

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS**

**Present:**

Mr. Justice Amjad Ali Sahito,  
Mr. Justice Amjad Ali Bohio.

**Constitutional Petition No.D-195 of 2024**

Petitioners: Province of Sindh and another  
Through Mr. Ayaz Ali Rajpar, A.A.G.

Respondents: Usman and others  
Through Mr. Syed Ghulam Haider,  
Advocate.

Date of hearing & Order: 20-02-2024

**ORDER**

**Amjad Ali Bohio, J:** This petition is filed by the petitioners/judgment debtors (hereinafter be referred as '*Petitioners*') impugning therein orders dated: 30-07-2011 and 02-07-2015 passed in execution proceeding by learned Senior Civil Judge, Sanghar and learned 1<sup>st</sup> Additional District Judge, Sanghar respectively whereby application under OVI, R 17 C.P.C., filed by the respondents was allowed.

2. The brief facts of the case are that F.C Suit No.14/2001 was filed by respondents No.1 to 64 for Declaration and Permanent Injunction in the Court of Senior Civil Judge, Sanghar which was decreed on 06-05-2003 as under:

*"A revised notification in respect of acquiring of 9-20 acres out of the suit land of plaintiff No.1 which has been used by the Chowtiyaroon project be issued within 90 days and award be passed in respect of the above land utilized by Chowtiyaroon project"*

3. Being aggrieved with the said judgment and decree, the petitioners had preferred the appeals which were also dismissed. Thereafter, the decree holders had filed execution applications before the trial Court, which were dismissed by the Executing Court. Decree Holders being

aggrieved, had filed Civil Appeal No.34 of 2007 and 39 of 2007 before lower appellate court. These appeals after hearing were allowed vide order dated 28.07.2009, and the order passed by the Executing Court dismissing the execution applications was set aside with directions to the executing Court to issue necessary directions to the concerned authorities/respondents to issue revised notification in respect of the suit land as per judgment and decree passed by the trial Court in accordance with law. The petitioners had filed Revision Applications Nos. 142 & 143 of 2009 by challenging the aforementioned order of Appellate Court. Both revision applications were disposed of as under:

*“In the executing Court order, the trial Court has dismissed the execution application for the reason that decree holders have failed to mention the survey numbers therefore, the notification U/s 4 and 6 of the Land Acquisition Act could not be issued and the execution application was dismissed while in the judgment and decree a revised notification was ordered to be issued within 90 days with further directions to pass the award in respect of the land in question therefore, there is an inconsistency apparent on the face of record between judgment and decree and the executing Court order which is to be heard and decided afresh for reaching at proper conclusion. The learned Additional A.G and learned counsel for Respondents both have agreed that let the impugned order be set aside and the learned executing Court be directed to decide the fate of execution application afresh after hearing the decree holders and judgment debtors and their objections in accordance with law.*

*By consent of the learned counsel appearing for the parties, the impugned order dated 28<sup>th</sup> July 2009 alongwith order dated 10<sup>th</sup> September 2007 passed by the trial Court are set aside with direction to the trial Court to decide the execution application afresh after hearing the learned counsel for the decree holders and judgment debtors and their objections which are already on record and pass a speaking order within a period of one month.*

*Both these revision applications stand disposed of in the above terms.”*

4. Subsequently, decree holders had filed an application under Order VI Rule 17 C.P.C., seeking the amendment at column No.10 of execution application as under:

*“That this Honourable Court may be pleased to direct the judgment debtor No.5 to issue notification u/s 4 and 6 of Land Acquisition Act. And pass order for Award and make payment of compensation of agricultural land bearing survey Nos.246/1,2,3 & 4 area 14-21 acres, of Deh Akanwari, Taluka & District Sanghar, acquired in project of Chotiaryoon Reservoir are resettlement in favour of Decree Holder”.*

5. The Executing Court vide order dated 30.07.2011 allowed the application under Order VI Rule 17 C.P.C., as prayed. Thereafter, the petitioners have challenged the said order by filing Civil Revision Application No.12 of 2013 in the Court of 1<sup>st</sup> Additional District Judge, Sanghar, which was dismissed vide order dated 02.07.2015, impugned in this petition.

6. The learned counsel representing the petitioners has argued that the Decree Holder neglected to include the relevant survey numbers when submitting the execution application. However, subsequent to the decision in R.A. Nos. 142 & 143 of 2009, the respondents have filed an application under Order VI Rule 17 CPC, purportedly with malicious intent, seeking an amendment to column No. 10 of the execution application. On the other hand, the learned Assistant A.G. has contended that the provision outlined in Order VI Rule 17 of the CPC, is not applicable to execution proceedings. Therefore, he argued that the impugned order is liable to be set aside.

7. None appeared on behalf of the respondents.

8. We have gone through the order dated 02-07-2015 passed by 1<sup>st</sup> Additional District Judge, Sanghar, as well as, order dated 30-07-2011 passed by learned Senior Civil Judge, Sanghar, whereby the amendment

sought at column No.10 of the execution application was allowed and maintained. Indeed Executing Court has no authority to allow amendment under the provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908, but in view of the provisions of section 151 C.P.C., the Court has inherent powers to allow amendment, when it is necessary, as held in case of *“Popular Industries Commercial Agencies, Khairpur v. Khairpur Textile Mills Ltd.”* (PLD 1972 Karachi 617) in following manner:

*“However, the view expressed in Asghar Ali’s case was dissented from in Chandra Mohun Chowdhury and others vs. Abbasuddin Chowdhury and others (3). It was held therein that the provisions of sub-rule (1) of rule 17 were permissive and not prohibitive and that “in view of the provisions of section 151 of the Code of Civil Procedure the Court has inherent power to allow amendment, when it is necessary.” There is also nothing to show, that the appellants had taken any objection on that score, so that the application could be returned and corrected, specifying the mode in which the assistance of the Court was required. A party, to my mind, should not suffer on account of Court’s omission to check entries in execution application.*

9. The respondents' request for amendment solely aims to insert survey numbers 246/1,2,3, and 4, spanning 14-21 acres, which were essential for execution of the decree granted by the trial Court. These survey numbers were originally included in the trial Court's decree for awarding compensation to the Decree Holder. Therefore, this particular amendment does not alter the fundamental nature of the application or introduce a new case. Consequently, it does not contravene the provisions of Order XXI, Rule 17 of the Code of Civil Procedure, 1908, as established in the case of *Chandra Mohun Chowdhury and others vs. Abbasuddin Chowdhury and others*, cited above. Furthermore, permitting the amendment during the execution proceedings by the trial Court does not prejudice the petitioners, especially considering that the decree itself referenced the aforementioned survey numbers. This argument finds

support in previous legal precedent *Abdul Majeed v. Additional District Judge, Shujjaabad, and 02 others* (2019 Y L R 2924).

10. It is true that an amendment is not contemplated by Rule 17 of O. XXI of the Code of Civil Procedure, 1908. But Rule 17 is not prohibitory but permissive. Rule 11 to 14 required that certain particulars should be stated in the application for execution to enable the Court to execute the decree. Rule 17 permits the Court to allow amendment of the application for execution if any of those particulars require such amendment. This does not mean that the Court cannot allow any other amendment. There cannot be the least doubt that it was a bona fide mistake made at column No.10 of execution application, and we do not think that the law prohibits the Court from permitting such amendment in the application to remove apparent mistake, as the amendment does not change the nature or character of the application.

11. Based on the aforementioned reasons, we hereby dismiss the petition and uphold the impugned order with no orders as to the costs. The execution application will proceed in accordance with the law.

**JUDGE**

**JUDGE**

*\*Jabbar\**