

*Present: Saad Saood Jan, Act. CJ., Abdul Qadeer Chaudhry,
Sajjad Ali Shah, Saleem Akhtar and Saeeduzzaman Siddique JJ*

Sardar AHMED YAR JANG---Appellant

versus

Sardar **MOOR AHMED KHAN---Respondent**

Civil Appeal No.189 of 1991, decided on 16th April, 1994.

(On appeal from the judgment of Peshawar High Court, dated 10-7-1991 passed in C.M.64/90).

(a) Civil Procedure Code (V of 1908)---

---0. VII, R.11(c)---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted to consider whether the plaint in the suit could be rejected under O.VII, R.11(c), C.P.C. without first determining the deficiency in the amount of court-fee and allowing reasonable time to the plaintiff to make up the deficiency. [p. 691] A

(b) Civil **Procedure Code** (V of 1908)---

--0. VII, R.11(c)---Rejection of plaint--- Condition to be satisfied.

In order to entail rejection of plaint under Order VII, Rule 11(c), C.P.C., two conditions must be satisfied. Firstly, the Court should have positively and specifically determined the amount of deficit court-fee which the **plaintiff was required** to pay/affix on the plaint and secondly, a reasonable time must be allowed to the plaintiff to make up the deficiency in the amount of court-fee. [p. 692] C

(c) Civil Procedure Code (V of 1908)---

---0. VII, R.11(c)---Rejection of plaint--- Trial Court, pending suit, required plaintiff to file the Goshwara of net profit of the pre-empted land from the Revenue Authorities and pay the deficient court-fee after calculating the proper fee on the basis of the net profit disclosed in the Goshwara---Such order of the Trial Court left the calculation of the proper court-fee and the deficit court-fee to the plaintiff which could not be treated as the direction of the Court to pay a definite amount of court-fee within a specified time ---Noncompliance of such an order, therefore, could not result in the rejection of plaint. [pp. 691, 692] B & D

Siddiq Khan v. Abdul Shakur Khan PLD 1984 SC 289 and Muhammad Hanif v. Muhammad and others PLD 1990 SC 859 ref.

Fakharuddin G. Ibrahim, Fida Muhammad Khan, Advocates Supreme Court and ChAkhtar Ali, Advocate-on-Record for Appellant.

M. Akram Shakil, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Respondent.

Date of hearing: 16th April, 1994.