

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.1789 of 2022

Arif Hassan Ali Hashwani & others
Versus
Sadruddin Hashwani & others

Date	Order with signature of Judge
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1. CMA No.17705/22 (Under Order XXXIX Rule 1 & 2 CPC)
2. CMA No.17705/22 (Under Order XXXIX Rule 4 CPC)
3. CMA No.17705/22 (Under Order VII Rule 11 CPC)
4. CMA No.17705/22 (Under Order XXXIX Rule 4 CPC)

Date of hearing: 07.12.2022, 20.12.2023, 02.02.2023, 06.02.2023, 09.02.2023, 16.02.2023 and 22.02.2023

Mr. Hussain Ali Almani for plaintiffs.

Mr. Arshad Tayebally, Mr. Omer Memon and Mr. Aitzaz Manzoor Memon for defendants No.1, 5 and 6.

Mr. Zahid F. Ebrahim along with Mr. S. Furqan Ahmed for defendants No.2, 8 and 9.

Mr. Taha Ali Zai along with Mr. Fawad Syed for defendant No.3.

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Muhammad Shafi Siddiqui, J.- Plaintiffs dispute the shareholding in defendant No.2 i.e. Gulf Properties (Pvt.) Limited. Plaintiffs are the children of Late Hassanali Hashwani who is survived by plaintiffs, on the count of being his sons and daughter and a widow, who is not arrayed as party (perhaps for the reason that this is not a suit for administration). Plaintiffs seeks a declaration that the shares held by defendant No.1 Sadruddin Hashwani, defendants No.5 and 6 being son of Sadruddin Hashwani and a holding company of defendant No.2 respectively, are subject to a constructive trust. This suit is perhaps for the performance of same promises made by Sadruddin Hashwani, as pleaded.

2. Along with main suit, plaintiffs preferred injunction application, which is followed by application under order XXXIX Rule 4 CPC by

defendant No.5 and an application under order VII rule 11 CPC seeking rejection of plaint. An application under order XXXIX rule 4 CPC is also filed by defendant No.2 for discharge/recall of exparte order passed on 23.11.2022, which restrained defendants from creating third party interest over the assets of defendant No.2.

3. In relation to application under order VII rule 11 CPC primary arguments of Mr. Arshad Tayebally are that plaint is liable to be rejected by operation of law as enshrined under Order II rule 2 CPC, the Limitation Act and under the provisions of Companies Act, 2017. It is argued that neither plaintiffs nor their father at the time of his demise, were shareholders in defendant No.2. It is argued that since in the suit personal interest have not been established, either in the property owned by the company or in the shareholding of the company, the plaintiffs have no locus standi in challenging the construction over the subject property as the provisions of section 42 of the Specific Relief Act would restrict plaintiffs from exercising such rights as only personal rights in the suit could be looked at and the plaintiffs cannot conceive this suit to be in the public interest.

4. Mr. Almani however responded that the defendant No.1 has held the shares in defendant No.2, under a trust since the death of his father and it is for this declaration that the plaintiffs have filed this suit that cumulatively plaintiffs hold 33% shareholding and the defendant No.1 is only, to the extent of 33% share in defendant No.2 is the ostensible owner for plaintiffs' predecessor and now, for that matter plaintiffs. Learned counsel has argued that since it is a fresh cause as highlighted in the plaint and also since the current subject could not have formed part of the earlier litigation, the provisions of Order II rule 2 CPC would not be applicable.

5. I have heard the learned counsel appearing for parties and perused material available on record.

6. Record reveals that defendant No.2 (whose shares are disputed) was incorporated in the year 1970 as Hashwani Sales & Services Limited. The name of the company then, was changed as Hashoo Properties Limited and Gulf Properties Limited in the year 2008 and 2010 respectively. Lastly the status of the defendant No.2 was converted from public limited to a private limited company on 25.03.2013.

7. Plaintiffs' father Hassanali Hashwani expired on 02.12.1974. Record reveals that plaintiffs' father at the time of his death, was not enjoying any shareholding in the company. Such shares were transferred during his life time. It is this transfer which plaintiffs claim to be ostensible, in fact on a constructive trust. Plaintiffs' father had a total shareholding of 20,000 shares, which as per record available, transferred prior to his death. First trench of 10,000 shares was transferred to Kassam Jhandiya on 09.08.1973; second trench of 2500 shares transferred to Malek Sultan on 09.08.1973; third trench of 2500 shares was transferred to Ms. Fahmida also on 09.08.1973 and last trench of 5000 shares to Mr. Hussain Abdullah Hashwani in the year 1974 whereafter returns were filed and disclosed no shares of plaintiffs' predecessor. These shares however were not transferred to defendant No.1. Plaintiffs claim that since their late father was not well, he proceeded abroad for medical checkup. Paragraph 16 of plaint reveals that he travelled abroad not only for medical checkup but to establish business offices.

8. Plaintiff's own stance with regard to transfer of shares is very shaky. At one end it is claimed that the plaintiffs were minor at the relevant time being of 11, 7, 5 and 3 years respectively, yet it is urged that individuals to whom these transfers were made "were not

individuals known to plaintiffs' late father and were in fact benamidars of defendant No.1". No explanation provided as to why the ostensibility was not trusted by having the shares transferred to two brothers and/or grandmother and/or wife. It is also claimed that transfer of shares specified in Form 'E' were illegally done by and for benefit of defendant No.1. Admittedly, the immovable property, which is the main bone of contention in these proceedings, was acquired by company in the year 1975 when father of plaintiffs was no more a shareholder. In fact he passed away on 02.12.1974. These facts have been highlighted to limelight the real question involved, though not a real question to be determined and nothing would turn on above stance.

9. I will see the applicability of Order II Rule 2 CPC in the light of history of litigation. This suit, not being a suit for inheritance, defendants' counsel asserted that the reliefs sought are hopelessly barred by time and also hit by the provisions of Order II rule 2 CPC. An attempt has been made by plaintiffs that at the relevant time when their father passed away and before that when the shares were transferred, they (plaintiffs) were minors and had no idea whatsoever about such transactions and that they were unable to throw a challenge to such transfers of shares in defendant No.2.

10. Plaintiff reveals that at the time of death of plaintiffs' father in December 1974 (i) plaintiff No.1 was 11 years; (ii) plaintiff No.2 was of seven years; (iii) plaintiff No.3 was of five years and (iv) plaintiff No.4 was three years of age.

11. Plaintiffs' mother, for the first time, filed suit bearing No.485 of 1975 for administration, for herself and on her children's (plaintiffs) behalf in relation to Hassanali Hashwani's estates. Nothing about shareholding of the deceased father in the defendant No.2 was expressed at that time, perhaps, as pleaded, she was not aware of entire estate of deceased. In the aforesaid suit plaintiffs' mother

claimed an interest over 33 assets of plaintiffs' father. It was then eventually compromised on 31.10.1978 and a compromise decree was drawn on 24.12.1978. This was first attempt of plaintiffs' mother in asserting rights over the estate left by deceased Hassanali Hashwani which she did for herself and for her children.

12. Record also disclosed that there was some dispute between two brothers of plaintiffs' father i.e. Sadruddin Hashwani (defendant No.1) and Akbar Ali Hashwani. Record however does not reveal that there was an understanding reached between the two brothers (Sadruddin Hashwani and Akbar Hashwani), which is relied upon by Mr. Almani, in terms whereof certain assurances were given by defendant No.1 that the purported shares of the deceased in the defendant No.2 were held by him i.e. Sadruddin Hashwani on constructive trust. Record however reveals that on 25.07.1985 an agreement of family arrangement was executed i.e. almost 10 years after the demise of plaintiffs' father. This event of execution of family arrangement is important in the sense that the plaintiff No.1 was then 21 years old and was also a witness to this family arrangement. This family arrangement is devoid of any such understanding that shares in defendant No.2 were being held by defendant No.1 as a trustee.

13. Furthermore, the preamble of this family arrangement reveal that insofar as legal heirs of the deceased brother (Hassanali Hashwani) is concerned, the brothers have clarified that they had no right in respect of the estate of the deceased and the extent thereof was specified in the Schedule V to the family arrangement. The said schedule does not mention any number of shares of the deceased in the defendant No.2. This family understanding is between two brothers in relation to the rights and interest of certain assets wherein brothers have agreed in respect of shares in defendant No.2 and the subject property. No one

objected to this understanding reached between the two brothers. This family arrangement stands without a challenge by plaintiffs.

14. Above event was followed by a joint declaration dated 29.07.1985 signed by the two brothers in respect of shares of another company. On 30.09.1985 an addendum family agreement was executed and the plaintiff No.1 was also witness to this addendum. Scope of this addendum was also rights and interests of the two brothers, excluding Hassanali Hashwani, and the plaintiffs were absolutely quiet about their purported claim at that time, either in the shareholding of defendant no.2 or the property itself as later acquired by the company. This family arrangement, according to Mr. Almani, remained fruitless and if any assurances or promises were made discretely, it perhaps ended, as an attempt was made to reconcile the matters between brothers and the reconciliation failed. All of the children by that time were well above age of majority and did not bring any claim whatsoever in respect of purported shares of the deceased in defendant No.2 or the subject property.

15. On 27.07.2004 a settlement agreement yet again was executed between the brothers, which is almost after 30 years of the sad demise of plaintiffs' father. It is in fact a settlement again between two brothers. Clause 15(i) of this agreement clearly reflects the ownership of shares of defendant No.2 and the subject property, which property was acquired by the company after sad demise of plaintiffs' father. Nowhere have they reserved their rights to claim the purported shareholding and its transfer.

16. After almost 30 years of plaintiffs' father's death, a suit was filed as Suit No.1001 of 2004 and this suit is filed by plaintiffs against defendant No.1 in respect of shareholding in Hashwani Hotels Limited. This defendant No.1 is the same person who, according to plaintiffs,

made promises and gave assurances in respect of shares in the defendant No.2, yet the plaintiffs limited their grievances in respect of shareholding in Hashwani Hotels Limited only. They (plaintiffs) were alleged to be betrayed by defendant No.1 which ended up in filing of the suit for the first time by plaintiffs, yet the claim in respect of defendant No.2's shareholding was ignored. At the relevant time (i) plaintiff No.1 was 41, (ii) plaintiff No.2 was 37, (iii) plaintiff No.3 was 35 and (iv) plaintiff No.4 was 33 years old.

17. As is being claimed in this suit, plaintiffs therein claimed 33% i.e. 1/3rd shareholding in Hashwani Hotels Limited on the pretext of certain assurances given to the plaintiffs that such shares were held under a trust for plaintiffs by defendant No.1. Plaintiffs had an opportunity at that stage to raise claim in respect of shareholding in the defendant No.2 but they chose not to raise any such claim.

18. Two years after, plaintiffs filed yet another suit i.e. Suit No.321 of 2006 again against defendant No.1 and now in respect of the shareholding in Hassanali & Co. (Pvt.) Limited i.e. after almost 32 years of the sad demise of their father. At this occasion plaintiffs No.1 to 4 were 43, 39, 37 and 35 years of age respectively. The pleadings and style in the referred suit No.321 of 2006 to claim 1/3rd shareholding in Hassanali & Co. and the defence of being betrayed is exactly identical as framed in this suit and in the earlier Suit No.1001 of 2004. Pleadings were that certain assurances, which were given to the plaintiffs by defendant No.1, were breached and thus they were compelled to file the suit. Surprisingly, defendant No.2 i.e. the company whose shares are disputed in this suit, was also arrayed as defendant No.6 in the said suit but no relief was claimed. The accusations in the referred suit were and are that the defendant No.1 who purportedly holding shares of their father in trust has played a fraud, rather betrayed them all, and the suit

also provides details of the companies for which assurances were given. Those companies were identified as category 'B' companies which identified instant company also i.e. defendant No.2. Thus defendant No.1 accused to have resiled from his commitments which also include shareholding in defendant No.2. Plaintiffs failed on this occasion as well to lodge their complete and comprehensive claim. Instant suit is their third suit after sad demise of Hassanali, by the legal heirs, excluding first suit filed by all the legal heirs for administration of estate of deceased.

19. Mr. Almani has attempted to frame the relief as being one for inheritance however he is unable to convince this Court in view of pleadings of this suit. It seeks performance of promises and assurances made by defendant No.1. The pleading of this suit is not such that it could be conceived to be a suit for administration. It is perhaps argued so that bar under the Limitation Act could be avoided. This suit is thus for declaration and performance of promises purportedly made and breached by defendant No.1 in the year 2004 and 2006 respectively. The dispute for the first time with regard to shareholding of defendant No.2 was raised in the instant suit in the shape that the commitments made by defendant No.1 were not honoured. The pleadings of the plaintiffs in all these three suits are identical i.e. claim of 1/3rd shareholding on the pretext of certain assurances which were given to the plaintiffs by one of their uncles as the shares, according to Mr. Almani, were being held by him under a trust and which trust was breached.

20. The first suit after the sad demise of Hassanali Hashwani i.e. father of plaintiffs was filed by his widow i.e. Suit No.485 of 1975 and that suit was for administration. This suit was filed by the widow of the deceased not only for herself but also on behalf of plaintiffs. Mother perhaps was appointed as guardian of the person whereas Akbar

Hashwani as guardian of the property. It seeks an order for taking accounts of both moveable and immovable assets left by the deceased Hassanali Hashwani and that the same be administered under the decree of this Court. The agreement was then executed in between the parties on 31.10.1978 and the terms were drawn as a decree in the aforesaid suit.

21. As discussed above, plaintiffs filed two independent suits being Suit No.1001 of 2004 and 321 of 2006, both for declaration and injunctions. The prayer clause of Suit No.1001 of 2004 which relates to Hashwani Hotels Limited being defendant No.2 therein is as under:-

- A) *Declare that the plaintiffs are shareholders of one-third of the shareholding in the total paid up capital of defendant No.2 up-to-date;*
- B) *Declare that the defendant No.1 is a trustee, for all intents and purposes, to the shareholders including the plaintiffs for all the monies of the defendant No.2;*
- C) *Declare that the EOGM scheduled for 14.09.04 for removal of the plaintiffs No.1 and 2 as directors is illegal and malafide;*
- D) *Grant a permanent injunction against the defendants No.1 and 2 from holding the EOGM scheduled for 14.9.04 and/or from removing the plaintiffs No.1 and 2 as directors;*
- E) *Grant a permanent injunction against the defendant No.1 from disposing of or transferring or alienating the plaintiffs' one-third shareholding in defendant No.2 in any manner whatsoever;*
- F) *Grant a permanent injunction restraining the defendants No.1 and 2 jointly and severally from dealing with any of the assets of the defendant No.2 in any manner whatsoever, or making any investments out of the funds, money, properties and assets of the defendant No.2, or creating any liability or encumbering any properties or assets or stocks or fittings or fixtures or building or plant and machinery of the defendant No.2, or increasing the share capital and issuing of shares of the defendant No.2 in any manner whatsoever during the pendency of the suit;*

- G) Direct the defendant No.1 and 2 to render accounts of all profits earned out of the businesses of the defendant No.2 from 31.12.84 till to-date for determination of plaintiffs' one-third shareholding;
- H) Direct the defendant No.4 to take action against the defendants No.1 to 3 for violating the provisions of the Companies Ordinance, 1984;
- I) ...

22. Similarly in Suit No.321 of 2006, which is in relation to shares of Hassanali & Company (Pvt.) Ltd., plaintiffs prayed as under:-

- “(a) Declare that all shares held by the defendants 1 and 3 to 7 in the defendant No.2 are subject to a constructive trust to the extent of 33%, in favour of the plaintiffs jointly, such trust commencing from 11.8.1973 and continuing to date;
- (b) Direct the defendants 1, and 3 to 7 to jointly and severally transfer 33% of all shares held by them in the defendant No.2 to the names of the plaintiffs and deliver over to the plaintiffs the original share scripts representing such shares;
- (c) Pass a preliminary decree directing that accounts be taken to all profits earned by the defendants 1 to 7 against the shares held by the said defendants in constructive trust for the plaintiffs;
- (d) Pass a final decree of accounts determining the sum payable by the defendants 1 to 7 to the plaintiffs;
- (e) Grant costs of the suit, and
- (f) Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

23. The prayer of the present suit in relation to Gulf Properties (Pvt.) Limited is somehow identical as it is also based on plea of constructive trust. The prayers are as under:-

- A) Declare that all shares held by defendants No.1 and 5 to 9 in defendant No.2 are subject to a constructive trust to the

extent of thirty three (33) percent in favour of plaintiffs jointly.

- B) Direct defendants No.1, and 5 to 9 to jointly and severally transfer thirty three (33) percent of all shares held by them in defendant No.2 to the plaintiffs and deliver to them the original share scripts representing such shares;
- C) Pass a preliminary decree for accounts of all profits earned by defendants against the shares held by them in constructive trust for plaintiffs;
- D) Pass a final decree of accounts determining the sum payable by defendants to plaintiffs;
- E) Restrain defendants from making any sale or transfer of, or creating any third party rights in the subject property or the shareholding in defendant No.2;
- F) Direct defendant No.13 to seal subject property and ensure no construction, building work, sales, advertising or marketing is carried out on or in relation to the same and no third party rights are created in the subject property; and
- G) Grant such order relief as may be deemed necessary in the circumstances of the case; and
- H) Grant costs.

24. In all these three suits plaintiffs have accused their uncle Sadruddin Hashwani/defendant No.1 that he held the shares of their father under a trust and that he failed to honour his commitments and assurances. If their uncle Sadruddin Hashwani has refused to honour a commitment in relation to the shares of one company, what prevented plaintiffs from incorporating all reliefs and remedies that he could have made and raised earlier when first suit for declaration was filed. After all it was same uncle who betrayed him for the first time when a suit was filed in the year 2004. It is plaintiffs' common assertion that Sadruddin Hashwani/defendant No.1 is holding their shares as being trustee. In Suit No.1001 of 2004 Para 11 reads as under:-

11. ... They also realized that if the defendant No.1 had no reservations about neglecting his own mother's wishes and had no qualms in denying the rights and interest of his living elder brother (i.e. Mr. Akbar Ali Hashwani), he

would have even lesser qualms about denying the rights and interest of his deceased brother's children. It is also fact borne from the records that the plaintiffs at that time were not in any financial position to take on the might of the defendant No.1 by getting embroiled in litigations. The result was that in exchange for the defendant No.1's promise to give to the plaintiffs their shares in the concerned companies, in order to protect their rights and interests under the Family Agreement, the plaintiffs No.1 and 2 gave their unstinting support to the defendants in the litigation....”

25. Similarly, in Suit No.321 of 2006 the pleadings were as under:-

“14. That in the AFA some of the assets of the extended Hashwani family were given exclusively to Mr. Akbar Ali Hashwani and some exclusively to the defendant No.1. However, the AFA recognized that some assets belonging to Hassanali Hashwani had been handed over to his legal heirs and some had still to be handed over. It also implicitly recognized that a category of companies, identified in the AFA as “Category ‘A’ Companies belonged one-thirds each to the three families, viz, the family of Sadruddin Hashwani, the family of Akber Ali Hashwani and the family of Hassanali Hashwani. However, the one-third interest in these companies that belonged to the family of Hassanali Hashwani was for the time being to be held by the defendant No.1 to “and or given or disposed of” by the defendant No.1 “in his absolute discretion”. This discretion was, however, also subject to the qualification appearing in the last sentence of clause 1(b) of the AFA, vis “the intent being the shares may remain and benefit thereof may go to the family of the Elder and Younger Brother and relations”. Clause 1(a) of the AFA reads as follows:

1(a) The Elder brother and the younger brother agree that holding of shares as on 31st December 1984, of Companies mentioned in para 1 herein and listed in schedule 1 as Category “A” Companies namely New Jubilee Insurance Limited and Hashwani Hotels Limited are for benefit of the elder brother and his family in share and proportion of one upon three and for benefit of the younger brother and his family in same share and proportion of one upon three and that as to balance of one upon three the same may be held and or given or disposed of by the younger brother in his absolute discretion. Parties agree to constitute, form or incorporate one or more Trusts and or one or more, companies for holding and managing the holdings of shares herein in said companies and for providing against their transfer to outsiders, the intent being the shares may remain and benefit thereof go to the family of elder and younger brother and relations.

15. That *inter alia* based on the said provision and various assurances held out by the defendant No.1 as to the Category 'A' companies, the plaintiffs have instituted Suit No.1001 of 2004 in this Hon'ble Court and the said suit is pending adjudication. The instant suit is, however, based on a different cause of action, that being recovery of the assets of the late Hassanali Hashwani which are in the possession and control of the defendant No.1, who had at all times assured the plaintiffs that he held the said assets in trust for them and has now, as traversed hereinafter, resiled from the said assurances and committed breach of trust. It is submitted that the defendants 2 and 6 were described as "Category 'B' Companies" in the AFA were to be taken over by the defendant No.1 (The younger brother) to the exclusion of Akber Ali Hashwani. The defendant No.2 assured the plaintiffs that once the AFA is implemented, he would be responsible for giving to the plaintiffs their inherited share/entitlement in the said category "B' companies.

16.The plaintiffs were assured on several occasions that if they kept faith and trust in the judgment and assurances of the defendant No.1, they would stand to benefit and would not be disappointed in any manner. In fact during the interregnum, the defendant No.1 did transfer to the plaintiffs their share in one of the category "A" companies, namely New Jubilee Insurance Company Limited. These assurances were made personally to all of the plaintiffs individually and on family occasions in the presence of other family members including Zaver Bai who was the matriarch of the family until her death on 22.12.1989.

17. ...

18. That the defendant No.1, immediately after his settlement with Akber Ali Hashwani on 27.7.2004 resiled from his promises and assurances made to the plaintiffs both in respect of HHL and in respect of the defendant No.2 and 6. The assurances with respect to the plaintiffs' shares in New Jubilee Insurance Company Limited were, however, carried out prior to the final settlement dated 27.7.2004 with Akber Ali Hashwani.

...

22. That the defendant No.2 was the main sponsor of HHL. In the year 1974, HHL had 1,12,500 shares that were issued and outstanding. Out of these 1,12,500 shares, 100,000 shares (89% of the shares) were held by the defendant No.2. A copy of form-E of HHL made up to 10th September 1974 is filed herewith as Annexure "L".

26. Thus, the cause is common i.e. betrayal and denial of rights by defendant No.1. Juridical events, followed after the sad demise of plaintiffs' father, are fatal for the maintainability of this suit. By virtue of some oral understanding if the defendant No.1 has betrayed the trust

of plaintiffs it does not sound logical that the plaintiffs would split their claims and reliefs since assurances were denied by the same person and of the same documents and same understanding, as purportedly reached between plaintiffs and defendant No.1 and every claim that they could conceive under the agreement, oral or in writing, in view of above facts of common betrayal, out of a common intention, should have been seen by plaintiffs as a sunked vessel.

27. Order II rule 2 CPC has a direct implication to the facts and circumstances of instant case. Rules/Sub-rules of Order II CPC reads as under:

2. Suit to include the whole claim.__(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. Where a 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.

(3) Omission to sue for one of several reliefs. 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.

Explanation.__(For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.)

28. It is requirement of Order II rule 2(1) that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action however it gives a cushion to litigant that he/she may relinquish any portion of the claim in order to bring the suit within the jurisdiction of any Court whereas Order II rule 2(2), which is being applied, speaks where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of claim, he/she shall not afterwards sue in respect of the portion so omitted or relinquished.

29. There is no cavil that these suits are not based under a direct claim of inheritance; it is only a declaration which is sought that the shares were being held by defendant No.1 Sadruddin Hashwani under a trust. To my understanding a breach of promise is comprehensive cause under the facts and circumstances of this case, which could enable a litigant (plaintiffs) to pursue litigation/grievance comprehensively. It is the obligation and requirement of law that every suit shall include whole of the claim, which the plaintiffs are entitled to make in respect of a cause of action, he however may opt to relinquish any portion of his claim and when litigants does, they would be precluded to bring it later.

30. I would sum up the applicability of Order II Rule 2(2) CPC in the instant case by observing that a single transaction, by virtue of a formal document, may be a component of many sequential events and promises but denial of one such event/subject or denial of one of many promises does not necessarily mean that a cause to claim and challenge all promises is also ripe. If every event is unfolded individually, cause may also be unfolded periodically to be identified as a separate cause of action, however, in a case where “triggered cause” gives rise to set in motion all claims and reliefs simultaneously and does not give litigant a chance to split and distinguish the causes of action, then by not preferring or by not availing of any of the “matured relief” within a common transaction, it would be affected and influenced by the principle laid down under order II Rule 2(2) CPC and such actions (not pursuing all material remedies) would be considered as omission and intentional relinquishment. If however, the cause of action is the same for many reliefs to which the plaintiff is entitled, he may sue for one or more of such reliefs and reserve his right with leave of the Court, to sue later on for the other reliefs, which is not the case here.

31. The cause of action in the present suit is a breach of trust. It is not pleaded that such breach was in relation to a particular subject/ event or a particular claim of the plaintiffs that they could distinguish and split them, rather it is a comprehensive breach of trust as consistently pleaded in the earlier two suits, at least, if not also in the first suit for administration. Incidentally, in the last suit filed by the plaintiffs, the accusations were also in relation to the company whose shares are under dispute in this suit, yet no relief was claimed in the earlier suit. The defendant No.2, the company whose shares are under consideration was arrayed as defendant No.6. The common evidence that was required to sum up all claims was that there was a breach of trust and that could have been conveniently established in the earlier suits when a common cause was triggered and consumed.

32. If a litigant is entitled to more than one relief in respect of same cause of action, as indeed, in the instant case, he has to sue for all or he may sue for any of the relief he may opt but the leftover would count as an omission to sue. Since provisions of Order II rule 2 CPC are penal in nature it would preclude a litigant to sue for a portion of claim or remedy so ignored or omitted. The plaintiffs have ignored and omitted to sue for all the claims and reliefs to which they were entitled with regard to a cause of action that is "breach of trust" and hence are precluded to have a next round of litigation on the original cause of action. Plaintiff can only ignore any of the matured relief at the risk of treating them as relinquished or ignored one. The purported breach of trust of defendant No.1 has given rise to a common cause of action and any relief arising out of that common cause of action, the Rule and Sub-rule under consideration provides that the plaintiffs cannot split the relief into parts where the cause has been consumed in an earlier litigation so as to bring separate suits in respect of those parts left

behind. The pleadings of the two suits are purposely reproduced above which discloses that there is one cause i.e. breach of trust which would cover all promises that were made under a transaction, whether oral or in writing.

33. Insofar as issue of unlawful and unauthorized construction is concerned, the plaintiffs claim relief under section 42 and 56 of Specific Relief Act, which involve a personal interest in the property, be it movable or immovable, and since the personal interest is not established with the above understanding, the suit for unauthorized construction cannot be conceived to be under personal interest whereas, public interest litigation cannot be framed within section 42 and 56 of ibid Act.

34. In view of above, I would sum up the case that instant suit is hit by provisions of Order II rule 2(2) CPC and as such barred under the law and consequently application under order VII Rule 11 CPC (CMA No.18080/2022) is allowed and the plaint is rejected. The remaining miscellaneous applications stand disposed of as having become infructuous.

Dated: 16.03.2023

J U D G E