

*Velli*

**ORDER**  
**Muhammad Adeel Anwar**  
30.07.2024 1st Class,  
(Special Court for Commercial Cases)  
Lahore

Present: Learned counsel for the petitioner/defendant.  
Learned counsel for the respondent/plaintiff.

*By way of this single order, I would like to dispose of petition*  
under order VII rule 11 of CPC.

2. Petitioner has filed an application u/o VII Rule 11 CPC praying  
therein that the plaint is liable to be rejected on the grounds that no cause of

*Adel*  
**Muhammad Adeel Anwar**  
30.07.2024 1st Class,  
(Special Court for Commercial Cases)  
Lahore

action has been accrued to the respondent/plaintiff. Moreover, the vary basis of the suit is Sec.111(g) of Transfer Of Property Act 1882, which is not attracted in the circumstances as asserted by the petitioner/defendant. Lastly, petitioner has prayed for rejection of the plaint.

3. On the other hand, respondent/plaintiff has filed written reply of the petition and contested the petition. Learned counsel respondent/plaintiff has once made partly arguments on 15.01.2021. Thereafter learned counsel for respondent/plaintiff did not appear for further arguments and only attendance is being marked through clerk. So, in these circumstances, this court is constrained to decide the petition u/o VII rule 11 of CPC.

4. I have heard the arguments and gone through the record available to me.

5. Perusal of record shows that this is the suit for declaration, cancelation of document and injunction filed by the plaintiff/respondent on the grounds that by violating Sec.111(g) of Transfer Of Property Act 1882. The lease agreement with defendant No.1 ceased to be existed. So, respondent/plaintiff has prayed for cancelling the lease agreement possession may be given to the respondent/plaintiff.

6. The background of the suit is that plaintiff/respondent has executed the lease with the petitioner/defendant No.1 on 23.04.2008 for the period of 30 years. It is also the stance of the respondent/plaintiff that defendant No.1 has converted his entire business to defendant No.2 by way of merger of the Company, therefore, they have violated the provision of 111(g) of Transfer Of Property Act 1882. No doubt, petitioner has merged his company from defendant No.1 to defendant No.2 by the intervention/order of the Hon'ble Sindh High Court on 11.06.2012 in which scheme of the merger was approved by the Hon'ble Sindh High Court to the petitioner/defendant. Petitioner after changing their directors and in order to promote their business has started their business form M/s Metro-Habib Cash & Carry Pakistan Pvt. Ltd to M/s Habib-Metro Pakistan Pvt. Ltd. No violation of the lease deed dated 23.04.2008 was ever been made by the defendants. Moreover, according to the clause 8-B of the lease deed dated 23.04.2008, defendants were even having the right to lease, rent, sub-let, and

*Adel*  
30/7/21  
**Muhammad Adel Anwar**  
Civil Judge 1st Class,  
(Special Court for Commercial Cases)  
Lahore.

M/s Divine Developers Pvt. Ltd

Vs.

M.s Metro-Habib Cash & Carry Pakistan Pvt. Ltd etc

licence all or any part or parts of the said Land and/or the building and structures constructed thereon and on the terms set forth in this deed lease. Sec.111(g) of Transfer Of Property Act 1882 can only apply when the tenant claims ownership either by himself or 3<sup>rd</sup> party or the title is shifted to any 3<sup>rd</sup> party but in the case in hand, petitioner/defendant did not change their title in the property. They are continuing the same business on the demised property only the directors of the company have been changed and ownership of the company also remains the same. Petitioner/defendant neither repudiated title nor set up the title in the fulfill of any 3<sup>rd</sup> party through petitioner/defendants have not violated the provision of Sec.111(g) of Transfer Of Property Act 1882 on the basis of which present suit has been filed by the respondent/plaintiff. It is also pertinent to mention here that petitioner/defendant has moved the petition u/s 12(2) of CPC before Sindh High court for assailing the order of the merger of the Company from petitioner/defendant No.1 to defendant No.2, the same petition could not be entertained and respondent/plaintiff has withdrawn the same and filed the suit at Lahore. So, the order of the merger of the company with the approval of the Hon'ble Sindh High Court stands intact.


7. Lessors in order to bring about forfeiture of the lease not only should prove breach of the condition giving right to lessor to re-enter the demised premises but must also give notice in writing to the lessee of his intention to determine the lease---In the absence of such notice, forfeiture of the lease could not be deemed to have taken place in terms of Sec. 111(g) of Transfer Of Property Act. In this regard, this court has also been guided by the Esteemed Judgment PLD 1993 Lahore 297. In the case in hand, respondent/plaintiff has not issued any notice to the defendant.

*Adell*  
Muhammad Azeel Anwar  
Clerk, District Court,  
(Special Court for Commercial Cases)  
Lahore.

Last but not least, since, no illegality or violation has been appeared to be committed by the petitioner/defendant as per terms of lease deed dated 23.04.2008. Consequently, this court is of the considered view that no cause of action apparently accrued to the plaintiff/respondent for

bringing the suit. As a result of which petition u/o VII Rule 11 of CPC stands allowed. Plaint is rejected. Decree sheet be prepared. No order as to cost. File be consigned to record room after its due completion.

Announced  
30.07.2021

  
Muhammad Adeel Anwar,  
Civil Judge 1st Class,  
(Special Court for commercial cases)  
Lahore.

**IN THE COURT OF MUHAMMAD ADEEL ANWAR, CIVIL JUDGE I  
CLASS, LAHORE**

Civil Suit No:..... /2021  
Date of Institution: .....27.04.2019  
Date of decision:.....30.07.2021

M/S Divine Developers (Pvt) Ltd

Plaintiff

VERSUS

- (1) M/S Metro-Habib Cash & Carry Pakistan (Pvt) Ltd.  
(2) M/S Habib Metro Pakistan (Pvt) Ltd.

Defendants

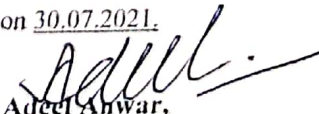
**SUIT FOR DECLARATION CANCELLATION OF DOCUMENTS**

Plaint of plaintiff is rejected under order VII Rule 11 CPC.

**MEMO OF COSTS:**

Sr. No.	Plaintiffs	Cost	Defendants	Cost
1	Stamp on plaint		Stamp of plaint	
2	Power of attorney		Power of attorney	
3	Fee of counsel		Fee of counsel	
4	Process fee		Process fee	
5	Misc. petition		Misc petition	
6	Total		Total	

This decree sheet is given under my hand and seal of this Court on 30.07.2021.

  
Muhammad Adeel Anwar,  
Civil Judge 1<sup>st</sup> Class, Lahore