

IN HIGH COURT OF SINDH, AT KARACHI

Suit No.194 of 1991

ORDER

Date of hearing 22.10.2013.

Plaintiff through Mr. Mansoorul Haq Solangi,
advocate.

Defendant No.5 through Mr. Imtiaz Ali Effendi, advocate.

Another defendants through Mr. Khalid Shah, advocate.

NAZAR AKBAR-J: Through this order, I intend to dispose of the Application under Order VII Rule 11 CPC (CMA No.12634/2010) filed by the defendant.

2. Brief facts of the case are that the plaintiffs are the legal heirs of deceased Rashid Anwar Akhtar, who died in a road accident on 09.02.1990. Prior to the death, Rashid Anwar Akhtar severely injured, was brought to the Agha Khan University Hospital, Karachi and the Defendant No.2 attended the injured. However, he died on 06.02.1991 and his legal heirs filed the instant suit for damages and compensation amounting to Rs.50,00,000/- under the Fatal Accident Act, with the following prayers:-

“The plaintiffs, therefore, pray for a judgment and decree in their favour, against the defendants, jointly and severally, for a sum of Rs.50 Lacs (Rupees Fifty Lacs) by way of compensation and damages, which sum may be distributed amongst the plaintiffs in accordance with Muslim Sunni Law.”

3. The defendants subsequently agreed to accept the claim of compensation and damages raised in the plaint and on 12.08.2010, the plaintiffs namely Mst. Shireen Akhtar, widow, Hammad Akhtar and Ms. Madiha Akhtar son and daughter of deceased Rashid Anwar Akhtar filed an application under Order XXIII Rule 1 CPC bearing CMA No.8404/2010 on the ground that the defendant has prepared a pay order of entire amount of Rs.50,00,000/-, claimed in the plaint. They may be directed to deposit the said pay order in Court for distribution amongst five plaintiffs. On 24.08.2010, this application was allowed only to the extent of Plaintiffs No.1 to 3 as the Defendants No.4 and 5 were not willing to accept their share. The record shows that vide Pay Order No.2177325 amounting to Rs.50,00,000/- was deposited with the Nazir of this Court on 26.08.2010. The record further shows that out of the said amount, the shares of the Plaintiffs No.1, 2 and 3 have been paid to them by the Nazir of this Court and the shares of the Plaintiffs No.4 and 5 amounting to Rs.16,66,500/- as their shares by way of inheritance as per Sharia has been invested by the Nazir of this Court on 27.08.2010. In this background, since the defendants have conceded to the claim raised by the plaintiffs in their suit and three of them have realized their share through the Court, the defendants on 14.12.2010 have filed CMA No.12634/2010 for rejection of plaint.

4. I have heard learned counsel for both the parties and perused the record.

5. The defendants in their application for rejection of plaint have raised only one issue that once the entire amount claimed by the plaintiffs has been paid by the defendants, no cause of action is left and

no triable issue is in the field as such now this Court cannot pass any decree against the defendants.

6. No counter affidavit to the application under Order VII Rule 11 CPC has been filed. Learned counsel for the Plaintiff No.4 has contended that he has already filed an application for amendment of the plaint bearing CMA No.5133/2007, which is pending and, therefore, the plaint cannot be rejected at this stage. The perusal of the application for amendment of the plaint shows that the only ground for amendment of the pleadings and enhancement of the amount for damages from Rs.5.00 Million to 10.00 Million is mentioned in Paragraph-9 of the said application, which is reproduced herein below:-

“9. That the amended amount claimed appeared to be just and reasonable on the face of it. That a considerable period had been passed since the commencement of litigation i.e. 17 years and over all such period the plaintiffs who are parents, widow and orphans have been suffering for want of monetary sustenance and financial assistance. Besides, the inflation and profit at the market rate would have further enhanced the amount had the due compensation be paid immediately after the death of the deceased subsequent upon lodging of the claim. Besides, the deceased would have got quick and rapid promotions and advancement in his job career and he would have obtained handsome raise in his earning packages with the passage of time and an increment @ 30% to 40% would have safely been assumed in view of the past trend of inflation.”

7. In fact the delay in disposal of the case is not a ground the increasing the amount of compensation and damages. Even otherwise, it is not alleged in the application for amendment of pleadings that the delay is attributable to the defendants. If such amendment is allowed then today when this application under Order VI Rule 17 CPC by itself is

pending for more than seven years, the claim of enhancement sought through this application has become insufficient before it could be granted. Therefore, the plaintiff should file yet another application for further amendment in the pleadings. It is not legally and logically possible. Learned counsel for the Plaintiff No.4 has failed to meet the basic question as to how the cause of action survived once the entire claim of the plaintiffs has been not only admitted but has been paid by the defendants. Nothing is left in the Suit. The order dated 24.08.2010 indicates that this application has not been fully disposed off only because the arguments/contentions of the learned counsel for the Plaintiff No.4 were to be heard. Therefore, inspite of clear directions of this Court by order dated 17.02.2012 that first of all the CMA No.12634/2010 seeking rejection of plaint is to be decided. I allowed the learned counsel for the Plaintiff No.4 to argue his application for amendment of the plaint simultaneously since he is claiming pendency of the said application as the only defence is against the rejection of the plaint.

8. The record shows that the plaintiffs neither in the original plaint nor in the application for amendment of the plaint have claimed that they are also entitled to the interest on the amount of compensation and damages claimed by them.

9. The value of the share of the Plaintiffs No.4 and 5 is being invested by the Nazir of this Court in profit bearing scheme has already been increased for more than Rs.23,00,000/- from Rs.16,66,500/-. This factual condition further shows that the amount paid by the defendants on 27.08.2010, the defendants have not parted away from the said

amount and they could not be benefitted with it not only by realizing the profit amount, but also by investment in their own business. Since plaintiff has not prayed for compensation alongwith interest in the plaint, the Plaintiffs No.4 and 5 are not entitled to the interest on the amount of their share lying in the Court. However, the Nazir of this Court is directed to release the amount of share of the Plaintiffs No.4 and 5 with interest to them if they choose to come to collect the same after proper identification.

10. In view of the above circumstances, admittedly no cause of action is left. In my humble view the suit should have been dismissed or otherwise declared that it has become infructuous on the day when the claim was accepted and paid by the defendants. The purpose of the suit has been achieved. Therefore, the suit stands dismissed as withdrawn. In the above terms CMA No.12364/2010 stands disposed off. All the pending applications are also dismissed as infructuous.

Karachi
Dated:05.03.2014

JUDGE