

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.-681 of 2021
[Syed Waqas Hussain Shah vs. Bahria University & Others]

Date	Order with signature of Judge(s)
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1. For orders as to maintainability of suit.
2. For orders on office objection at flag 'A'.
3. For orders on CMA No.740/2022.
4. For orders on CMA No.8018/2023.
5. For hearing of CMA No.5049/2021.

02.10.2024

Mr. Talha Abbasi, advocate for the plaintiff.
Mr. Muhammad Nawaz Khan Abbasi, advocate for the defendants.

This suit is pending under office objection since 2021 and even a regular suit number has not been assigned till date. The controversy appears to be the plaintiff's dissatisfaction with marks / grade received while at university, hence, the resort to legal proceedings.

The Supreme Court has consistently maintained that Courts ought to fetter interference in university matters, as seen in *Khyber Medical University vs. Aimal Khan* reported as *PLD 2022 Supreme Court 92*. Notwithstanding the foregoing, office objection highlights that the subject *lis* has already been agitated between the same parties in CP D 210 of 2020, hence, question as to maintainability was raised and the same remains unaddressed till date.

The plaintiff's counsel articulated no cavil to the consistency of parties, subject matter etc. across the successive matters, however, remained unable to justify as to how the subsequent suit could be permitted to be perpetuated, *inter alia* per Order II rule 2 CPC, when the same relief was / could have been sought in the earlier proceedings.

The memorandum of plaint does not specifically plead the earlier petition, however, a copy of the pleadings has been annexed. Perusal thereof demonstrates *prima facie* consistency of parties and subject matter. CP D 210 of 2020 was disposed of with directions vide order dated 25.11.2020 and subsequent thereto the university has already passed order dated 15.01.2021; the said order finds no mention in the prayer clause herein.

Shafi Siddiqui J dwelled upon *pari materia* issues in *Atta Elahi¹* and observed that the law does not talk of identical issues / relief. It would suffice for the subsequent relief to be directly or substantially linked to the earlier one. It was further observed that any formal or informal addition of a party, having no substantial effect on the proceedings / relief claimed, would have no material effect on the application of the law. Sections 10² and 11³ CPC disapprove of multiple litigation and Order II rule 2⁴ requires *inter alia* consolidation of successive claims within the same proceedings.

¹ *Atta Elahi vs. Allah Bachaya* reported as *2024 CLC 18*.

² 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title...

³ 11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or

In view hereof, it is concluded that the matter lies demonstrably within the strictures of Order VII rule 11 CPC, therefore, the plaint herein is hereby rejected.

Judge

Khuhro/PA

between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit...

⁴ 2. (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) 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 claim.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief; but if no omits, except with the leave of the Court, to sue for all such relief, 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.