

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 Suit No.1805 of 2015

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.7417/2016 (U/O 1 Rule 10 CPC)

22.03.2018

Mr. Muhammad Hanif Qureshi, Advocate for Plaintiff.
Mr. Javed Asghar Awan, Advocate for Defendant.

This is an application under Order 1 Rule 10 CPC, whereby, it is prayed to delete the names of Defendants No.2 to 5 from the array of Defendants as they have no concern with this Suit. Learned Counsel for Defendants submits that this is a Suit for malicious prosecution claiming damages, whereas, Defendant No.1 Bank is already a Defendant in this matter, and therefore, Defendants No.2 to 5 have been unnecessarily arrayed as it is the act of the Bank, which is root cause of filing this Suit. He submits that neither the said Defendants are a necessary party nor a proper party, whereas, the trial can proceed and be adjudicated without their presence. Lastly, he submits that without prejudice these Defendants can be summoned as witnesses, whereas, if any decree is passed, the Defendant No.1 is already a party and execution can be sought.

On the other hand, learned Counsel for the Plaintiff opposes such application, however, submits that if Defendants No.2 & 3 are deleted, who have been arrayed with designation, the Plaintiff has no objection; but insofar as Defendants No.4 & 5 are concerned, they are very much a necessary party as it is the act of such persons, which has resulted in malicious prosecution, for which instant Suit has been filed.

I have heard both the learned Counsel and perused the record. The grievance of the Plaintiff is that some criminal proceedings were initiated at the behest of Defendant No.1 Bank by Defendants No.4 & 5 and FIR was registered, in which the Plaintiff has been acquitted. For this the Suit for malicious prosecution and recovery of damages has been filed. Perusal of the title of the plaint as well as its contents reflects that insofar as the Defendants No.2 & 3 are concerned they

have been arrayed with designation only, and therefore, they cannot be made Defendants in respect of a claim of damages. To this even learned Counsel for the Plaintiff has also conceded that they can be deleted. However, insofar as Defendants No.4 & 5 are concerned, they have been arrayed in their personal names and it is the case of the Plaintiff that both these persons are necessary and proper party as it is the act of such persons, which resulted in malicious prosecution. After considering the facts of this case, I am of the view that this application to the extent of Defendants No.4 & 5 must not be granted as deleting the said Defendants from the Suit may have serious consequences vis-à-vis the case of the Plaintiff. Both these persons have been arrayed in their personal names and it is for the Plaintiff to prove its case against the said Defendants, and therefore, they are at least proper parties, if not necessary parties. The stance of the Defendants' Counsel that if any decree is passed, the Bank would be there for execution is not relevant for the present purposes as the Plaintiff is within its rights to array Defendants No.4 & 5 in this matter as according to the Plaintiff, the entire proceedings were initiated by these Defendants, and therefore, they must not be deleted. Moreover, it is a case of damages and if both these Defendants are deleted, the Plaintiff's case may well be seriously prejudiced.

In view of such position, I am of the view that this application cannot be granted and is accordingly dismissed. However, as conceded, the names of Defendants No.2 & 3 shall be deleted and an amended title be filed accordingly.

J U D G E

Ayaz