# SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

**Present:**
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed
Mr. Justice Muhammad Shafi Siddiqui

**CIVIL PETITION NO.3792 OF 2018**
Against judgment dated 01.10.2018 of the Islamabad High Court, Islamabad, passed in Regular First Appeal No.29 of 2014.

Nisar Ahmed Afzal …**Petitioner**

**VERSUS**

Irfan Qadir & another …**Respondents**

| | | |
|---|---|---|
| For the Petitioner | : | Mr. Agha Muhammad Ali, ASC<br>Mr. Mir Aurangzeb, AOR |
| For the Respondent | : | Mr. Muhammad Nazir Jawwad, ASC<br>Mr. Haroon-ur-Rashid, ASC<br>Ms. Saira Khalid, ASC |
| For the Respondent 3 | : | Mr. Sohail Mahmood, ASC |
| Date of Hearing | : | 19.02.2026 |

**JUDGMENT**

**SHAHID WAHEED, J-.** This petition seeks leave to appeal against the concurrent judgments of the courts below, whereby the plaint in the petitioner's suit for declaration was rejected under Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("CPC") on the ground that it failed to disclose a cause of action.

2. The controversy before us lies within a narrow compass. The solitary question that falls for determination is whether, on a meaningful reading of the plaint and assuming every averment contained therein to be true, it could be said that the plaint did not disclose a cause of action so as to warrant its rejection under Order VII, Rule 11(a), CPC. It is essentially a question of fact. The inquiry at this stage is neither directed to the truth of the pleaded facts nor to the probability of the plaintiff ultimately succeeding in the suit. It is confined to a narrow question, namely, whether the facts pleaded,

if accepted as true, constitute a legally enforceable claim. Since the jurisdiction under Order VII, Rule 11(a), CPC is confined to the averments contained in the plaint and the documents relied upon therein, the answer must necessarily be found within the four corners of the plaint itself.

3. The petitioner in his plaint pleaded that he enjoyed cordial relations with Respondent No.1 and, acting upon the trust reposed in him, agreed to sell the suit plot for a consideration of Rs.6.5 crore. According to him, although the sale consideration was not paid at the time of execution of the agreement, Respondent No.1 assured him that the amount would be paid shortly thereafter. Believing this assurance, the petitioner facilitated the transfer of the plot in favour of Respondent No.1 in the record maintained by the Capital Development Authority ("CDA"). It was further averred that Respondent No.1 subsequently reneged on his promise and refused to pay the agreed consideration, thereby, through deceit and fraud, securing title to the plot without discharging his contractual obligation. On these assertions, the petitioner sought a declaration that he continued to be the owner of the suit plot and that the transfer effected in favour of Respondent No.1 was illegal, fraudulent, void and inoperative against his rights.

4. The Trial Court, taking into account the facts pleaded, rejected the plaint on the reasoning that the petitioner had admittedly executed the sale agreement in which receipt of the entire sale consideration had been acknowledged. It held that the petitioner could not, on the one hand, admit the execution of the agreement and, on the other, deny receipt of the consideration recorded therein. Proceeding on the principle that a party cannot be permitted to approbate and reprobate simultaneously, the Trial Court concluded that the plaint disclosed no cause of action and, by order dated 17$^{th}$ of February 2014, rejected it under Order VII, Rule 11(a), CPC. The High Court, in appeal, affirmed that view. It observed that a litigant seeking equitable relief must approach the Court with clean hands and maintain consistency in his pleadings. According to the High Court, the petitioner's denial of the receipt of the sale consideration, while not disputing the execution of the sale agreement itself, disentitled him from claiming equitable and discretionary relief.

5. Having heard the learned counsel for the parties and examined the record, we are, with respect, unable to agree with the view concurrently taken by the courts below. The law does not countenance the termination of a civil suit without trial except in those limited circumstances where the legislature has expressly so ordained. Order VII, Rule 11, CPC, embodies one such exception. By authorising rejection of a plaint at its inception, it excludes the ordinary process by which disputed civil rights are adjudicated after the parties have been afforded an opportunity to adduce evidence. Being an exception to the normal rule of trial, the jurisdiction is necessarily narrow and must be exercised with restraint. The court must therefore remain vigilant not to convert the summary scrutiny contemplated by the provisions into an adjudication upon disputed questions of fact.

6. Clause (a) of Rule 11 authorises rejection of a plaint where it does not disclose a cause of action. The expression "cause of action" has not been defined in the CPC; however, its legal connotation is well settled. It comprises every fact which the plaintiff must prove, if traversed, in order to obtain a judgment in his favour[1]. It is not the evidence by which those facts are to be proved, nor does it concern the probability of the plaintiff ultimately succeeding. Rather, it consists of the bundle of material facts which gives rise to a legal right in the plaintiff and its corresponding infringement by the defendant, thereby entitling the plaintiff to seek judicial redress. Stated differently, every suit involves four elements: firstly, a primary right possessed by the plaintiff, and a corresponding primary duty devolving upon the defendant; secondly, a delict or wrong done by the defendant which consisted in a breach of such primary right and duty; thirdly, a remedial right in favour of the plaintiff, and a remedial duty resting on the defendant springing from this delict, and finally the remedy or relief itself. Every suit, however complicated or however simple, must contain these essential elements. Of these elements, the primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term[2], and it must be disclosed in the plaint, as its non-disclosure entails rejection of the plaint. It bears noting

[1] Coke v. Gill (1873)8 CP 107 (116), and, Read v. Brown (1889) 22 QBD 128.
[2] Pomeroy, Code Remedies (4th ed. 1904) Secs.347–349, and, Oliver O. McCaskild, Actions and Causes of Action (1925) 34 Yale Law Journal 614.

that there is a marked distinction between the "non-disclosure" of a cause of action and the "non-establishment" (or "non-existence") of a cause of action. The former concerns the sufficiency of the pleadings, whereas the latter pertains to the adequacy of the evidence adduced in support of those pleadings. A plaint may be rejected only where the material facts pleaded, even if accepted as true in their entirety, fail to disclose a legal right capable of judicial enforcement. Conversely, where the plaint discloses the essential facts constituting a legal claim, the Court cannot reject it merely because it considers those facts improbable, inconsistent, or ultimately incapable of proof. Those are matters to be examined after the parties have led evidence at the trial. To conflate these distinct inquiries is to convert the limited jurisdiction under Order VII, Rule 11, CPC into a premature adjudication upon the merits, a course wholly foreign to the scheme of the Code of Civil Procedure, 1908.

7. Examined in the light of these principles, the plaint in the present case unmistakably discloses a cause of action. The petitioner has asserted that the agreed sale consideration was never paid; that Respondent No.1 falsely represented in the sale agreement that payment had been made; that acting upon Respondent No.1's assurance, the petitioner facilitated the transfer of the plot in his favour; and that Respondent No.1 thereafter dishonestly refused to honour his promise. These averments constitute a clear allegation of fraud and deceit and furnish the factual foundation for seeking avoidance of the impugned transaction and restoration of the petitioner's proprietary rights. Whether these allegations are true, whether the petitioner can successfully overcome the recital contained in the sale agreement acknowledging receipt of the consideration, and whether he ultimately succeeds in proving fraud are all questions that fall within the domain of evidence and adjudication after trial. They have no bearing on the anterior question whether the plaint discloses a cause of action. At the stage of Order VII, Rule 11 of the CPC, the Court is not concerned with the truth, falsity or probable success of the claim; it is concerned only with whether the facts pleaded, if accepted as correct, give rise to a triable claim. In the present case, they undoubtedly do. The courts below, with respect, treated the petitioner's apparent difficulty in proving his allegations as though it were synonymous with the absence of a cause of action. In doing so, they fused

disclosure with proof. The jurisdiction under Order VII, Rule 11(a), CPC does not authorise the Court to evaluate evidence before it is produced, determine disputed questions of fact, or pronounce upon the likelihood of the plaintiff ultimately succeeding. Courts, exercising jurisdiction under the said provision do not decide whether the plaintiff has a good case; they decide only whether he has pleaded one. To reject a plaint because the court considers the pleaded facts improbable or unlikely to be established is to substitute an anticipated judgment after trial for the limited scrutiny contemplated by the CPC. That, in our view, is precisely what has occurred in the present case, which is clearly not tenable in law.

8. For the foregoing reasons, this petition is converted into an appeal and is allowed. The judgments and orders passed by the courts below are set aside. Consequently, the plaint stands restored, and the suit shall be deemed to be pending before the Trial Court, which shall proceed to decide it strictly in accordance with law, uninfluenced by any observations made by the courts below or in this judgment on the merits of the controversy.

**Judge**

**Judge**

**Judge**

Announced in open Court at
Islamabad on _____________.

**Judge**

**APPROVED FOR REPORTING.**

**Muhammad Shafi Siddiqui, J**. I have had the privilege of going through the proposed judgment authored by my learned brother, Mr. Justice Shahid Waheed. However, with all the humility at my command, I am not in agreement with the conclusion drawn therein and hence record my separate disagreement (reasoning and conclusion) in the following terms:

2. The facts of the case were objectively described in the proposed judgment; hence I will only reiterate the essentials. The petitioner filed a suit for declaration and cancellation of transfer of allotment of House No.10, Main Double Road, Sector F-11/2, Islamabad. The admitted facts as disclosed in the plaint are that the last transferee (since the chain of earlier transfers is not required), namely, Abid Rehman Chaudhry, son of Abdul Razzaq, sold the subject property to the petitioner/plaintiff for an agreed sale consideration and has transferred the same in the name of the petitioner vide transfer letter No. CDA/EM-(10)F-11/2/92/665 dated 24.12.2004. The house was rented out, and at the time of filing of the plaint, it was still in possession of the tenant. In paragraph 3 of the plaint, the petitioner "admitted and conceded" that the subject property was transferred in the name of respondent No.1, Irfan Qadir (being defendant No.1 in the suit) vide transfer letter No. CDA/EM/F-11/2/10/92/4335 dated 08.03.2008 for a consideration of Rs.6.5 crores. The consideration was agreed to be paid in future as promised and as admitted in paragraph 3 of the plaint. Thus, the petitioner consciously transferred the property despite the consideration not being paid and being promised to be paid in future. He has not disclosed any coercion or fraud of any nature whatsoever in the entire plaint.

3. There were only five paragraphs in the plaint disclosing facts, and I wish to reproduce them below since the averments in the plaint are crucial

while considering an application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

> 1. That Plot No. 10 Main Double Road, F-11/2, Islamabad was originally allotted to Mst. Maria Maud Sabri, wife of Ghulam Allauddin Sabri, resident of House No. 10, Street No.10, F-6/3, Islamabad by defendant No. 2 which in turn was sold out to Bashir Hussain son of Ch Mohammad Ali, resident of House No. 1776, Sector I-10/2, Islamabad vide transfer letter No. CDA/EM-F-11/2(10)/92/2498 dated 6-6-2001, which in turn was sold out to Abid Rehman Chaudhry son of Abdul Razaq, resident of House No. 39, Street No. 52, F-7/4, Islamabad for a consideration. It is important to mention here that a house was constructed upon the aforesaid plot by Bashir Hussain after approval of site plan from defendant No. 2.
>
> 2. That Abid Rehman Chaudhry son of Abdul Razaq in turn sold it out to the plaintiff for a sale consideration and the transfer in the name of plaintiff was effected through transfer letter No. CDA/EM-(10)F-11/2/665 dated 24.12.2004. The son of plaintiff Israr Ahmed Afzal rented it out to one Adnan Khan for a period of 2 years vide lease agreement dated 04.10.2007 at the monthly rental of Rs.1,50,000/-. The house in question is still in possession of said tenant. It worth mentioning there that the aforesaid lease agreement was for a period of 2 years starting from October 2007 to September 2009.
>
> 3. That having cordial relations with defendant No. 1, the plaintiff reposed confidence/trust on defendant No. 1, the aforesaid house was transferred in the name of defendant No. 1 vide transfer letter No. CDA/EM/F-11/2/10/92/4335 dated 8-3-2008 for a consideration of Rs.6.5 crores but as mentioned above, when the plaintiff having cordial relations reposed trust on the plaintiff, as the consideration was not paid to the plaintiff by defendants No.1, <u>with the promise to pay in near future, the aforesaid house was transferred without consideration in favour of defendant No. 1 by the plaintiff.</u>
>
> 4. That time and again defendant No.1 has been asked by the plaintiff <u>to pay the consideration amounting to Rs.6.5 crores but defendant No.1 one pretext or the other lingered on it for making payment</u>.
>
> 5. That the consideration of Rs.6.5 crores has not been paid to the plaintiff as defendant No.1 in lieu of that sale consideration which was not paid to the plaintiff, promised for its payment later on, <u>hence the transfer made in favour of defendant by plaintiff is liable to be cancelled</u> … ."

(The cause of having not paid the consideration was being utilized for the relief, i.e., cancellation of title/transfer).

4. On the said facts, the petitioner prayed for a declaration that the plaintiff is the owner of the suit property and that the transfer made in favour of defendant No.1/respondent was without consideration, illegal, fraudulent and inoperative against the rights of the petitioner and consequently claimed a permanent injunction restraining the respondents from taking any action on the basis of the subject transfer.

5. Undisputedly, the consideration was agreed and also agreed to be paid in the future, and the property stood transferred, and the transaction is not void rather valid under the Transfer of Property Act, 1882.

6. The controversy before this Court for the "relief claimed", therefore, is a narrower but significant one. The issue is not whether the sale consideration was agreed to be paid in future, as that fact is expressly pleaded by the petitioner himself, rather, the question is whether, on the facts pleaded and the relief claimed, the plaint disclosed a legally enforceable cause of action for "cancellation of the transfer" under the substantive provisions of the Transfer of Property Act, 1882, which comprehensively regulate the respective rights and liabilities of a buyer and a seller of immovable property.

7. The learned Trial Court answered that question in the negative and rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. It held that, even if the averments contained in the plaint were accepted as true, they did not disclose a legally sustainable cause of action for the relief of cancellation sought therein. The High Court, in exercise of its revisional jurisdiction, concurred with that view and maintained the order rejecting the plaint. Any claim made in a suit flows from the cause of action; therefore, the claims made must correspond to the cause of action from which they arise. A cause of action consists of two parts: the legal theory (the legal wrong which the plaintiff claims to have suffered) and the remedy (the relief which the Court is asked to grant), both founded upon the facts pleaded.

8. The issue which, therefore, falls for determination in the present petition is whether the petitioner, on the basis of the averments contained in the plaint and in the absence of any allegation of fraud, coercion or any other vitiating circumstance, could invoke any substantive provision of law entitling him to seek cancellation of a completed transfer merely on the ground that the agreed sale consideration remained unpaid and/or to be paid in future.

9. The controversy before us must be examined in the light of the statutory scheme embodied in the Transfer of Property Act, 1882. Section 54 defines a sale as a transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised, thereby recognising that payment of the entire purchase money or any part thereof is not a condition precedent to the completion of a sale. The respective rights and liabilities of the buyer and the seller are thereafter regulated by Section 55 of the Act which provides that, in the absence of a contract to the contrary, the buyer and the seller of immovable property are subject to the liabilities and entitled to the rights specified therein, so far as they are applicable to the property sold.

10. As mentioned above, section 55 deals with the substantive rights of the seller, which is the petitioner/plaintiff. Section 55(4) (b) bestows certain rights upon the seller (which include the situation where the ownership of the property had passed to the buyer before payment of the whole of the purchase money), to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment for the amount of the purchase money or any party thereof remaining unpaid and for interest on such amount from the date on which possession has been delivered.

Section 55(4)(b) of the Transfer of Property Act, 1882 is reproduced for ease of reference:

> **55. Rights and liabilities of buyer and seller.** In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:
>
> (1) …
>
> (2) …
>
> (3) …
>
> (4) The seller is entitled--
>
> (a) …
>
> (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(a) The reading of the two provisions, i.e., Sections 54 and 55, suggests that a conjoint reading is inevitable. The conjoint reading shows that the payment of the agreed consideration at the time of the passing of title in favour of the vendee is not a sine-qua-non for the completion of the sale transaction.

(b) In case any part of the consideration or the whole consideration still remains to be paid despite the transfer of title through a registered instrument or otherwise, (without coercion), the seller/transferor is, in that event, only entitled to a statutory charge over the immovable property to the extent of the unpaid consideration and is not entitled either to retain possession against the transferee or to deny possession to the transferee. Thus, in such circumstances, the transfer of property in favour of the transferee is valid and complete despite the non-payment of consideration.

11. The above statutory construction also finds persuasive support from the judgment of the Supreme Court of India in *Vidhyadhar*[1] wherein the Court interpreted Sections 54 and 55 of the Indian Transfer of Property Act, 1882, provisions which are *in pari materia* with the corresponding provisions of our Act. The Court observed that Section 54 itself contemplates a completed sale where the price is "paid or promised or part-paid and part-promised", thereby making it clear that payment of the entire purchase money is not a condition precedent either to the completion of the sale or to the passing of title. The legislative scheme, therefore, recognises that ownership may validly pass notwithstanding that the whole or any part of the consideration remains unpaid. In such circumstances, the seller is not left without a remedy. Rather, Section 55(4)(b) expressly safeguards his interest by conferring a statutory charge over the property for the recovery of the unpaid purchase money together with interest but not the cancellation of registered instrument. The Supreme Court accordingly held that the non-payment of consideration does not, by itself, invalidate an otherwise valid transfer or entitle the seller to treat the transaction as void. This principle has since been reaffirmed by the Supreme Court of India in *Dahiben*[2], wherein the Court, relying upon *Vidhyadhar*, reiterated that once a sale deed has been duly executed and registered, title passes to the transferee notwithstanding that the whole or any part of the consideration remains unpaid, and that non-payment of the balance consideration does not invalidate the sale. The statutory remedy lies in enforcing the rights expressly preserved under Section 55(4)(b) and not in upsetting a completed transfer. The same statutory scheme governs the present case. The petitioner's own pleadings proceed on the admitted footing that the property was voluntarily

---

[1] Vidhyadhar v. Manikrao and another [(1999) 3 Supreme Court Cases 573]
[2] Dahiben v. Arvindbhai Kalyanji Bhanusali (AIR 2020 Supreme Court 3310)

transferred upon the respondent's promise to pay the agreed consideration subsequently, without any allegation that the transfer itself was procured by fraud, coercion or any other vitiating circumstance. The ratio in *Vidhyadhar*, as consistently followed in *Dahiben*, therefore, fortifies the conclusion that the petitioner's grievance, if any, lay in seeking recovery of the unpaid consideration in accordance with law and not in seeking cancellation of a transfer which had otherwise been validly completed. The pleading of the plaint and registered deed, where consideration was agreed to be paid in future, plays a pivotal role.

12. The understanding of the aforesaid subsection coupled with the case law is that the only right retained by the seller under the law (after transfer of the property with the understanding that the consideration will be paid later in the future) is the right to recover the *"unpaid consideration"* and interest thereon. The law has only created a charge over the property in respect of the unpaid amount, and no substantive law within the contemplation of the Transfer of Property Act would enable the seller to cancel the transfer on account of unpaid consideration, consciously agreed to be paid in future. We are conscious of the fact that the plaint does not disclose any coercion. It was transferred on such understanding on account of the relationship between the parties, but no suit for recovery of the consideration had been filed till the filing of the suit based on such cause of action. Indeed, the Trial Court and the High Court were mindful of the fact that for the purposes of "cancellation", under the given facts disclosed in the plaint, a cause of action for claimed relief does not exist; if at all the cause exists, it was/is for recovery of the unpaid consideration, which was neither pleaded in the plaint nor prayed for.

13. The Court assessing an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, cannot speculate that an alternative relief could have been claimed. The plaint had to be seen as filed, and the facts actually pleaded.

14. To my understanding, the concurrent findings of the two courts were that there was no substantive law as far as the cancellation of lawful transfer is concerned which could be enforced by the petitioner against the transferee. The law does not render the transfer made on account of unpaid consideration void. The agreement was not without consideration, which could have fetched different consequences. Here, the agreement itself was for a promise that consideration be made in the future and on such understanding that the property was transferred.

15. The Transfer of Property Act saved such a transaction and enabled the seller to recover the unpaid consideration only. The petitioner may pursue his remedy as far as the actual relief based on such cause of action, i.e. recovery of consideration, but for the present purposes the relief of cancellation cannot filter through the substantive law and hence could not have been granted on the count of unpaid consideration and thus the plaint was rightly rejected by the Trial Court and maintained by the High Court.

16. Therefore, in my view, this petition is dismissed and leave to appeal is refused.

Judge

Approved for Reporting
[Simra Sohail/LC]