

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

High Court Appeal No.52 of 2024

Gohar Yaqoob Khan

Versus

Abdul Rasheed Memon & another

Date	Order with signature of Judge
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1. For orders on office objection.
2. For hearing of main case.
3. For orders on CMA 284/24

Dated: 21.02.2024

M/s Muhammad Tarique Siddiqui and Irfanullah Khan for appellant.

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This High Court Appeal is arising out of an order dated 16.01.2024 whereby an application under order VI rule 17 CPC was dismissed as being devoid of any ground for grant thereof.

Brief facts are that a suit for declaration, cancellation of documents, damages and permanent injunction was filed with the following prayers:-

- a) *The Hon'ble Court be pleased to declare that the plaintiff is owner of basement floor of plot No.25-C, basement measuring 1650 sq. feet, situated in Bokhari Commercial Lane No.8, Phase-6, DHA Karachi.*
- b) *The Hon'ble Court be pleased to declare that the sub-lease dated 20.12.2011, bearing registration No.4831, book No.1, MF Roll No.U-3599/7554, dated 21.01.2021 is void and unlawful document and same may kindly be cancelled and the mutation/letter bearing No.DHA/SSI/WL-2472 dated 10.01.2019 with regard of basement floor is too void, unlawful and same may kindly be cancelled.*
- c) *That the Hon'ble Court be pleased to grant compensation with regard of mental shock and agony of Rs.1 million to plaintiff against both the defendants.*
- d) *That the Hon'ble Court be pleased to grant the permanent injunction against defendant No.1 not to interfere in the lawful possession of plaintiff in any manner.*
- e) ...

Notices and summons were issued followed by filing of written statement and the issues were framed accordingly in relation to the pleadings of the parties. The evidence of the plaintiff/appellant has

already been recorded/concluded while the evidence of the defendants/ respondents is being recorded as is being cross-examined, as informed. It is at that stage when it was pleaded by the appellant, by virtue of an application for restoration of possession, that the appellant has been dispossessed from the premises in question. There was no interim order operating when he claimed to have been dispossessed. While the said application was pending, he moved another application under order VI Rule 17 CPC for bringing certain amendments in the pleadings such as plaint/prayer accordingly. The application was heard and decided/ dismissed by virtue of impugned order.

We have heard learned counsel for the appellant and perused material available on record.

It is the frame of suit that counts in relation to bringing amendment in the pleadings. The frame of the instant suit is identified in the prayer clauses, which seeks a declaration with regard to basement of the subject property and a declaration in relation to sublease, identified in the prayer clause (b), i.e. its cancelation. The present cause, as disclosed in the application seeking amendments, is a cause which triggered on 28.09.2020, which is altogether different than the frame of the suit itself. If that is permitted to carry out, this not only would change complexion of the suit but rights of the parties will also be prejudiced as material evidence, either in the shape of plaintiff/ appellant's evidence or defendants'/respondents' evidence in shape of affidavit-in-evidence has already been recorded/filed and that would have not disclosed the facts of incident reported in the application.

Learned counsel for the appellant has relied upon certain judgments/case laws such as in the case of Mumtaz Begum¹ as well as in the case of Ghulam Bibi².

¹ 2004 CLC 697 (Mumtaz Beum v. Province of Sindh)

² PLD 1985 SC 345 (Ghulam Bibi v. Sarsa Khan)

In the first case there is no cavil to the proposition, as was also applicable in the cited case, that if any development takes place in the proceedings, the Courts would not overlook such development and that too when it is material for the purpose of deciding “controversy between the parties”. However, the prayers made in the application, seeking amendments, is not the same as identified in the suit and/or prayer clauses hence it would change complexion of the suit. Thus, this case law is not of any help to the learned counsel.

Similarly, in the subsequent case which was relied upon by the learned counsel, it was noticed by the Supreme Court that even appellate Court would have taken cognizance if that amendment was declined. The amendment that was discussed in the cited judgment is in relation to the frame of the suit and the controversy that was pending. Indeed, if any such application is denied, the appellate Court could take cognizance. In the instant case admittedly when the cause to file the suit was triggered this issue, as raised in the application, was nowhere in the remote consideration of the parties hence not only parties would be deprived to lead evidence in this regard but it would change complexion of suit and hence the learned Single Judge rightly dismissed the application seeking amendments and we maintain the order by dismissing this appeal in limine, along with pending applications.

As far as the application for restoration of possession is concerned that may be heard independently without being influenced by any of the observation made hereinabove.

Judge

Judge