IN THE COURT OF VII ADDITIONAL DISTRICT JUDGE
(MODEL CIVIL APPELLATE COURT)
SOUTH AT KARACHI

Civil Revision No. 128 of 2024

Trellis Housing Finance Limited..... Applicant
Versus
Muhammad Alif Hussain..... Respondent

Advocates on record:-
Mr. Awais Z.Sarki, Waqar Ali Baloch, Miss Farah Khan & Miss Rabia Sajjad, Advocates for applicant
Mr. [redacted] Amjad Ali, [redacted]
Advocates for Respondent

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ORDER

This 28th Day of February 2025.

By this order, intend to dispose-off civil revision as preferred by the counsel for applicant against the order dated 28-08-2024 passed in Civil Suit No. 160 of 2024 whereby learned Trial Court was please to dismiss an application preferred by the applicant under the provisions of Order VII Rule 11 CPC and being aggrieved thereto, the applicant has preferred the present civil revision. The revision been entrusted to this Court for disposal in accordance with the law virtue the Order of Honorable District Judge. South at Karachi. At receipt of appeal, notice was extended to otherside who accordingly made appearance and offered contestation.

- 2. **The facts giving rise to present day of order** are that the respondent filed Civil Suit, being a suit for Declaration, recovery of damages on breach of contract & permanent Injunction as against the applicant as defendant. The case was admitted and was being proceeded wherein the applicant side preferred application for rejection of plaint in terms of Order VII Rule 11 CPC which application after notice to otherside was dismissed by the trial court prompting the applicant to file present revision.

- 3. **The learned counsel for the applicant has argued** in terms of the grounds as mentioned within present revision application which do not require to be recanvassed for the sake brevity however in a gist it is the contention that impugned order requires interference of this Court as the impugned order is not sustainable under the eyes of law as suit of the respondent preferred before trial court was not maintainable under the law as neither any compulsion or written acknowledgement for buying back the shares is on record nor any promise been broken or to say term been breached to give rise to claim of the respondent and despite such elements on record, the trial court paid no adherence to same otherwise the prayer itself was barred by law as such element related to fulfilment of certain conditions in line with procedure provided under the Companies Act 2017 and SECP Regulation 2023 and thus no cause was available with the respondent in terms of approaching the civil court thus impugned order violates the fundamental principle of article 10-A of the Constitution and such aspect has been overlooked by the trial court. it is argued that no obligation exists against the applicant for buying back the shares of the respondent and no any document is on record to show the same being obligation of the applicant. It is the contention that impugned order does not manifest as legally susceptible order being result of erroneous conclusion drawn total in disregard to contentions as were advanced

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and as against the principles of law. It is argued that frivolous litigation is to be nipped in the bud at earliest and trial court instead has passed an order which requires interference of this Court and he prayed that revision be admitted and notices be extended.

4. **The Counsel for the respondent side has argued that** impugned order does not call for interference, having been passed in due accordance with the law. It is argued that dispute between parties requires factual controversy and the same cannot be resolves thus without recording of evidence. It is argued that contentions between parties required to be observed and decided after recording evidence being factual in nature. and prayed that revision thus not maintainable is liable to be dismissed.

5. **Having regards the arguments and perusal of material as on record**, before adverting further, would like to highlight that the Jurisdiction on District Court is conferred in terms of Section 115(2) CPC, in respect of ***"case decided"*** by Court subordinate to such District Court in which no appeal lies subject to its appellate pecuniary jurisdiction. It is observed that impugned Order was passed on application for rejection of plaint under Order VII Rule 11 CPC thus the same does qualify as case decided thus amenable to Revisional jurisdiction. Further, the provisions of Order VII Rule 11 CPC are only available when the contents of Plaint are admitted as true and it is then that the case is hit with any of the provision thereto, then only the plaint is liable to be rejected. So also the plaint is not ipso facto liable to be dismissed but only where it appears to be barred. Now in present case, the respondent preferred a suit for declaration, recovery of damages on breach of contract & Permanent Injunction as filed by plaintiff against the defendant and there are documents which are available as been appended with plaint in terms of Order VII Rule 14 CPC. The respondent-plaintiff claim that he was employed with applicant and under its policy ESOP, certain amount was deducted from salary of the respondent each month and in exchange was given equity being reflected as common shares which were to be bought back and that subsequently he was resigned/terminated which led the respondent in filing the suit as against the applicant. The applicant made appearance and offered contestation whereby he filed application for rejection of plaint as well as the written statement. The applicant denied contentions of the respondent side as within plaint and rendered to have no obligation to buy back such share and while refuting the contentions prayed for dismissal. The application under Order VII Rule 11 CPC was dismissed which as stated resulted in present revision application. The employement of the respondent with the applicant side is admitted element on record. The giving of shares is also admitted element on record and not disputed. The contention that any reciprocal promise been broken or the obligation to buy back the share exists or not are factual elements which cannot be decided in slipshod manner. The respondent side has referred to certain document on basis of which are trying to establish a claim. The contention of the applicant side qua claim being barred in terms of section 88 of the Companies Act 2017 or barred under regulation are elements which requires recording of evidence for drawing the conclusion to such element. Otherwise,in my humble opinion the contentions of the applicant side can be met by formulating issues in such regard as in present case actual factual controversies exists which thus cannot be adjudicated without recording evidence. The fact & circumstances, the contentions as advanced by respondent-plaintiff within plaint or advanced by applicant-defendant can only be resolved & validly adjudicated after recording of evidence and allegations seem triable in presence of documents/facts interpretation of which is required in the lights of evidence which would be produced and plaint in such circumstances cannot be rejected even if

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plaintiff may not have ultimate success, reference placed on 1982 CLC 269, 2000 MLD 1537, 1982 CLC 1570. It has been held by Honorable Apex Courts time and again that the cases of the parties should be decided on merits. Rules and procedures are framed to foster the cause of justice and should sparingly come into the way for dispensation of the same on merits. In Case of S.D.O./A.M., Hasht Nagri Sub-Division, PESCO, Peshawar and others v. Khawazan Zad **(PLD 2023 Supreme Court 174),** it was held by the Apex Court that: **"The courts, thus, always lean in favour of adjudicating the matters on merits rather than stifling the proceedings on procedural formalities. The rules of procedure are meant to facilitate the court proceedings for enforcing the rights of litigants, not to trap them in procedural technicalities for frustrating their rights. They are the tools to advance the cause of justice and cannot be used to cause the miscarriage of justice. The ultimate object of securing the ends of justice, therefore, outweighs the insistence on strict adherence to such rules".** As stated that the provisions of Order VII Rule 11 CPC are only available when the contents of Plaint are admitted as true and it is then that the case is hit with any of the provision thereto, then only the plaint is liable to be rejected but in present case, this factual controversy cannot be adjudicated without recording evidence as discussed supra. The trial court considered all aspects and then decided the application on its available merits thus no apparent illegality of irregularity has been exercised by court below. The contentions of the applicant side can be considered by regulating issues thereto. Further, the Revisional jurisdiction as envisaged in section 115 CPC is directed against the irregular exercise or non-exercise or illegal assumption of jurisdiction and not against the conclusion of law or fact not involving question of jurisdiction however, erroneous that may be, thus a Court while hearing revision has to justify itself upon three matters viz, that order of Trial Court was within its Jurisdiction; that the case was in which Court ought to had exercised its jurisdiction and that in exercising such jurisdiction the Court has not acted illegally. Therefore, merely showing therefore that an order passed is in violation of some provisions of law or procedure, the conclusion that order is nullity would not follow. Rather in order to take benefit of section 115 (c) of CPC, it should further be shown that there was such a violation of some statutory provision or principle of natural justice as would render the proceedings *coram-non-judice*. **I am fortified in drawing the above conclusion from reading of case laws reported PLD 1964 SC 97, 2004 CLC 231, 1995 MLD 985, 1994 SCMR 818.**

6. For the above reasons, Impugned Order does not call for interference, resultantly the in-hand Revision application being bereft of force, is hereby dismissed with parties left to bear own costs. Misc. application if any, stand dismissed as infructuous for having served the cause. The revision application stand disposed-off accordingly.

Pronounced.
Given Under My Hand & Seal of the Court.
This 28th Day of February 2025.

28/2/25

VII Additional District & Sessions Judge
(Model Civil Appellate Court)
South at Karachi.

Date of Application ... 04-03-25
Fees Estimated on ... 04-03-25
Fees Deposited on ... 04-03-25
Copy Ready on ... 05-03-25
Stamp Supplied on ... 05-03-25
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Section Officer
Court of VII Additional District & Sessions Judge
Karachi-South