

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-4440 of 2018

Date	Order with signature of Judge
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Present
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Amjad Ali Sahito

Tehseen & others.....Petitioners

Versus

Honourable XII Addl. District Judge
Karachi South & others.....Respondents

10.03.2021

Sardar Muhammad Zareen Khan, Advocate for Petitioners.
None present for Respondent No.3 despite service of notice.
Mr. Sheheryar Mehar, A.A.G.

Muhammad Ali Mazhar, J: The petitioners have challenged the order dated 21.04.2018 passed by learned XIIth Additional District & Sessions Judge, Karachi, South in Civil Revision Application No.47/2018 whereby the order dated 10.01.2018 in Civil Suit No.780/2012 passed by learned IIIrd Senior Civil Judge, Karachi-South was affirmed/maintained. It appears from the impugned order passed by the learned Senior Civil Judge that during pendency of the suit, the plaintiff filed an application under Order 6 Rule 17 CPC for amendment in the plaint which was allowed and in consequence of such amendment, the defendant was also allowed to amend the written statement. The plaintiff raised the objection that after making amendment in the plaint, it was the responsibility of the defendant to first seek leave for the amendment which was rightly turned down by the trial court on the premise that once the plaint is allowed to be amended then the right to amend the written statement is vested in the defendant, so we do not find any illegality in the order on this count. Secondly the learned counsel for the petitioners argued that after amendment in the pleadings, the plaintiff filed an application for framing additional issues but without considering the application it was dismissed. He further contended that after making substantial amendments in the pleadings it was necessary that the issues should have been recast. It was further argued that though the issues were

amended but these are not in accordance with the pleadings of the parties.

2. Under Order 14 Rule 5 CPC, the court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. It is also the prerogative of the trial court to strike down any issues that appear to it to be wrongfully framed or introduced. If the proper issues are not settled by the court then obviously it would cause the problem at the time of final determination of the suit, therefore, such powers are vested in the court in broad spectrum to consider the pleadings and to frame proper issues. Apparently there is no illegality seen in the orders passed by the courts below but the counsel for the petitioners submits that some material issues were not framed in accordance with the pleadings, therefore, he may file a proper application in the trial court pointing out the specific issues which the petitioners want to be framed and the learned trial court will consider the same and if such issues go to the roots of the case and require to be framed for the just and proper determination of the suit, then the trial court may consider the same and recast the issues accordingly after hearing the parties. Petition is disposed of accordingly alongwith all pending applications.

Judge

Judge

Asif