

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.49-K of 2022

Appeal against the judgment dated 22.11.2021, passed by the High Court of Sindh, Circuit Court Hyderabad in IInd Appeal No.70/2021

Mst. Rehmat BegumPetitioner

Versus

Mehfooz Ahmed and others ...Respondents

For the Petitioner: Mr. Muhammad Arshad S.Pathan, ASC

For the Respondents: N.R.

Date of Hearing: 09.08.2024

Judgment

Muhammad Ali Mazhar-J: This Civil Petition for leave to appeal is directed against the judgment dated 22.11.2021 passed by the learned High Court of Sindh, Circuit Court, Hyderabad, in IInd Appeal No.70/2021, by dint of which the order dated 29.10.2020, passed by VIII Senior Civil Judge, Hyderabad, rejecting the plaint in F.C Suit No.523 of 2020 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC"), and the order affirmed by the judgment and decree dated 06.08.2021 passed by the learned IXth Additional District Judge/MCAC-I, Hyderabad, in Civil Appeal No.142 of 2020 were set aside and the matter was remitted to the Trial Court to be decide on merits.

2. According to the facts narrated in the memo of civil petition, the respondent No.1 filed the civil suit for specific performance of contract, recovery, and permanent injunction against the petitioner. A registered Partnership Deed was executed on 15.04.2013 between Abdul Qayoom and Mrs. Zareen Imtiaz for running the business of assembling-cum-manufacturing of Motorcycles, Rickshaws, Tricycles, Import, Export, and trading other commodities in the name and style of Haji Motors, SITE Hyderabad. The aforesaid partners, by mutual consent, retired

from the partnership firm and such deed of retirement, dated 15.09.2015, was executed and registered before the Registrar of Firms. Thereafter, the petitioner and respondent No.1 mutually agreed to run abovementioned business and executed another Partnership Deed on 16.09.2015 before the Registrar of Firms, whereby the respondent No.1 was appointed as the managing partner and was fully authorized to look after, manage, supervise, administer, and control all of the affairs of the partnership business. However, after some time, the petitioner agreed to sell her 50% share in the partnership to the respondent No.1 and entered into an agreement dated 23.09.2019 against the total sale consideration of Rs.5,00,00,000/- (Rupees five crores). The respondent No.1 asserted in the suit that he already paid Rs.2,50,00,000/- (Rupees two crores and fifty lakhs), and the remaining amount was to be paid on 20.12.2019 in compliance of the sale agreement for which he arranged different pay orders, but the petitioner requested him to delay the sale transaction on account of her husband's illness, who eventually died on 17.01.2020. Since the petitioner failed to perform her part of the contract, hence the respondent No.1 filed the civil suit. The petitioner/defendant filed the written statement along with an application under Order VII Rule 11, CPC. The Trial Court rejected the plaint, and this order was also affirmed by the Appellate Court. However, the Second Appeal was allowed by the High Court and the matter was remanded with directions given to the Trial Court to decide the suit on merits.

3. The learned counsel for the petitioner argued that the learned High Court failed to consider that the Civil Court had no jurisdiction to decide the dispute with regard to the transfer of share or the sale/purchase of share in view of Section 5 of the Companies Act, 2017 ("Act"). He further averred that the learned Trial Court rightly rejected the plaint in the suit filed for specific performance of contract and injunction. It was further contended that the learned High Court wrongly held that the suit did not fall under the Act. It was further avowed that the High Court failed to decide the jurisdictional issue of whether the suit for specific performance of agreement for selling share and execution of deed through *Nazir* was maintainable. In fact, without properly advertent to the order of the Civil Court and the Appellate Court, the High Court allowed the second appeal and remanded the matter through the impugned judgment which is against both law and facts and is liable to be set aside.

4. Heard the arguments. This is a well-known elucidation of law that the plaint cannot be rejected in piecemeal under Order VII Rule 11, CPC. Even if one prayer contained in the plaint is found to be maintainable in the relevant facts and circumstances of this case, the plaint cannot be rejected in part. What is essentially required is that the plaintiff must demonstrate that not only a right has been infringed in a manner that entitles him to a relief but also that when he approached the Court, the right to seek that relief was in subsistence. Nothing more than the averments of the plaint have to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action. However, the dearth of proof or weakness of proof in the circumstances of the case did not furnish any justification for coming to the conclusion that there was no cause of action disclosed in the plaint, because for the rejection of plaint under Order VII Rule 11, CPC, the Court cannot take into consideration pleas raised by the defendants in the suit, as at that stage, the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record. However, if there is some material apart from the plaint which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court while deciding an application under Order VII Rule 11, CPC. Moreover, the Court may, in exceptional cases, consider the legal objections in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for the rejection of plaint. The Court has to presume the facts stated in the plaint as correct for the determination of such application. In case of any mixed questions of law and facts, the right methodology and approach is to allow the suit proceed to the written statement and discovery phases and to determine the matter either by framing preliminary issues or through a regular trial. This rule does not justify the rejection of any particular portion of the plaint or a piecemeal rejection, as the concept of partial rejection is seemingly incongruous to the provisions of Order VII Rule 11, CPC. However, it should be kept in mind that astute drafting for creating illusions of cause of action are not permitted in law, and a clear right to sue ought to be shown in the plaint. Where there is a joinder of multiple causes of action, and at least on some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted to reject the plaint. Similarly, if there are several parties and the plaint discloses a cause of action against one or more of them then, too, the plaint cannot be rejected, as what is required in law is

not the reading of the plaint in fragments but reading it as a whole. The Court is under an obligation to give a meaningful reading to the plaint and if it is manifestly vexatious or meritless, in the sense that it does not disclose a clear right to sue, the court may reject the plaint, but before rejecting, it must determine whether litigation of such a case will be absolutely vexatious and an abuse of the process of the court.

5. Undoubtedly, the plaint can be rejected under Order VII Rule 11, CPC, at any stage of the proceedings to culminate the civil action, on the philosophy that incompetent lawsuits should be buried to their inception in order to save the precious time of the Court which may be consumed and dedicated in serious and genuine litigation, but at the same time, this underlying principle does not give license to invoke the same in every lawsuit just to prolong or drag the proceedings with *mala fide* intention or ulterior motives. On the contrary, such application must articulate, distinctly, how and in which condition, as enumerated under Order VII Rule 11, CPC, is the plaint liable to be rejected, rather than filing it with sweeping or trivial allegations to waste the valuable time of the Court. In the present case, the application was filed by the petitioner in the Trial Court on the grounds that (1) the suit is not maintainable under law; (2) the suit is barred under Companies Ordinance, 1984, and the Act; (3) the jurisdiction of the Court is lacking one under the Act and that the Court could not entertain the suit; (4) the suit is not maintainable under law even if the jurisdiction is assumed, and; (5) the suit is barred under the Specific Relief Act, 1877, and other provisions of laws and no effective decree could be passed in a case where jurisdiction does not lie.

6. The pith and substance of the agreement which sought to be enforced depicts that it was a straightforward agreement between the petitioner and respondent No.1, and according to the covenants the petitioner agreed that after receiving the total sale consideration from respondent No.1, she will hand over and transfer her share which included her share in the assets of the firm such as machinery, tools, equipment, furniture and fixtures, and all manufactured and unmanufactured vehicles and unassembled parts of vehicles, and she also agreed to execute the sale deed after which the respondent No.1 will become the full owner of the business carried out in the name and style of "Haji Motors".

7. Whereas in the suit for specific performance of contract, recovery of amount, and permanent injunction, the respondent No.1 prayed to the Court (a) to pass a decree of specific performance of contract in favour of the plaintiff against defendant No.1, directing her to receive balance consideration and transfer and execute the sale deed in respect of her 50% share in the firm and get it registered before defendant No.3 in favour of the plaintiff; (b) in case of failure by defendant No.1, the *Nazir* of the Court may be directed to execute the sale deed and get it registered in favour of the plaintiff on behalf of defendant No.1 in respect of her 50% share in the firm; (c) to pass the decree in favour of the plaintiff against defendant No.1 and direct her to pay difference amount of Rs.12,869,654/- to the plaintiff; (d) that the decree for permanent injunction be issued against the defendants restraining them from alienating, transferring, gifting, exchanging, mortgaging, or creating a third party interest in respect of the firm.

8. In order to bring in reformation relating to company law, the Act was promulgated with the objectives of facilitating corporatization and promoting development of corporate sector, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and the general public, and safeguarding minority interests in corporate entities. According to Section 2 (9) of the Act, "body corporate" or "corporation" includes (a) a company incorporated under this Act or company law; or (b) a company incorporated outside Pakistan, or (c) a statutory body declared as body corporate in the relevant statute, but does not include (i) a co-operative society registered under any law relating to cooperative societies; or (ii) any other entity, not being a company as defined in this Act or any other law for the time being. While Section 2 (17) of the Act defines "company", which means a company formed and registered under this Act or the company law. Section 5 of the Act deals with the jurisdiction of the Court and creation of benches by means of which, the jurisdiction has been conferred upon the High Court, having jurisdiction in the place at which the registered office of the company is situated, with a non-obstante clause that no civil court as provided in the CPC or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.

9. While according to Section 4 of the Partnership Act, 1932 ("1932 Act"), "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called "partners" individually and "a firm" collectively, and the name under which their business is carried on is called the "firm name". Section 7 of the 1932 Act, construes that where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership then in such eventuality, the partnership shall be construed as "partnership at will". In the swing of things, the procedure for retirement of a partner is provided under Section 32 of the 1932 Act, whereby a partner may retire (a) with the consent of all the other partners, (b) in accordance with an express agreement by the partners, or (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire. Last but not the least, Section 39, 40 and 44 of the 1932 Act are germane to the dissolution of a firm with the consent of all the partners or in accordance with a contract between the partners and/or dissolution by the Court by which, upon a suit by a partner, the Court may dissolve a firm on any of the grounds already mentioned under Section 44.

10. According to the minutiae of the case, it is clear beyond any shadow of doubt that M/S Haji Motors, Hyderabad, is neither a corporate entity nor was it incorporated under the provisions of the Companies Ordinance, 1984, or the Act, therefore, the assertion of the petitioner that the suit was barred by the provisions of Section 5 of the Act is misconceived and fallacious. As a matter of fact, Section 5 has no applicability or nexus in the matter. Therefore, it has nothing to do with the pending suit between the parties. In reality, the business entity is being operated through a registered partnership firm between the two partners i.e. the petitioner and respondent No.1. In keeping with Section 14 of the 1932 Act, subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired by purchase or otherwise, by, or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business and unless the contrary intention appears, property, rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

11. The substratum of the plaint does not highlight any dispute with regards to the business of the partnership firm, nor did anybody approached the Court for dissolution of the partnership firm or rendition of accounts; but for all practical purposes, the respondent No.1 only entered into an agreement for buying out 50% share of the petitioner in the partnership firm against a valuable consideration, and due to the alleged breach and nonfulfillment of terms and conditions of the agreement, respondent No.1 filed the suit for specific performance of contract with some other ancillary reliefs.

12. The genus of specific relief, in fact, articulates the remedy afforded by the Court to ensure the implementation of specific performance and obviate the contravention of an obligation. The Specific Relief Act, 1877, ("**1877 Act**") grants access to the legal framework meant for dispensing specific relief in the civil lawsuits for ensuring justice and ordering a party to perform the contractual obligations. The nature of relief is an equitable one, which is structured on the philosophy of evenhandedness and justness. While awarding or declining this discretionary relief, the Court, according to the facts and circumstances of the case, ought to have weighed up the rudiments *sine qua non* for the specific relief, such as the nitty-gritties of the contract executed between the parties, the demeanor of the person concerned, and the level-headedness and judiciousness of enforcing the relief which is broad enough to assimilate a wide range of contractual disputes *vis-à-vis* the mode and manner of specific relief obtainable in civil suits. According to Section 3 (Interpretation Clause) of the 1877 Act, "settlement" means any instrument (other than a will or codicil as defined by the Succession Act, 1925) whereby the destination or devolution of successive interests in moveable or immovable property is disposed of or is agreed to be disposed of. While Section 4 of the same Act provides that nothing in this Act shall be deemed (a) to give any right to relief in respect of any agreement which is not a contract; (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or (c) to affect the operation of the Registration Act, 1908 on documents.

13. Under the precincts of Section 5 of the 1877 Act, the Court may grant the specific relief (a) by taking possession of certain property and delivering it to a claimant; (b) by ordering a party to do the very act

which he is under an obligation to do; (c) by preventing a party from doing that which he is under an obligation not to do; (d) by determining and declaring the rights of parties otherwise than by an award of compensation; or (e) by appointing a receiver. However, according to Section 7 of the 1877 Act, specific relief cannot be granted for the mere purpose of enforcing a penal law. The letter of the law makes it somewhat discernible that the jurisdiction to grant a decree of specific performance is discretionary, as encapsulated under Section 22 of the 1877 Act, but exercise of such discretion should not be arbitrary. Rather, it must be based on sound and reasonable grounds guided by judicial principles. The incidences in which specific performance is enforceable by the Courts are provided under Section 12 of the 1877 Act, such as (a) when the act agreed to be done is in the performance, wholly or partly, of a trust; (b) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done; (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done. The explanation attached to this Section further enlightens that unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved. The order rejecting the plaint depicts that the learned Trial Court was of the view that the plaintiff/respondent should have filed the suit for dissolution of partnership firm and rendition of accounts, and since there was no immovable property, hence specific performance of contract and execution of sale deed was not possible and in addition thereto, certain observations with regard to the prayer of recovery was also objected to and the plaint was rejected while the learned first Appellate Court also reiterated the same findings, and the appeal was dismissed along with the application filed by the respondent No.1 under Order VI Rule 17, CPC, for seeking some amendments in the plaint, which in our view should have been filed in the Trial Court. In a nutshell, the learned High Court set aside not only the order of the Trial Court but also the Appellate Court, so for all practical purposes, the order rejecting the application for amendment in the plaint also ceases to exist.

14. While under Section 12 of the 1877 Act, clauses (a) to (d), certain conditions have been provided in which the Court may grant decree of specific performance, but in order to explain the niceties of such conditions, the legislature has also provided illustrations dealing with each condition separately. The internal aid of interpreting any statute or its provision can be derived primarily from the statute itself including its preamble, illustrations, headings, marginal notes, punctuation, transitory provisions, etc. It is an elementary rule of law that the illustrations should not be considered redundant or inconsequential, as they are evenly significant and constructive for securing the proper meaning of the provision. While they cannot influence the ordinary connotation of the section, they are beneficial to demonstrate the means and methods by which such sections are set in motion while interpreting the law. The Trial Court and the first Appellate Court both misconstrued the spirit of law where the suit for specific performance is not limited or confined to the contract in relation to the immovable property alone, but movable property also. In addition, the other prayers were also not considered which have had independent status and are not dependent upon the alleged right of execution of sale deed or transfer of 50% share of the partnership firm in favour of respondent No.1 against a valuable consideration. According to respondent No.1, the partnership business is a going concern and he wanted to buy out 50% share of another partner. The effect of the agreement in question was also to be decided by the Trial Court on whether the arrangement in question could be construed as an agreement for relinquishment of share or retirement from the firm. On the alleged *consensus ad idem*, the contract was signed, and on the alleged breach, respondent No.1 filed the suit. Each case has to be decided on its own facts, the Court cannot force someone to file a suit for dissolution of partnership or rendition of accounts, but it has to see whether specific performance of contract is possible or not, and in this case, unless the parties are provided equal opportunity to lead the evidence, it is not possible to decide the matter summarily on the basis of an application under Order VII Rule 11, CPC. At this stage, the Trial Court cannot not presume or anticipate the outcome that if the case is made out on merits and the Court grants a decree of specific performance, what the plaintiff will do with the partnership business, and whether he will induct any other partner, continue as proprietor, or convert it into a corporate entity of business. That it not the issue before the Court right now. At present, the *lis* only relates to the

alleged sale agreement of 50% share of another partner against some valuable consideration. This is the core issue and dispute between the parties which needs to be adjudicated by the Trial Court. No doubt, under Order VII Rule 7, CPC, the plaintiff is obligated to state specifically the relief which he claims either simply or, in the alternative, it is further explicated that the plaintiff does not need to ask for general or other relief which may always be given as the Court may deem just, as if it had been asked for, and the same rule shall apply to any relief claimed by the defendant in his written statement. Whereas the exactitudes of Order VII Rule 8 make it clear that where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. Equity and justness vindicates and gives a reason for refraction of the rules of procedure, especially, where no particular stipulation of law is desecrated or outraged, but it is found more conducive to foster substantial justice between the parties with judicious mindfulness of the state of affairs ingathered succeeding to the institution of the lawsuit which may have rational impact of rights and entitlement. Hence, in such situations, the court can take cautious cognizance of the later vicissitudes of fact and law also, to mould the relief in order to advance the cause of justice.

15. The learned High Court has discussed all the material facts of the case, and there is no illegality or perversity in the impugned judgment which requires any interference by this Court. As a result of the above discussion, this Civil Petition is dismissed and leave is refused.

Judge

Judge

KARACHI
9th August, 2024
Khalid
Approved for reporting.