

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. D-1499 of 2015

Present:

Mr. Justice Mehmood Ahmed Khan

Mr. Justice Khadim Hussain Tunio-JJ

Petitioner: Saindino, through Mr. Talib Hussain Bhatti, Advocate.

Respondents: 1. Muhammad Uris & others through Mr. Jagdish R. Mullani, Advocate.

Mr. Alalh Bachayo Soomro, A.A.G.

Date of hearing:21.02.2018.

Date of decision:21.02.2018.

ORDER.

KHADIM HUSSAIN TUNIO-J:-Through captioned constitution petition, the petitioner has challenged the impugned order dated 13.05.2015 passed by the learned Second Additional District Judge, in Civil Revision application No. Nil/2014 whereby he set aside the order dated 15.05.2014 passed by the 1st Senior Civil Judge, Nawabshah, dismissed the application u/o VI Rule 17 CPC read with Section 151 CPC of petitioner/plaintiff in FC Suit No. 1029 of 2013 Re. Muhammad Uris Vs. Sain Dino and others for amendment in the pleadings.

2. Brief facts of the instant constitutional petition are that the petitioner paid an earnest money to the Respondent No. 1 in the sum of Rs. 3,50,000/- from a total of Rs. 4,75,000/- for the purchase of suit land, however when the petitioner approached him, the Respondent ignored him and failed to complete his part of the deal. Hence, the petitioner filed a suit for Specific performance and injunction against the Respondent No. 1. The plaintiff filed application u/o VI Rule 17 C.P.C with the court of 1st Senior Civil Judge, Nawabshah who after hearing the parties, allowed the application of petitioner vide order dated 15.05.2014, however the Respondent, while dissatisfied, filed a Civil Revision with the court of learned 2nd Additional District Judge, Shaheed Benazirabad and the court, after hearing the parties, set-aside the impugned order passed by learned trial court. After being dissatisfied with the same, the petitioner filed present Constitutional Petition.

3. Learned counsel for petitioner submits that the impugned order passed by the appellate Court is bad in law, facts, equity and principles of justice; that the suit is not barred under Article 113 of the Limitations Act; that the learned appellate court failed to consider the material aspect of the case while passing the impugned order; that the purpose of rejection of the plaint, maintainability of the suit is no ground and besides maintainability of the suit is a mixed question of law and facts which can only be adjudicated after recording of evidence and framing of appropriate issues; hence he prays that the impugned order may be set aside.

4. After arguing the matter at length, learned counsel for the Respondent No.1 frankly conceded that the impugned order may be set aside and application u/o VI Rule 17 CPC for amendment in the pleadings may be allowed.

5. Learned A.A.G has supported the impugned order while arguing that the Revisional Court has correctly dealt with the Revision application and the same has been passed while considering the merits of the case.

6. It is, by now, well settled position of law that Court enjoys jurisdiction under Order VI Rule 17 CPC to allow the amendments in a *pleading* regardless of the stage of the proceedings which *exercise* however is subject to conditions that such *amendments*, to conscious of the Court, should appear to be just, proper and necessary and same should not likely change the nature and character of the suit. Subject to fulfillment of these conditions the Court should not be reluctant in allowing the amendments because it is also aimed to avoid multiplicity of proceedings and to determine the issues between parties decided as a whole. It is worthwhile to mention here that while allowing amendment in the plaint the defendant's right also be kept in mind and no amendment should be allowed which is aimed to change the compulsion of the case or introduce a new case based on fresh/new cause of action.

7. In the instant matter, the petitioner/plaintiff submitted that after filing of the suit for declaration and injunction, the respondent No.1/defendant No.1 has forcibly occupied the land in dispute,*prima facie*, no prejudice will be caused to defendants if the proposed amendment is allowed. The refusal of proposed amendment will defeat the ends of

justice. The proposed amendment is necessary in order to avoid multiplicity of the litigation. The amendment sought by the plaintiff will not alter the nature of the suit or relief. The relief of possession *even was/is* a consequential relief hence will not prejudice the merits of the case for *main* relief of declaration. The amendment sought by the plaintiff is only of technical nature hence no further evidence is required.

8. In case reported as PLD 1985 SC 345 (*Mst. Ghulam Bibi and others V. Mst. Sarsa Khan and others*), the Hon'ble Apex court has been pleased to observe as under:

"A short comment on observations made in some of the aforementioned judgments regarding the effect of provisions of Order II, rule 2, C. P. C. in so far as the refusal to allow proper amendments is concerned, will not be out of place. Often an application for amendment is opposed on the ground that it would introduce a new element in the case as distinguished from a new cause of action or a new case altogether. Of course, in so far as the new cause of action and a new suit is concerned that cannot be permitted to be introduced in the garb of amendment ; but regarding the introduction of a new or different element which by itself does not constitute a different cause of action or a new suit it would be in accord with the provisions contained in Order 11, rule 2, C. P. C. It provides' that "every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action" ; further that where the plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Similarly, it provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs ; but if he omits, except, with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. If a genuine amendment which is permissible and should otherwise be liberally allowed in view of the principles highlighted in the foregoing discussion with reference to the case-law, is denied the provisions contained in Order II, rule 2 would create enormous difficulties for the applicant. It was in this context that this Court, made the following observation in the case of National Shipping Corporation v. Messrs A. R. Muhammad Siddik and another (1974SCMR131).

"The application for amendment was opposed by the petitioner on the ground that it introduced an entirely new cause of action which virtually altered the nature of the suit. The learned Single Judge overruled the objection for, in his view, the proposed amendment neither altered the nature of the suit, nor raised any new cause of action.

Learned counsel for the petitioner repeated the argument which was repelled by the learned Single Judge by the impugned order. It is difficult to see how the nature of the suit will be altered by the new plea. It cannot be gainsaid that unless respondent No. 1 is allowed to

raise this plea, his subsequent suit on the new plea would be barred under Order II, rule 2, C. P. C."

It was on the foregoing consideration, (bar contained in Order II, rule 2) that the leave to appeal was refused with a further very weighty remark which reads as follows:

"The Courts have always inclined to allow leave liberally to enable the parties to bring all points relating to a dispute between the parties before the Court so as to avoid multiplicity of proceedings."

In the light of the foregoing discussion, this appeal is allowed, the impugned judgment is set aside."

9. In case reported as PLD 1989 SC 340 (*Mst. Pakistan Molasses V. The Collector of Custom and others*), the Hon'ble Apex Court has been pleased to hold as follows:

*"the rules of procedure are meant to advance justice and to preserve right of litigants and they are not meant to entrap them into blind corner so as to frustrate the purpose of law and justice. Proper place of procedure in any system of administration of justice is to help and not thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. The English system of administration of justice on which our own is based may be to a certain extent technical but we are not to take from that system its defects. Any system which by giving effect to the form and not to the substance defeats substantive rights is defective to that extent. All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore, essential that they should be made to serve and the subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be literally exercised, but nonetheless no power has yet been given enable one distinct cause of action to be submitted for another, nor to change, by means of amendment, the subject matter of the suit. Further, held that on question of amendment of the pleadings this court, as would be presently shown, has in recent years adopted a liberal view, as compared to the strict view of the master in some old cases. *Karam Ali and another V. Muhammad Younis Haji and others (PLD1963 SC 191)* in reality is the basic judgment on this issue. On the wider question relating to the purpose of the rules regarding pleadings a very important observation has been made in another recent judgment of this court-*Dino Manik G. Chinoy and others V. Muhammad Ameen (PLD 1984 SC 1)* to the effect that a strict view "on technical plain" of pleadings without regard to the substance of the matter which results in defeating the ends of justice and leads to something genuine litigation, is not to be taken."*

10. Under these circumstances, the present Constitutional Petition was allowed and the impugned order dated 13.05.2015 passed by the learned

Second Additional District Judge, Nawabshah was set aside and the order dated 15.05.2014 passed by learned Ist. Senior Civil Judge, Nawabshah was maintained, whereby the application u/o VI Rule 17 was allowed for amendment in the plaint. The petitioner/plaintiff is directed to file amended plaint. Thereafter, the defendants may file their amended written statement from the date of filing of amended plaint with no order as to costs. These are the reasons of our short order dated 21.2.2018.

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