

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

H.C.A No.279 of 2023

**[UBL Insurers Limited v. Town Municipal Corporation Moriro Mirbahar
and others]**

Order with signature of Judge(s)

**Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi**

Hearing

1. For orders on office objection a/w reply at 'A'
2. For hearing of main case
3. For hearing of CMA No.3981/2023

15-05-2025

Ms. Saira Shaikh, Advocate for the appellant
Mr. Muhammad Idrees, Advocate for respondent No.1
None present for respondent Nos.2 & 3

JUDGMENT

Muhammad Iqbal Kalhoro, J:- We have heard both the parties. This appeal questions an order dated 02.06.2023, whereby learned single Judge of this Court has been pleased to dismiss an application under Order VI Rule 17 CPC seeking amendment in paragraph-15 of Suit No.729 of 2022 filed by the appellant/plaintiff for specific performance of agreement dated 14.02.2022 and permanent injunction. The amendment appellant sought in para-15 is reproduced as under:-

“15. The defendant’s action and/or ill actions are causing severe losses to the plaintiff. Therefore, unless the defendant is not directed to clear the entire outstanding amount i.e. Rs.99,993,080/- (Rupees Ninety Nine Million, Nine Hundred and Ninety Three Thousand and Eighty only) and returned Rs.2,000,000/- (Rupees Tow Million only) deposited by the plaintiff with the defendant as earnest money, the plaintiff shall suffer the irreparable loss.”

Prayer clause ‘a’

“Pass a decree of specific performance of agreement dated 14.02.2022 thereby directing the defendant to pay Rs.99,993,080/- (Rupees Ninety Nine Million, Nine Hundred and Ninety Three Thousand and Eighty only) to the plaintiff.”

2. The only ground to oppose this application by the learned counsel for respondent No.1 is that the fact mentioned in the proposed amendment was already in knowledge of the plaintiff/appellant, but it did not seek the relief in relation to which at the time of filing the plaint, hence the proposed amendment is hit by Section 2(2) CPC. However, this contention has been rebutted by learned counsel for the appellant stating that when the suit was filed the agreement was in existence and during pendency of the suit the same has expired. The entire amount has become liable to be paid to the plaintiff/appellant by the respondent, hence, the amendment is necessary to include entire claim.

3. It may be stated that even up till now the written statement has not been filed, and it goes without saying that an amendment changing complexion of suit is the one, which cannot be allowed. Here, the amendment sought by the plaintiff/appellant is in continuation of the relief already sought by it in the suit, hence, the complexion of suit will remain the same. Moreover, the written statement has not been filed, therefore, no prejudice would be caused to the respondents if the application is allowed and the appellant is permitted to file the amended memo of plaint with necessary amendment.

4. In the circumstances, we *set aside* the impugned order and allow this appeal without any order as to costs.

JUDGE

JUDGE