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Rejection of Plaintiff in the Light of Precedents of Superior Courts of Pakistan

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Abstract: This article delineates the dismissal of the plaintiff under Rule 11 Order VII, Civil Code Procedure (1908) as applied by the Superior Courts of Pakistan. The different general standards, for example, the inclination of the rightness of plaintiff. The valuation of the suits for court charge and locale, the obligation of the Court staff qua valuation, and prudence of the court to expand fixed time combined with various auxiliary viewpoints have likewise been examined. The most significant and summoned ground for dismissal of plaintiff 'banned by law' has been explained with representations zeroing in on the undertone of law and recognizing dismissal of the plaintiff and excusal of the suit. From there on, the outcomes of the dismissal of plaintiff and cures there against have additionally been brought getting looked at. The furthest point of this article closes the entire conversation.

Key Words: Valuation of the suit, Dismissal of the plaintiff, Point of reference

Introduction

'Equity deferred is equity denied' (Nanik Ram V. Ghulam Akbar, 2016 MLD 52 (Kar) and 'equity rushed is equity covered' (Ibid) are the standards of gigantic importance in the organization of equity in Pakistan. These groups are, at first sight, disconnected, yet an amicable translation of this pair of standards guarantees granting equity on merits. The instrument of Rule 11 Order VII, [Civil Code Procedure \(1908\)](#), is applied to cover pointless and vain suits at the commencement in Pakistan. At the same time, this gadget manages the cost of every available open the door to settle upon discussions on merits and to save the challenging gatherings from the desolation of pointless and extended prosecution (Sher Khan v. Gulzar Khan, 2016 CLC 663 (Pesh). Nonetheless, this instrument is, here and there, either applied pointlessly or isn't applied when important and brings about a variety of suits and wastage of

valuable season of the court. In this unique situation, the different perspectives and questions applicable to the inscribed subject are explained considering the legal and point of reference law of Pakistan in the lines underneath.

Significant Law

1. Order VII, Rule 11 of [Code of Civil Procedure, 1908](#)
2. Part B, Reception of Plaints as well as applications, Volume-I, High Court Rules and Orders, LHC.
3. Part C, Examination of plaintiff, Volume-I, High Court Rules as well as Orders, LHC.
4. Suit Valuation Act 1887, S.11
5. Court Fee Act 1870

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Justification for Rejection of Plaintiff

The justification for dismissal of plaintiff has been determined altogether Rule 11 Order VII, [Civil Code Procedure \(1908\)](#) for unveiling activity reason for, (ii) alleviation needed by court to report the valuation opportunity and assertion in the plaintiff by law. These grounds have been explained by the Superior Courts of Pakistan and the standards have been at last settled. Request Rule 11 of Civil Procedures 1908 peruses as under:

The exposed perusing of the Rule 11 supra makes it sure that plaintiff can be dismissed distinctly in indicated conditions. Be that as it may, this Rule isn't thorough and there are numerous conditions wherein the plaintiff might be dismissed or the suit might be excused. Specifically, the ground 'banned by law' is of wide implication and covers express and inferred bars. The word 'will' obviously demonstrates that dismissal of the plaintiff is obligatory and not optional when any of the grounds are available.

General Principles

The most disputable and uncertain part of the viable subject is an affirmation of different general standards and their special cases by the Superior Courts of Pakistan in different points of reference. The most applied common guidelines and their special cases are as per the following.

1. The main general standard is that each averment made in the plaintiff is to be acknowledged as right' ([1993 CLC 2523](#), [1984 CLC 3061](#), [1995 SCMR 459](#)). The August Supreme Court of Pakistan has, as of late, explained that 'there can be little uncertainty that power, not really selectiveness, is to be given to the substance of the plaintiff. The substance of the composed assertion is not analyzed and placed in juxtaposition with the plaintiff to decide if the substance of the plaintiff is right or inaccurate. In completing the examination of the averments contained in the plaintiff, the court isn't stripped of its typical legal force of investigation (PLD 2012 SC 247, [PLD](#)

[2017 SC 1](#)). Subsequently, the rightness of averments of the plaintiff is an overall guideline subject to the exemption of legal examination.

2. The second broad standard is that 'the guard taken in the composed assertion can't be investigated while thinking about the dismissal of the plaintiff' ([1993 CLC 2523](#), [1984 CLC 3061](#)) with the exception of when a legitimate request for example, res-judicata or time-banned, and so on is progressed ([1981 SCMR 58](#)). In any case, for a situation, the respondent documented a composed assertion didn't propel requests of valuation and practicality of the suit.
3. The fourth one is that 'the court ought to look at plaintiff for a reason for dismissal of plaintiff at the hour of the show" ([Rule 1, Chapter-1-C](#), Volume 1, Rules and Orders, Lahore High Court). The August Supreme Court of Pakistan presumed that the dismissal of the plaintiff is considered at a phase when the court has not recorded any proof in the suit ([1994 SCMR 826](#)). In another point of reference, it was concluded that where proof had effectively been recorded and the gatherings were earnestly at issue, the court ought to as opposed to dismissing the plaintiff, conclude the question on merits by alluding to proof of the gatherings ([1977 MLD 21](#), [1993 SCMR 2039](#), [1995 CLC 525](#)). The plaintiff can't be dismissed without concluding the issues previously outlined. In such a case, the appropriate course for the court is to choose all issues together ([2000 AC 739](#)). Nonetheless, the plaintiff can be dismissed while excusing the application for a transitory order ([PLD 1988 SC 221](#), [1992 CLC 2282](#)). In a suit for explicit execution, the court inferred that the inquiry whether at the hour of going into an understanding the litigant had title to the property or not is an issue of reality and the equivalent

can't be chosen without permitting the gatherings to lead proof (2008 YLR 1523). Hence, for the most part, dismissal of plaint is liked at the origin with the exemption prior to outlining of issues.

4. The fifth general standard is that the main substance of plaint ought to be investigated for the dismissal of plaint (2003 CLC 1425). Notwithstanding the exemption of this rule is-If, there is another material under the watchful eye of the court separated from the plaint at that stage which is conceded by the offended party. The equivalent can likewise be investigated and thought about by the Court ([1994 SCMR 826](#)). The records alluded to in plaint can be investigated ([1998 CLC 308](#)). Indeed, reports of respondent qua res-judicata can likewise be investigated for dismissal of the plaint. ([1981 SCMR 58](#))
5. The 6th general standard is significant with the suit which isn't controlled by Code of Civil Procedure 1908. Nonetheless, the arrangements of the Code of Civil Procedure 1908 are applied mutatis mutandis. The Peshawar High Court announced where arrangements of Code of Civil Procedure 1908 mutatis mutandis apply. The plaint can be dismissed as if there should arise an occurrence of procedures under Defamation Ordinance 2002. ([PLD 2017 Pesh 19](#))
6. The seventh general rule is that plaint can be dismissed Suo-Moto without the utilization of the litigant ([PLD 2017 Pesh 19](#)). There is no special case or debate qua to this standard.
7. The eighth general standard is-the point at which the plaint is dubious. No dismissal except for the alteration of the plaint is simply (PLD 1993 Kar 626). Additionally, when a real examination is needed, there ought to be no dismissal of plaint ([1990 SCMR 1677](#), [1992 SCMR 1199](#)). Be that as it may, the

special case of this overall rule is the point at which the freedoms of an opponent party have encroached. The plaint ought to be dismissed. For instance, when a revision of plaint changes the character and appearance of a suit, for example, a suit for revelation turns into a suit for explicit execution as well as the other way around. (2016 CLCN 100 (Pesh).

Cause of Action

The main ground for dismissal of the plaint is 'non-revelation of the reason for the activity.' The word 'activity' signifies procedures in which a lawful interest of a right is made ([PLD 1963 Kar 182](#)). The expression "reason for activity" has been characterized by Privy Council as-'each reality which, whenever navigated, ought to be essential for the offended party to demonstrate to help his right to judgment and which if not demonstrated, gives the litigant a right to judgment (1889) 22 Q BD 128, [PLD 1948 PC 131](#), [PLD 1970 SC 63](#), [1991 SCMR 2030](#)). The august Supreme Court of Pakistan characterized "reason for activity" as-the ground dependent on which the offended party requests ideal judgment and not connected with safeguard or the alleviation appealed to God for' (PLD 1970 SC 363). The Lahore High Court characterized "reason for activity" as 'the group or entirety of fundamental realities which the offended party should demonstrate before he can succeed. There might be various reasons for activity from one exchange'. ([PLD 1975 Lahr 563](#))

There is a significant inquiry on how to address whether or not the reason for activity is something very similar? The law specialists and the points of reference answer this inquiry. Many tests answer this viewpoint. To start with, assuming the proof to help the two cases is unique, the reasons for activity are likewise unique (1884) [14 QBD 141](#), [PLD 1975 Lahr 563](#)). Also, the reasons for activities in two suits might be viewed as something very similar in the event that they are indistinguishable in substance (Ibid). For instance, the applicant gave checks to the respondent. The checks were disrespected and a suit was recorded. In this way, a few

arrangements were executed regarding checks. The litigant protested a reason for the activity. The High Court pronounced that from the substance of the suit, a reason for activity was revealed for the respondent. The impact of resulting occasions and exposure of specific realities including the execution of arrangements, the conditions, and the reason for which said arrangements were executed, will be the topic of assessment by the preliminary learned court considering the proof created. The preliminary court, subsequent to recorded proof of the two players, would likewise be capable of deciding the impact settlements documented by the respondent ([2011 LHC 2383](#)). On the off chance that the reason for activity emerges out of Pakistan, the suit isn't viable. ([1998 CLC 360](#))

There is a differentiation between divulgence of the reason for activity and gathering of a reason for the activity. There might be an exposure of reason for activity without gathering of something similar. For instance, when a specific time is fixed for the execution of the understanding, the establishment of a suit for explicit execution is announced untimely ([Limitation Act 1908, Section 3; Schedule 1, Article 113](#)) and the suit is excused and not plaintiff is dismissed. The explanation is that there is a revelation of reason for activity; however, there is no gathering of a reason for the activity. Essentially, unexpected agreements additionally reveal however, don't gather reason for activity prior to occurring the possibility. ([Contract Act 1872, Sections 31 to 35](#))

Under-Valuation of Relief Claimed

The second ground for dismissal of the the plaintiff is the undervaluation of alleviation guaranteed. This ground has nexus with a valuation of suit for the motivation behind purview. This valuation is done under the Suit valuation Act 1887. The underlying obligation of assurance of the appropriate valuation of help is upon the offended. Assuming the valuation of help controlled by the offended party is erroneous, the court needs to decide legitimate valuation and furthermore, permit a sensible chance to change the plaintiff in like

manner ([1991 SCMR 1153](#)). Moreover, the individual introducing plaintiff might be addressed by the court in such a manner and his response might be recorded on the plaintiff except if an agreement is given to revise the plaintiff without further ado. The court ought to decide the appropriate valuation of the suit at the beginning phase ([PLD 1975 Lahr 886](#)). At the point when the offended party flops in rectifying the valuation of the help, really at that time, dismissal of the plaintiff is passable. ([PLD 1983 SC 227](#))

Just the plaintiff is to be investigated for assurance of the valuation of the case ([1995 SCMR 459](#)). Assuming the valuation controlled by the court surpasses the locale of the court, the plaintiff ought to be returned (PLD 1971 Kar 682). The cardinal angle is that valuation is not really settled of not the entire help but rather the guaranteed alleviation by the offended party. Assuming that some piece of the help is surrendered, then, at that point, overlooked alleviation is excluded from a valuation. For instance, A records suit for recuperation of the advance measure of Rs. 100000/- and interest Rs.25000/- however, asserts just chief advance sum Rs. 100000/- . In the present circumstance, valuation is to be founded on the chief credit sum and not interest. The arrangements of Order VII Rule 11 are required, not optional. (PLD 1994 SC AJK 32)

Deficient Court Fee Stamps

The third ground for dismissal of the plaintiff is a deficiency of court charge stamps. The provision © of Rule 11 supra assumes the right valuation of help guaranteed and isn't drawn in when the court expense isn't payable ([1996 CLC 1624](#)). The reader of the concerned court has the underlying obligation to check the court charge on the plaintiff and is liable for the misfortune. In the event of vagueness, the reader ought to allude to making a difference to the court ([Rule 5, Chapter-1-B](#), Volume 1, Rules and Orders, Lahore High Court). In any case, the court has a definitive obligation to decide the legitimate court expense payable by the offended party and award a sensible chance to make great the lack of the court charge. The court has the optional ability to expand the time conceded for making

installment of court charge except if there is contumacy, gross carelessness and mala-fide under segments 148 and 149 [Code of Civil Procedure 1908](#) (PLD 1984 SC 289; 1994 SCMR 262). The time may likewise be reached out under segment 151 of Civil Procedures 1908 (1970 SCMR 188). At the point when the lack is eliminated, the plaint is considered initiated from the date of the show (PLD 1970 SC 42). The issue may likewise be outlined for the assurance of the legitimate valuation of the court charge. (1985 CLC 774)

Barred by Law

The fourth ground for dismissal of the plaint is 'banished by law' The 'law' signifies composed law or rule law and is utilized from a conventional perspective (PLD 1990 Lahr 222). Law implies – a proper declaration of the desire of a capable lawgiver ([PLD 1977 SC 397](#)). Law incorporates constitution, resolutions, legal standards, rules, by-laws, and so forth ([PLD 1997 SC 84](#)). The delineations when the suit is banned by law are-

- i) Time banished suit is excused under area 3 of Limitation Act 1908 and plaint isn't dismissed. The law of impediment predominant at the hour of organization of suit applies and not when the reason for activity emerged (PLJ 1983 SC 143).
- ii) The alleviation surrendered in regard to one reason for activity is banished under Order II Rule 2 of CPC 1908.
- iii) The suit hit by diverseness is banned under Section 11, Explanation IV of CPC 1908.
- iv) The suit with respect to execution, release, and fulfillment of announcement is banished under area 47 of CPC 1908.
- v) The suit hit by the standard of res-judicata is banned under segment 11 of CPC 1908.
- vi) The suit in regards to public annoyance without the assent of the supporter general is banished under area 92 of CPC 1908.
- vii) The suit for saving announcement is banned under area 12(2) of CPC 1908.

- viii) The suit hit by the principle of stopple is banished under article 114 of Qanun-e-Shahadat Order 1984.
- ix) The suit for pre-emption by a not pre-individual emptor under area 6 of Punjab Pre-emption Act 1991.
- x) At the point when the suit was removed without consent, the new suit was banished for a similar reason for activity under Order XXIII Rule 3.
- xi) The suit for super durable directive limiting public functionaries from true capacities is banned under segment 56 (d) of the Specific Relief Act 1877.
- xii) Suit for announcement dependent on a consent to sell is banished under area 42 of Specific Relief Act 1877.
- xiii) The suits for explicit execution of nature can't be explicitly upheld under segment 21 of the Specific Relief Act 1877.
- xiv) Interpleader suit which doesn't satisfy conditions under area 88 and Order XXXV of CPC 1908.

Dismissal of Plaint and Dismissal of Suit

The Lahore High Court talked about the differentiation between the dismissal of plaint and excusal of the suit in the words that "the dismissal of plaint" implied that if fixings all together VII, Rule.11 CPC 1908 were accessible in the plaint. The court had the purview and ability to dismiss the plaint. Excusal of suit meant that it was the last assurance of a discussion between parties meaning; consequently, the Trial Court could excuse the suit solely after holding the request and recording of proof ([PLD 2017 SC 1](#)). Dismissal of plaint gave or made way for the offended party to record a new suit, yet in the event of excusal of the suit, no new suit could be documented and just legal cure was accessible against excusal request. The litigants applied, under Section 151 of CPC, by putting on record all realities at long last settled among gatherings and offended parties conceded every such truth. Henceforth, no inquiry for additional assurance of any issue had emerged and the court was inside its privileges to dismiss the plaint under O. VII, R.11 of CPC Excusal of suit

for summoning the convention of *res judicata* was not a right translation of the law ([2017 CLC 1660](#)). Dismissal of the plaintiff is a legitimate request, not an excusal of the suit. ([Rule 6, Chapter-1-C, Volume 1, Rules and Orders, Lahore High Court](#))

Dismissal of Plaintiff and Return of Plaintiff

There is a sensitive straightforward distinction between the dismissal of the plaintiff and the return of the plaintiff. Return of plaintiff is worried about the ability of the court while the dismissal of the plaintiff is worried about the skill of the suit, at the point when the court closes any stage that it has no purview. The orders 'majority non-judice' is a nullity according to the law ([2012 SCMR 730](#)). The court having locale can pass a request under Order VII Rule 11 of CPC 1908.

Results

The results of the dismissal of the plaintiff are both extreme and transitory. The 'dismissal of the plaintiff isn't *res-judicata* against an offended party and litigant' ([2017 SCMR 172](#)) with the exception of when the dismissal of plaintiff adds up to definite arbitration, for example, *res-judicata* or time-banned suit. (PLD 1990 Lahr 222)

The dismissal of the plaintiff is ordered as characterized in area 2(2) and is appealable under Rule Procedures 1908. Nonetheless, when the plaintiff isn't dismissed, the request for dismissal can be addressed in correction. The new suit might be initiated if not banned by law. (1989 SCMR 58)

Conclusions and Recommendations

The Rule Procedures 1908 isn't comprehensive as numerous different grounds might legitimize the dismissal of the plaintiff. The Order VII Rule 11 CPC, 1908 is required not an index in nature having

reformatory results. The basic guideline that main averments of the plaintiff are important for dismissal of plaintiff' has two special cases (i) the archives conceded by offended party attached with plaintiff can be investigated and (ii) in remarkable conditions, for example, *res-judicata* or time-banned suit, reports of litigant as well.

Also, the averments of the plaintiff are assumed right. However dependent upon legal investigation by the court. For the most part, a suit can be dismissed at any stage. However, ideally at the underlying stage before issuance of request and sometimes at a later stage. At the point when issues have been outlined, the suit ought to be settled on merits. The divulgence of the reason for activity and gathering of the reason for activity are particular angles. The dismissal of the plaintiff is applicable with the previous, not later, perspective.

The plaintiff isn't to be dismissed when a change of the plaintiff is reasonable under the law. A sensible time should be conceded to decide legitimate valuation of help or make great lack of court expense and award of time by the court is compulsory. The further expansion of time fixed by the court is allowed with the exception of when there is contumacy, mala-fide, and gross carelessness of the offended party. The dismissal of plaintiff and excusal of suit or two unmistakable perspectives. Dismissal of the plaintiff, not an excusal of suit, is a legitimate request on grounds itemized all together VII Rule 11 CPC 1908.

The law of constraint common at the hour of organization of suit applies and not when the reason for activity emerges. The plaintiff can be dismissed *Suo-Moto* without application by the respondents. The request for dismissal of the plaintiff is appealable though the request for refusal to dismiss plaintiff is revisable.

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