IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 1100 of 2023

A.A. QUALITY BUILDERS

VERSUS

CHINA HEBEI RESEARCH INSTITUTE (CHGL) & OTHERS

---

1. For Orders on Maintainability of Suit
2. For orders on MA No. 12480 of 2023
3. For orders on MA No. 12481 of 2023
4. For hearing of CMA No. 10855 of 2023
5. For hearing of CMA No. 10856 of 2023
6. For hearing of CMA No. 10482 of 2023
7. For hearing of CMA No. 10483 of 2023
8. For hearing of CMA No. 10592 of 2023
9. For hearing of CMA No. 9907 of 2023
10. For hearing of CMA No. 12013 of 2023
11 For hearing of CMA No. 13319 of 2023

Plaintiff : Through Mr. Sufiyan Zaman, Advocate

Defendant No. 1 : Through Mr. Atir Aqeel, Advocate

Defendant No. 2 : Through Mr. Aman Aftab, Advocate

Defendant No. 3 : Through Mr. Syed Ali Zaidi, Advocate

Dates of hearing : 2 October 2023 and 2 March 2024

Date of Order : 3 February 2025

O R D E R

MOHAMMAD ABDUR RAHMAN, J. This order will decide an issue at to the maintainability of this Suit that was framed by this Court on 24 August 2023 as to whether the Suit was barred under the provisions of Sub-Section (a) (b) and (d) of Section 21 read with Sub-Section (f) of Section 56 of the Specific Relief Act, 1877 and will also decide CMA No. 13319 of 2023 being an application maintained by the Plaintiff under Rule 17 of Order VI of the Code of Civil Procedure, 1908 seeking to amend the Plaint.

2. The Defendant No. 3 i.e., the Water and Power Development Authority (hereinafter referred to as "WAPDA") had initiated a tender for construction works related to the Greater Karachi Bulk Water Supply Scheme K-IV and which tender was awarded to the Defendant No.2 i.e. China Gansu International Economic and Technical Cooperation Co. Ltd. & MEFA Industries (Pvt.) Ltd.

3. It is contended that the contract while being awarded to the Defendant No.2 was in fact being performed by the Defendant No. 1 and who had in turn sub-contracted a portion of the work to the Plaintiff. Thereafter on account of a disagreement as between the Plaintiff and the Defendant No.1, the Defendant No.1 has purportedly terminated the agreement with the Plaintiff and have appointed another Sub-contractor to perform the same obligations and has discontinued making any payment to the Plaintiff. The Plaintiffs therefore maintain this Suit seeking the following relief:

> " … *1. Declare that the Plaintiff has lawfully and legally started to construct Filtration Plant FPI on Reservoir 1 and Filtration Plant FP3 on Reservoir 3 in consonance to the stipulations of the Contract Agreement dated 01.12.2022.*
>
> *2. Declare that the Defendant No. 1 is in violation of the Contract Agreements dated 01.12.2022 by delaying IPC payments amounting to Rs.207,349,657/- to the Plaintiff and Direct the same to clear the IPCs payments in order for the Plaintiff to continue construction on the sites as per the Agreements.*
>
> *3. Declare that the Defendant No. 1 is in violation of the Contract Agreements dated 01.12.2022 by delaying provision of drawings and direct the same to be provided to the Plaintiff to continue construction on the sites as per the Agreements.*
>
> *4. Declare that the Defendant No.1 is in violation of the Contract Agreements dated 01.12.2022 by not releasing mobility advance and raw materials for construction and direct the same to release the mobility advance and raw materials for the construction on the sites as per the Agreements.*
>
> *5. Declare that introduction of the unknown workers i.e. the third party is violation of the Contract Agreement dated 01.12.2022 and hence is unlawful and illegal.*
>
> *6. Restrain the Defendant No.1 from introducing third parties to the construction site as the same is unlawful and illegal, as the same is grave violation of the Contract Agreement dated 01.12.2022*
>
> *7. Restrain the Defendant No. 1 from creating any third party interest within the scope of work that is assigned to the Plaintiff, as per the Contract dated 01.12.2022…"*

4. The relationship as between the Plaintiff and the Defendant No. 1 being of a Contractor and a Sub-Contractor and therefore being a contract of service premised on the personal qualification of the Plaintiff, I had questioned as to how the Plaintiff could maintain this suit by simply seeking a declaration as to a breach of a contract and injunctions restraining the performance of any new contractor to the Said Property

without seeking damages for the purported breach. It would therefore seem that as the claim for damages had not been maintained by the Plaintiff the only relief that was being claimed i.e., prevent the Defendants from breaching the contract as between the Plaintiff and the Defendants was barred under the provisions of Sub-Section (a) (b) and (d) of Section 21 read with Sub-Section (f) of Section 56 of the Specific Relief Act, 1877 and which prompted the Plaintiff to maintain CMA No. 13319 of 2023 being an application under Rule 17 of Order VI of the Code of Civil Procedure, 1908 seeking to amend the Plaint by claiming damages for breach of contract.

5. Mr. Sufiyan Zaman had entered appearance on behalf of the Plaintiff and with regard to the issue of maintainability relied on various judgements passed in the United States of America in terms of the manner in which specific relief can be granted by those courts. In this regard he relied on the decision reported as ***Bakersfield Country Club v. Pacific Water Company***[1]in which it was considered that the enforcement of a contract for the installation of water lines was specifically performable. He also relied on a decision reported as ***Ammerman v. City Stores Co.,***[2] where it was held that if a contract had been partly performed and the defendant had received the benefits thereon, the Plaintiff would be rendered remediless unless the contract was specifically performed. He next relied on two decisions reported as ***Brummel v. Clifton Realty Co., Inc.,***[3] and the decision reported as ***Edison Realty Co. V. Bauernschub***[4] in which it was held that where damages were an inadequate remedy and the nature of the contract is such that specific performance of it will not involve “too great practical difficulties”, equity would grant a decree of specific performance. He also placed reliance on the decision reported as ***Zygmunt v. Avenue Realty Co.,***[5] wherein it was held that the court may decree performance of a contract for construction work on land of a defendant when the difficulty of enforcing and supervising the execution of the decree is not great and the work is essential to the use of complainant's adjoining land, and damages are not an adequate remedy. He concluded on this issue by relying on the decision reported as ***McCormick v. The Proprietors of the Cemetery of Mount Auburn***[6] where it was held that while Specific Performance is not a matter of strict and absolute right, where performance will be complete within a reasonably short time, contracts have been specifically enforced.

---

[1] 192 CAL. APPL. 2ND 528, CAL. RPTR. 573, 1961
[2] 394 F.2D 950 (D.C. CIR. 1968)
[3] 146 MD. 56, 125 A. 905,
[4] 191 MD. 451, 62 A.2D 354,
[5] 108 N.J. EQ. 462
[6] 285 Mass. 548

6. When Mr. Sufiyan Zaman was confronted by this Court with regard to the fact that the interpretation that has been cast by the Courts in Pakistan on the provisions of the Specific Relief Act, 1877 are completely divergent from the caselaw relied on by him, he while not conceding the issue, in a tongue in cheek manner stated that he could not find any caselaw from the courts in Pakistan that supported him in this regard and therefore was constrained to rely on the abovementioned caselaw in an attempt to "hopefully" develop the law in Pakistan. It would seem that erring on the side of caution Mr. Sufiyan Zaman had therefore chosen to maintain CMA No. 13319 of 2023 being an application maintained under Rule 17 of Order VI of the Code of Civil Procedure, 1908 which he contends may be considered as an alternative to his arguments regarding the maintainability of this Suit. Regarding the basis that has been developed from assessing an application under Rule 17 of Order VI of the Code of Civil Procedure, 1908 he stated that, as long as the" complexion and nature" of the suit was not changed i.e., the cause of action accrued remained the same, if no prejudice was caused to either party and the amendment was necessary for the determination of all issues inter se the parties, this Court had the jurisdiction to allow an application for amendment of pleadings. In support of his contentions he relied on an order passed by the Supreme Court of Pakistan reported as ***Mst. Ghulam Bibi and others v. Sarsa Khan and others***[7] and in which where a suit had been maintained for declaration and injunction and which should have been framed as a suit for specific performance when an application for amendment of the plaint was dismissed, the Supreme Court of Pakistan while setting aside the order held that:

> " … *After hearing both the learned counsel for some time we agree with the observation made by the learned Judge in the High Court the "generally delay alone in applying for amendment or expiry of period of limitation or increase in court-fee and change of jurisdiction is not a ground for refusing amendment in the plaint". The judgment cited by the learned counsel for the appellants depending upon the circumstances of each of them support the said view. However, with respect we have not been able to agree with the learned Judge that notwithstanding the legal position "in the circumstances of the present case there is no merit in the prayer to allow the amendment for the reason that the appellants were negligent or that the application for amendment was not made bona fide".*
>
> *No doubt an objection was raised from the respondent-side that the suit was not maintainable in the present for and an issue was framed in that behalf. But it was ignored that the said issue was decided by the learned trial Court in favour of the appellants on the finding that the so called agreement to exchange was, in so far as its contents disclose; in reality a contract of exchange. Therefore, the plaintiffs (the present appellants) could not be held to have acted in a mala fide manner in not seeking the amendment before the trial Court. In the same context the learned counsel for the appellants is right in*

[7] PLD 1985 Supreme Court 345

pointing out that it was the respondent-side which filed the appeal before the District Court. If the appellants would have filed before the trial Court on this issue and they had filed the appeal before the District Court a question court have arisen as to why they did not at least ask for the amendment of the plaint as an alternative course of action. But here it was a different situation. Be that as it may, the learned Judge himself observed and rightly, so that the delay alone in applying for the amendment cannot be a determining factor for deciding an application under Order VI, Rule 17, C.P.C. The use of the expression "at any stage of the proceeding" in rule 17 is not without significance. The word "proceedings" has been interpreted by this Court in a liberal manner so as to give a proper scope to the rule in accord with its purpose, as including the appellate stage and that too up to the Supreme Court.

The foregoing interpretation is also in accord with the mandatory language used in rule 17 to the effect that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy….." Therefore once the Court decides the amendment is necessary for the said purpose of determining the real questions, the Court is required by law to not only allow an application made by a party in that behalf but is also bound to direct the amendment for the said purpose. Thus, the rule can be divided into two parts. In the cases falling under the first part, the Court has the discretion to allow or not to allow the amendment, but under the second part once the Court comes to a finding that the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment.

What has been stated above is, however, subject to a very important condition that the nature of the suit in so far as its cause of action is concerned is not changed by the amendment whether it falls under the first part of rule 17 or in the second part, because when the cause of action is changed the suit itself would become different from the on initially filed. Here this condition would not have been contravened if the amendment had been allowed by the High Court. The bundle of facts narrated in the plaint which constitute the cause of action, as the application for amendment shows, would not have suffered any material change if the request would have been allowed. Apart from the consequential technical changes mutatis mutandis in the context of the. grounds stated in the application for amendment, only two major amendments were sought to be made in the plaint. They would have been firstly, the change in the heading signifying the suit being for -specific performance etc. instead of declaration etc. and secondly, there was to be a similar change in the. prayer paragraph. These amendments would not have caused any embarrassment to the respondents defendants either in seeking and making similar amendments in their written statement. The inconvenience caused to the respondents as the provision itself visualises is not only natural but would ordinarily be occasioned in almost every case. That is why the law visualises the award of adequate compensation : in that, the amendment has to be allowed "in such manner and on such terms as may be just".

In the light of the foregoing discussion if the cause of action does not change the main substance of the suit and nature of the suit would not change and if that does not change the question of limitation would then remain only of form and not of substance. That is why this Court has so far followed the liberal rule in interpreting Order VI, rule 17 so as, to permit amendment if otherwise necessary notwithstanding the possibility that on account of some formal change, the question of limitation might have acquired pronounced importance, had it not been a case of amendment under Order VI, rule 17. Other principles governing the question of amendment in pleadings have adequately been determined and examined in the precedent law and no more discussion is necessary in so far as the question of law and principle is concerned. …

A short comment on observations made in some of the aforenoticed judgments regarding the effect of provisions of Order II, rule 2, C. P. C. in so far as the refusal to allow proper amendments is concerned, will not be out of place. Often an application for amendment is opposed on the ground that it would

> *introduce a new element in the case as distinguished from a new cause of action or a new case altogether. Of course, in so far as the new cause of action and a new suit is concerned that cannot be permitted to be introduced in the garb of amendment ; but regarding the introduction of a new or different element which by itself does not constitute a different cause of action or a new suit it would be in accord with the provisions contained in Order II, rule 2, C. P. C. It provides' that "every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action" ; further that where the 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. Similarly, it provides that 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. If a genuine amendment which is permissible and should otherwise be liberally allowed in view of the principles highlighted in the foregoing discussion with reference to the case-law, is denied the provisions contained in Order II, rule 2 would create enormous difficulties for the applicant. It was in this context that this Court, made the following observation in the case of National Shipping Corporation v. Messrs A. R. Muhammad Siddik and another (1974SCMR131).*
>
> > *"The application for amendment was opposed by the petitioner on the ground that it introduced an entirely new cause of action which virtually altered the nature of the suit. The learned Single Judge overruled the objection for, in his view, the proposed amendment neither altered the nature of the suit, nor raised any new cause of action. Learned counsel for the petitioner repeated the argument which was repelled by the learned Single Judge by the impugned order. It is difficult to see how the nature of the suit will be altered by the new plea. It cannot 6e gainsaid that unless respondent No. 1 is allowed to raise this plea, his subsequent suit on the new plea would be barred under Order II, rule 2, C. P. C."*
>
> *It was on the foregoing consideration, (bar contained in Order II, rule 2) that the leave to appeal was refused with a further very weighty remark which reads as follows :*
>
> > *"The Courts have always inclined to allow leave liberally to enable the parties to bring all points relating to a dispute between the parties before the Court so as to avoidmultiplicity of proceedings."”*

He also relied on a division bench judgment of this court in which similar observations were made by this Court ***Simi Mumtaz Baig and 5 others v. Sarfraz Baig***[8] and an unreported judgment of this Court bearing CP No. D-77 of 2012 entitled ***Syed Ali Nawaz Shah & Ors. VS Pakistan & Others*** and which it was contended advanced the same proposition. From the Indian Jurisdiction he relied on a judgement of the Privy Council reported as ***Ma Shwe Mya vs Maung Mo Hnaung***[9] wherein it was held that amendments to pleadings could be allowed if it secured the proper administration of justice.

7. As to whether the amendment sought to be made would be precluded under the provisions of Rule 2 of Order II of the Code of Civil Procedure, 1908 Mr. Sufiyan Zaman referred the Court to a decision of a learned Single Judge of

---

[8] 2003 CLC 713

[9] AIR 1922 PC 249

this Court reported as ***Raham Hussain vs Abdul Raheem***[10] which clarified that even if a prayer has not been maintained by the Plaintiff and which would be precluded from being instituted in a new suit, that the Plaintiff would be permitted to maintain the amendment even if a claim has been "relinquished" by the Plaintiff at the time of the filing of the suit as long as it did not alter the character of the suit. He also relied on a judgement of a learned Single Judge of the Lahore High Court, Lahore reported as **Rana Muhammad Abad Khan vs Mst. Talat Zahid**[11] and a decision of a learned Single Judge of the Peshawar High Court, reported as ***Muhammad Zaman vs Siraj-Ul-Islam***[12] in each if which while considering the application of Rule 2 of Order II of the Code of Civil Procedure, 1908 in the context of Rule 17 of Order VI of the Code of Civil Procedure, 1908 it was considered that the amendment sought would not be prohibited on the threshold as set in Rule 2 of Order II of the Code of Civil Procedure, 1908. He concluded on this issue by relying on the judgment reported as ***Muhammad Bakhsh vs. Muhammad Aish***[13] which stated that where the first suit was incompetent, the bar under Rule II of Order 2 of the Code of Civil Procedure, 1908 would not be applicable to a second suit being maintained which, while based on the same cause of action, was found to be competent.

8. As to whether the amendment would prejudice the Defendants, Mr. Zaman relied on the decision reported as ***Crescent Steel and Allied Product Limited vs. Sui Southern Gas Co. Ltd.,***[14] in which while considering an injunction application a learned Single Judge of this Court opined that the simpliciter granting of damages being payment for what was already agreed would restrain a court from granting an interim injunction against a third party from assuming the obligations under the contract being breached and hence the same could not be construed as prejudice caused.

9. Mr. Syed Ali Zaidi entered appearance on behalf of the Defendant No. 3 and stated that the Suit as framed was barred under Sub-Section (a) (b) and (d) of Section 21 read with Sub-Section (f) of Section 56 of the Specific Relief Act, 1877. He relied on a decision of the Supreme Court of Pakistan reported as ***Messrs Pakistan Associated Construction Ltd. vs. Asif H. Kazi & another***[15]

---

[10] 2007 MLD 1110
[11] 2012 CLC 977
[12] 2013 YLR 1548
[13] 2002 SCMR 1877
[14] 2015 CLD 745
[15] 1986 SCMR 820

in which where a contract had been cancelled, on a suit by the contractor to injunct the cancellation, a Learned Single Judge of the Lahore High Court held that such relief was barred under Sub-Section (a) and (d) of Section 21 read with Sub-Section (f) of Section 56 of the Specific Relief Act, 1877. He also chose to rely on an order of a learned Single Judge of this Court reported as ***Messrs Quality Builders Ltd. vs. Messrs J.P. Brockhoven V.V. Dredging Contractors & Others***[16] in which where a sub-contractor maintained a suit seeking the relief of a declaration of the sub-contract and an injunction restricting the Defendant No.1 to award the sub-contract to any other party a learned Single Judge of this Court held as hereinunder:

> " … *Having regards to the terms in which the injunction is prayed for in this case, if granted would leave no option with the Defendant No. 1 but to perform the contract in specie which the Court cannot order in view of the bar contained in Section 21 and Section 56(f) of the Specific Relief Act. It will amount to doing that indirectly what cannot be done directly. Thus it was held in Ehrmans' case already cited that the Courts invariably refused issue of an injunction if it will be inevitably result in the enforcement in specie of a contract not otherwise specifically enforceable."*

10. Mr. Zaidi next referred the Court to an order of the Supreme Court of Pakistan in the decision reported as ***Messrs Pakistan Associated Construction Ltd. vs. Asif H. Kazi & another***[17] in which while refusing leave to appeal, the Supreme Court of Pakistan approved an order passed by the Lahore High Court, Lahore dismissing an injunction application where the applicant had sought to injunct its employer from terminating a contract for the execution of certain works. He also relied on decision reported as ***Yusuf Hussain Shirazi & Another vs. Lt. Col. Muhammad Alam Shaikh***[18] in a dispute regarding the obligations under a contract for manufacture and distribution the court refused to grant an injunction to intervene as between the obligations of the parties. He concluded by relying on an order passed by a learned Single Judge of the Islamabad High Court reported as ***Pakistan Real Estate Investment And Management Company (Pvt.) Ltd vs Messrs Sky Blue Builders & Another***[19] and of a learned Single Judge of this Court in the decision reported as ***Muhammad Raza vs Haji Abdul Ghaffar & Others***[20] wherein an injunction was refused as specific performance on a contract for execution of works could not be enforced.

---

[16] PLD 1979 Karachi 668
[17] 1986 SCMR 820
[18] PLD 1966 (W.P) Khi 472
[19] 2021 CLD 518
[20] PLD 1992 Karachi 17

11. I have heard Mr. Sufiyan Zaman and Mr. Syed Ali Zaidi and have perused the record.

12. The provisions of Sub-Sections (a), (b) and (d) of Section 21 of the Specific Relief Act, 1877 read as hereinunder:

> " … *1. The following contracts cannot be specifically enforced:–*
>
> *(a) a contract for the non-performance of which compensation in money is an adequate relief;*
>
> *(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms; …*
>
> *(d) a contract which is in its nature revocable;*

These provisions may be read in conjunction with the provisions of Sub-Section (f) of Section 56 of the Specific Relief Act, 1877 read as hereinunder:

> " … *56. An injunction cannot be granted-*
>
> *…*
>
> *(f) to prevent the breach of a contract the performance of which would not be specifically enforced; …"*

A Division Bench Judgment of this Court in the decision reported as ***SPEC Energy DMCC vs. Pakistan Petroleum Limited***[21] while considering a similar issue regarding a contract for works and as to whether the same was specifically performable in terms of Sub-Sections (a), (b) and (d) of Section 21 read with Sub-Sections (f) of Section 56 of the Specific Relief Act, 1877 has held that:

> " … *18. Thus, the central question for determination in these appeals is whether the subject Contract was specifically enforceable by SPEC in terms of sections 12 and 21 of the Specific Relief Act, 1877, i.e. without prejudice to the relief instead for compensation/damages for breach of contract allegedly committed by PPL.*
>
> *19. Section 12 of the Specific Relief Act, 1877 describes contracts of which specific performance may, in the discretion of the Court, be enforced except as otherwise provided. These are contracts where the performance is of a trust [clause (a)]; where there exists no standard for ascertaining the actual damage caused by non-performance [clause (b)]; when pecuniary compensation for non-performance would not afford adequate relief [clause (c)]; or, when it is probable that pecuniary compensation cannot be got for non-performance [clause (d)]. SPEC's case does not involve clause (a) and (d).*

[21] 2024 CLC 1549

20. The Explanation clause to section 12 of the Specific Relief Act then states that unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved. On that Explanation clause there was a debate before the Single Judge as to whether the subject Contract could also be treated as a contract for sale of goods. Given the nature of the Contract (infra) we do not see the need for that discussion. Clearly the Explanation clause does not deal with all types of contracts, but only raises a presumption with regards to two types of contracts viz. for transfer of immovable property and for transfer of movable property.

Therefore, in our view, where a contract cannot be categorized as either, the only effect is that said presumption cannot be made by the Court, and it is then for the plaintiff to demonstrate that the contract sought to be specifically enforced is one where pecuniary compensation for non-performance would not afford adequate relief.

21. As per the Contract, it was "for design engineering, procurement (supply), construction, installation/erection, pre-commissioning, commissioning and startup (including successful commissioning) and performance testing, reliable guarantee testing (RGT) and remedying defects including replacement of parts and equipment where required during defect liability period of the project". Admittedly, it was not a contract to transfer immovable property, nor was it simply a contract to transfer movable property or sell goods. It was a contract to design and build, and hence titled by the parties as a „Works Contract".

22. The Contract had specified and fixed the price payable to SPEC for performing the works. Stages of payments to SPEC were pinned to milestones which too were identified in the Contract. Therefore, it was not a case where no standard existed for ascertaining the actual damage caused to SPEC by its non-performance so as to attract section 12(b) of the Specific Relief Act. As noted above, SPEC was to design and build a gas processing facility for PPL. The Contract did not award any concession to SPEC so as to raise any issue of operating profits for SPEC. Therefore, it could also not be said that pecuniary compensation for its non-performance would not afford adequate relief so as to attract section 12(c) of the Specific Relief Act. No special circumstances were pleaded by SPEC to demonstrate otherwise. As a consequence, the Contract was hit by section 21(a) of the Specific Relief Act which stipulates that a contract for the non- performance of which compensation in money is an adequate relief, cannot be specifically enforced.

23. In our view there is another hurdle that SPEC faces. Specific performance of the Contract by PPL did not simply entail release of payments to SPEC. Before that the Contract envisages that the works shall be to the satisfaction of PPL; that quality of material has to be approved by PPL; that PPL has to review project progress and may notify changes and amend the bills of quantities; that regulatory permits required during the works have to be procured by PPL; and certificates of successful completion have to be issued by PPL. These acts by PPL are of course dependent on the far more detailed and technical provisions of the Contract setting-out performances by SPEC. Therefore, the Contract runs into such minute and numerous details and is of such a nature that the Court cannot enforce specific performance of its material terms, which is another bar to specific performance under section 21(b) of the Specific Relief Act. The following Illustration given under said provision could not be more apt:

"A contracts with B to execute certain works which the Court cannot superintend:
………
The above contracts cannot be specifically enforced".

24. As apparent in the above Illustration, the principle underlying section 21(b) of the Specific Relief Act is that the Court cannot superintend a contract

> *of works of the nature mentioned in section 21(b). In Co-operative Insurance Society Ltd v. Argyll Stores (Holdings) Ltd. [1998] A.C. 1, HL, Lord Hoffmann explained that specific performance of a works contract running into details is usually denied as it entails constant supervision by the Court, and also for the reason that terms of specific performance of such a contract cannot be drawn with precision by the Court.*
>
> *25. When the subject Contract was not specifically enforceable, the relief sought in the suit for incidental injunctions were barred by section 56(f) of the Specific Relief Act which stipulates that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. As observed by the Supreme Court in Bolan Beverages (Pvt.) Ltd. v. Pepsico Inc. (2004 CLD 1530), where final relief for injunction is barred, no temporary injunction should be granted. In Pakistan Associated Construction Ltd., v. Asif H. Kazi (1986 SCMR 820), in somewhat similar circumstances emanating from the termination of a works contract, the Supreme Court upheld the denial of a temporary injunction in view of clauses (a) and (b) of section 21 and section 56(f) of the Specific Relief Act. CMA No. 6224/2020 by SPEC was no exception and was rightly dismissed."*

Aside from being binding on this court, I find myself in complete agreement with the interpretation cast by the Division Bench of this Court in those proceedings and which are clear that a contract for execution of works is not specifically performable and in terms thereof an injunction preventing the breach of a contract, by entering into a new contract with a third party on the same oblgiations cannot be granted. In terms of the subject suit, the contract entered into as between the Plaintiff and the Defendant No. 1 is not capable of being specifically performed and the prayer as maintained by the Plaintiff, seeking to prevent the Defendant No. 1 from appointing a new subcontractor would to my mind seem to me to be seeking an injunction to prevent the breach of a contract and which cannot be granted in terms of Sub-Section (f) of Section 56 of the Specific Relief Act, 1877 and which therefore cannot be granted. The Suit as framed is therefore not maintainable.

13. It seems that realising that the issue of maintainability might become an issue, Mr. Sufiyan Zaman has preemptively maintained CMA No. 13319 of 2023, being an application under Rule 17 of Order VI of the Code of Civil Procedure, 1908 seeking to include a prayer for damages for wrongful termination of the contract. I have perused the application that has been maintained by Mr. Sufiyan Zaman and whereby amendments have been sought to include a claim for damages. I have also perused the decision of the Supreme Court of Pakistan reported as ***Mst. Ghulam Bibi and others v. Sarsa Khan and others***[22] which was relied on by him and wherein it was clarified by the Supreme Court of Pakistan that where *"the cause of action does not change the main substance of the suit and nature of the suit would not change"* and hence the application could be allowed. To

---

[22] PLD 1985 Supreme Court 345

my mind the cause of action i.e. the bundle of facts on the basis of which the suit has been maintained has not changed as the amendments sought simply seek to detail the breach of contract by the Defendant No. 1 which was already pleaded in various paragraphs of the plaintiffs and also to detail the financial loss suffered on account of such breach and which are claimed as damages. I do not consider that this would amount to a change in the cause of action of the suit and hence in principle the application is maintainable.

14. In terms of the provisions of Rule 2 of Order II of the Code of Civil Procedure, 1908 and whether they would impede this application from bring allowed, the Supreme Court of Pakistan in the same decision has opined that in the event that the amendments tantamount to a " *new cause of action … that cannot be permitted to be introduced in the garb of amendment ; but regarding the introduction of a new or different element which by itself does not constitute a different cause of action or a new suit it would be in accord with the provisions contained in Order II, rule 2, C. P. C."* Having already come to a conclusion that the amendments sought do not amount to a new cause of action, it would seem that as per the decision of the Supreme Court of Pakistan in ***Mst. Ghulam Bibi and others v. Sarsa Khan and others***[23] the provisions of Rule 2 of Order II of the Code of Civil Procedure, 1908 would not impede this application being allowed and which having been maintained within a period of three years from the date of the alleged breach is also not barred under Section 3 of the Limitation Act, 1908. The application therefore must be allowed.

15. For the foregoing reasons, CMA No. 13319 of 2023 maintained under Rule 17 of Order VI of the Code of Civil Procedure, 1908 is allowed and the plaint while as originally framed was barred under the provisions of Sub-Sections (a), (b) and (d) of Section 21 read with Sub-Sections (f) of Section 56 of the Specific Relief Act, 1877, on account of such an application being allowed, renders the plaint being maintainable. The Plaintiff is directed to file an amended plaint within one week of this order and whereafter the Additional Registrar will issue notices for the filing of Written Statements. Order Accordingly.

J U D G E

Karachi dated 3 February 2025

[23] PLD 1985 Supreme Court 345

ANNOUNCED BY

JUDGE

Nasir