

**FORM "A"**  
**FORM OF ORDER SHEET**  
**IN THE COURT OF M. IMTIAZ, CIVIL JUDGE-II, ORAKZAI**  
**CASE NO.: 31/1 OF 2019**  
**MUHAMMAD SHAFIQ AND 01 OTHER**  
**VS**  
**DG HEALTH KPK AND 04 OTHERS**

Serial No. of Order or Proceeding	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of Parties or counsel where necessary.
1	2	3
O-----04	19-09-2019	<p><i>Mr. Altaf Hussain Advocate for the Plaintiffs</i>  <i>Defendants No. 01 and 02 Ex-Parte</i>  <i>Mr. Asim Khan Advocate for Defendants No. 03 to 05</i></p> <p>1. Learned Counsel for the Parties were present and forwarded their valuable arguments on Application "Under Order 07 Rule 11 CPC". Today is the date fixed for order on the same</p> <p>2. Brief facts of the instant Suit are that Plaintiff filed suit for Declaration to effect that Defendants No.01 and 02 has no right to hand over the command and control of Govt. Hospital at Mishti Mela, Lower Orakzai to an organization namely <b>MERF</b>. Plaintiffs also challenged the recruitment procedure and form of the Applicants/Defendants.</p> <p>3. Plaintiffs are also seeking an Injunctive order for restraining defendants No. 03 to 05 from further recruitment.</p> <p>4. Defendants were summoned through the process of</p>

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 Civil Judge/JM-II  
 Orakzai (Sabar Mela)  
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the Court. Defendant No. 01 and 02 were place and proceeded and Ex-Parte upon their non-appearance despite proper service as per law vide O---04 Dated:20.05.2019.

5. While Defendants No. 03 to 05 appeared through Counsel and submitted written statement, replication along with an application under O.7 R.11 CPC for rejection of the Plaint. Learned Counsel for Plaintiff submitted replication and denied contention of the Defendant No.03 to 05 on both legal and factual grounds.

6. Arguments of the Counsel heard and record perused.

7. Under Order 7 Rule 11 the Plaint shall be rejected in the following cases

**a. Where it does not disclose a cause of action**

**b. Where the relief claimed is undervalued and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**

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c. Where the relief claimed is written upon paper insufficiently stamped;

d. Where the suit appears from the statement in the plaint to be barred by any law.

8. From bare reading of the Plaint it is clear that Plaintiff is seeking Declaration but the body of the Plaint reveals that Plaintiff is actually challenging the recruitment procedure and form of the MERF. Plaintiffs have not mentioned in the Plaint specifically that which of their right or legal character has been denied or interested to deny by the Applicants/Defendants. which prima facie does not discloses the cause of action.

9. Documents of reliance submitted by the Defendants along with the written statement reveals that government under the Policy of Public and Private Partnership contracted agreement with the Applicants/Defendants and Respondents/Plaintiffs have not challenged the same in their plaint. They may do so as per law. For that very reason it also comes within the barring provision of S.42 of *The Specific Relief Act, 1877*.

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10. Suit can even be called barred by Law if the suit is impliedly barred or *where relief prayed for cannot be granted*. As per discussion in para No. 08 and 09 even if the case proceeds further even then any relief under S.42 of *The Specific Relief Act 1877* (Declaration) cannot be granted. Instant suit is also incompetent in its present form.

11. As per Principles laid by Hon'ble High in the case of **ILYAS AHMAD (PLD 2012 Sindh 92)** "(g) *...Rejection of Plaint...Principles...Incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law....*"

12. Keeping in above discussion so as to bring an end to the incompetent suit at the earliest to avoid wastage of time of the court and to bury the still born incompetent suit at its inception; and keeping in above discussion application under O.07 R.11 CPC of the applicants/defendants accepted and the complaint of the plaintiffs stands Rejected.

13. Parties are left to bear their own cost.

14. Case file be consigned to record room after necessary completion and compilation.

**ANNOUNCED**  
19-09-2019

MUHAMMAD IMTIAZ  
CIVIL JUDGE- II  
ORAKZAI

Muhammad Imtiaz,  
Civil Judge/JM-II  
Orakzai Bahar Baloch  
18.08.19