

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-7082 of 2015

M/s EFU General Insurance V Federation of Pakistan & others

Petitioner M/s EFU General Insurance Limited through Mr. Naveed Ahmed, Advocate.
Respondent No.1 Federation of Pakistan through Mr. Khaleeq Ahmed, DAG
Respondent No.3 M/s Nina Industries Limited through Mr. Rajindar Kumar, Advocate
Respondent No.7 M/s Bank of Punjab through Mr. Behzad Haider, Advocate.

Date of hearing 01.12.2021

ORDER

AHMED ALI M. SHAIKH, CJ.- Petition in hand assails the Orders all dated 08.10.2015 penned down by the learned District and Sessions Judge, Karachi Central/Insurance Tribunal for Sindh at Karachi, allowing applications under Order I Rule X read with Section 151 CPC, filed by the Respondent No.3 in Suit No.16 of 2011 to implead the Financial Institutions as Defendants to the suit.

2. The factual background as pleaded in the memo of Petition is that the Respondent No.3, engaged in the business of processing and export of woven/knitted fabric, filed Suit No.16 of 2011 for recovery of loss under insurance policy alongwith liquidated damages against the Petitioner. The Insurance Tribunal issued summons to the Petitioner/Defendant who filed written statement raising multiple defences, inter alia, that as the Banks have not been impleaded the suit is not maintainable. The Respondent No.3/Plaintiff made six applications in terms of Order I Rule X read with Section 151 CPC and the Tribunal vide impugned orders all dated 08.10.2015 allowed the said Applications. On 25.5.2016, the petitioner filed amended title impleading the newly added Defendants as Respondents No.4 to 9 herein.

3. Learned counsel for the petitioner submits that impugned orders were passed in post-haste manner without applying judicial mind. He submitted that the suit was not maintainable on account of non-joinder of necessary parties and the purpose of pointing out the lapse was to obtain dismissal of the Suit on that score, but the Respondent No.3 purposely filed Applications in terms of Order I Rule X CPC and all the banks were made parties to the suit. He submitted that the joinder of the Banks as Respondents did not serve to render the Suit maintainable, as it was only the Banks which could have initiated the proceeding. However, during course of hearing he very frankly conceded that the petitioner had filed an application under Order VII Rule XI CPC but the same was dismissed by the learned Tribunal, but the petitioner did not impugn the said order before any forum. He further conceded that in the written statement the petitioner has raised certain pleas with regard to the maintainability of the suit.

4. Per contra, learned counsel for the Respondents No.3 and 7 while questioning the maintainability of the Petition contended that as the suit remained pending before the learned Tribunal, the petitioner could raise such plea before it and even get an issue framed with regard to the subject of maintainability.

5. We have considered the contentions of the learned counsel for the petitioner, respondents and perused the impugned orders all dated 08.10.2015. With regard to the joining of private banks as parties and maintainability of the suit as framed, the petitioner may agitate this point before the trial Court and even can get an issue framed in this regard. Besides, during course of arguments, learned counsel for the petitioner could not pinpoint any violation of his fundamental right guaranteed under the Constitution. Yet the nature of the contract between the petitioner and the Respondent No.3 could not be looked into in these proceedings and remedy lies before the trial Court in the pending suit. For the foregoing, the petition, being meritless, was dismissed vide short order dated 01.12.2021.

Judge

Chief Justice