The judgment passed by trial court rejecting the plaint under Order VII Rule 11 CPC while hearing the application under Order 39 Rule 1, 2 CPC is also not supported by law.

16. There should have been consideration for the trial court either it should have been brought to the notice by filing an application under Order VII Rule 11 CPC or the court itself should have considered such legal aspect defining the last category the statement in plaint relief claim there too if barred by law.

17. There may be such aspect grossly involved the relief claimed and statement in the plaint is barred by law but such an aspect has not been taken into consideration by trial court. Therefore, I being fortified with the authorities referred elaborated herein below formed my opinion as such:-

2008 YLR 1405 Lahore

Trial Court whereby temporary injunction was granted, but also rejected plaint of plaintiff under O.VII, R.11 CPC---Validity--- Scope of appeal before Appellate court was restricted in the present case---Lis at the relevant time being pending before the Trial Court, Appellate Court could not have rejected the plaint of the plaintiff

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at such stage as it was only to decide the appeal to the extent of grant of temporary injunction----Appellate Court was not competent to reject the plaint while hearing the appeal against grant of temporary injunction by the Trial court---Impugned order was set aside and case was remanded to Appellate court to decide same in accordance with law.

1995 MLD 332 Karachi

---S.15---Civil Procedure Code (V of 1908), O.XXXIX, Rr.1,2 & O.VII, R.II--- Ejectment of tenant---Tenant after ejectment order, handing over possession not to landlord but to a person who also claimed ownership of the premises in question---Person in subsequent possession, thereafter, filing suit for adjudication of title and also applying for grant of interlocutory order to protect his possession---Trial Court did not grant interlocutory order which was, however, granted by Appellate court---Order of Appellate court was challenged in revision---Plaint in suit (relating to which interlocutory order had been granted) was rejected by Trial Court during pendency of revision against issuance of interlocutory order---Effect---Held, in the event of further continuation of proceeding in suit in question, maximum order that could be passed in plaintiff's favour before final determination of suit, would be an order requiring defendants to maintain status quo, as to possession, in the event they failed, to be dealt with

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according to the final disposal of plaintiff's suit for proceedings emanating therefrom---Any relief beyond that to plaintiff at interlocutory stage of proceedings would be unjust and even unlawful.

1987 MLD 511 Karachi.

---S.115, O.VII, R.11 & O.XXXIX, Rr.1 & 2—Specific Relief Act (I of 1877), Ss.42 & 54---Suit for declaration and permanent injunction—Rejection of plaint under O.VOO, R.11 can only be made by Court on basis of averments in the plaint—First Appellate Court while rejecting plaint of applicant relying on defence taken by defendants in written statement filed in suit---Such action of First Appellate court was clearly in excess of jurisdiction—Observation made by Court in judgment amounting to prejudging of whole suit was equally uncalled for as while hearing injunction application, Court should refrain from expressing any opinion with regard to merits of case which might ultimately prejudice the trial—Revision applications accepted, impugned order set aside and case remanded back to First Appellate Court.

2005 CLC 1740 Lahore.

Rejection of plaint while deciding application for interim injunction---Considering material other than the plaint--- Trial Court, while deciding application for interim injunction, took into consideration the material other than the plaint and rejected the plaint under O.VII, R.11

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CPC---Order passed by Trial Court was maintained by appellate Court---Validity---neither the plaint could be rejected while deciding application for temporary injunction nor Trial Court, while rejecting plaint, could take into consideration the material other than the contents of plaint or the material produced by plaintiff--- Facts stated in the order of Trial Court related to ingredients required to be proved by plaintiff for obtaining temporary injunction---Trial Court did not mention about the contents of plaint or the material attached to it---Appellate Court decided the mater while taking into consideration either extraneous material or facts which could only be proved after recording of evidence---Judgments and decrees of both the Courts below were not only violative of the provisions of law as contained in O.VII, R.11 CPC but were also in disregard of the law declared by Supreme court---High Court noted with concern that a general tendency has developed in Trial Courts and even in Lower appellate Courts confirming the orders of Trial Court to reject plaint while deciding application for temporary injunction in derogation of express provision of O.VII, R.11 CPC--- High Court directed that such tendency needed to be curbed by taking a serious view of the mater in order to save public from indulging into litigation by way of filing appeals and revisions up to High courts due to unlawful orders of subordinate Courts and also to ensure safe



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administration of justice and law through competent judicial officers---Orders passed by both the courts below were set aside and the case was remanded to Trial court for passing a separate fresh order on the application filed by plaintiff for temporary injunction--- Revision was allowed accordingly.

2003 PLC (C.S)56 Karachi.

Trial Court dismissed suit under O.VII, R.11 CCP as being barred by Art.212 of the constitution--- Plaintiff could not claim a vested right to be promoted, thus, he might not be entitled to a declaration as regards his legal character or right to property under S.42 of Specific Relief Act, 1877---Plaintiff under S.54 of Specific Relief Act, 1877 could always apply for a perpetual injunction to prevent breach of an obligation existing in his favour---If plaintiff was not entitled to any declaratory relief, an injunction could always be granted to prevent breach of an obligation on the part of respondents---Main fact that plaintiff had not asked for an injunction as independent relief, but had only sought the same byway of consequential relief to declaration prayed for would be of little consequence---Present controversy was outside the purview of jurisdiction of Service Tribunal---Malafide order or an order in defiance of the obligations of respondents could always be questioned through a civil suit for injunction---High

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Court accepted appeal remanded case for its decisions in accordance with law.

18. From the above discussion and close scrutiny of the record, it transpires that learned trial court while deciding the application under Order 39 Rule 1,2 CPC rejected the plaint which is not in accordance with law as discussed by Hon'ble Superior Courts.

19. Learned appellate court too ignored such legal aspect while deciding appeal wherein such crucial legal aspects have been pleaded by petitioner did not considered properly. Learned appellate court has also on the same patren relied upon the documents submitted by defendant with written statement, dismissed the appeal.

20. Therefore, I feel that the scheme of law strongly supports the version of petitioner on technical and legal aspects. The judgment passed by both the courts below are therefore, set aside, case is remanded back to the trial court for its afresh scrutiny.

21. These findings referred above do not preclude the trial court to entertain such plea again on making an application by defendants or otherwise considering such legal aspect referred above. With these observations instant civil revision is allowed and disposed off accordingly.

(NOOR-UL-HAQ N. QURESHI)

JUDGE

Announced in open Court on 30-05-2012

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Approved for reposit

JUDGE