

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No. S- 243 of 2025
Shakir Mehmood v. Government of Sindh and others

Petitioner : Shakir Mehmood Shaikh, *through*
Mr. Muhammad Moez Shamsi,
Advocate.

Respondents No.1 to 4 : Government of Sindh & others,
through Mr. Ahmed Ali Shahani,
Assistant Advocate General Sindh.

Respondent No.5 : Waheed Ahmed Yousufzai Pathan,
through, Mr. Azhar Ahmed Khan,
Advocate.

Respondent No.6 : Muhammad Asif Kamboh,
Nemo.

Date of hearing : 23.02.2026

Date of decision : 23.02.2026

ORDER

Ali Haider 'Ada', J:- Through this Constitutional Petition, the Petitioner has called in question the order dated 06.02.2024 passed by the learned Senior Civil Judge-I, Sukkur in F.C. Suit No.185 of 2018, whereby the application filed under Order VI Rule 17 read with Section 151, C.P.C., seeking amendment of the plaint, was dismissed. The said order was assailed before the Revisional Court in Civil Revision No.31 of 2024; however, the Revisional Court vide order dated 10.04.2025 maintained the order of the trial Court. Being aggrieved, the petitioner has invoked the constitutional jurisdiction of this Court.

2. Briefly stated, the petitioner instituted a suit for Specific Performance of Contract against the respondents. The respondent No.5 filed written statement before the trial Court, inter alia, contending that the petitioner had failed to pay the remaining sale consideration and, therefore, the contract was not fulfilled.

3. During the course of proceedings, it transpired that one Muhammad Asif (respondent No.6) was, in fact, the original owner of the property in question. Consequently, the petitioner moved an application under Order I Rule 10, C.P.C. for the Impleadment of the said

Muhammad Asif as party to the suit. Initially, the trial Court not only dismissed the application under Order I Rule 10, C.P.C., but also rejected the plaint under Order VII Rule 11, C.P.C. The said order was challenged before the appellate forum, which vide order dated 26.05.2018 set aside the impugned order and remanded the matter with a direction to decide the application under Order I Rule 10, C.P.C. afresh. Thereafter, in compliance of the remand order, the learned trial Court vide order dated 23.08.2019 allowed the application under Order I Rule 10, C.P.C. and impleaded Muhammad Asif as defendant, and the suit proceeded further.

4. Subsequently, the petitioner filed an application under Order VI Rule 17, C.P.C. seeking amendment of the plaint in view of the impleadment of respondent No.6. The said application was dismissed by the trial Court and the order was maintained by the Revisional Court, hence the present petition.

5. Learned counsel for the petitioner contended that once the application under Order I Rule 10, C.P.C., was allowed and respondent No.6 was impleaded as defendant, it became imperative in law to permit consequential amendment of the plaint, to incorporate necessary pleadings against the newly added party. He submits that the proposed amendment does not alter the nature of the suit, which remains one for specific performance of contract, but is only intended to bring the pleadings in conformity with the subsequent progress, particularly when respondent No.6 is the real owner of the suit property.

6. On the other hand, learned counsel for respondent No.5 argued that the proposed amendment would change the nature and scope of the suit and, therefore, cannot be allowed. He further contended that there is no dispute regarding ownership, as respondent No.6 had already transferred the property to respondent No.5, who in turn executed the agreement to sell in favour of the petitioner. According to him, respondent No.6 is neither a necessary nor a proper party, and the real controversy revolves around the alleged non-payment of the remaining sale consideration.

7. Conversely, the learned Assistant Advocate General submitted that once the application under Order I Rule 10, C.P.C. has been allowed and respondent No.6 has been impleaded as defendant, the filing of an amended plaint is a natural and necessary consequence to enable the Court to effectively adjudicate upon the controversy and to arrive at a just decision of the case.

8. Heard learned counsel for the parties and perused the material available on record.

9. In the instant matter, respondent No.6 was directed to be impleaded as a party to the proceedings pursuant to the acceptance of the application under Order I Rule 10, C.P.C. However, the subsequent application filed by the petitioner under Order VI Rule 17, C.P.C., seeking amendment of the plaint, was declined by the learned trial Court, and such order was maintained by the Revisional Court. Before discussion, it would be beneficial to reproduce the Order VI Rule 17, C.P.C., which reads as under:—

“17. Amendment of pleadings.— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

10. A bare perusal of the above provision makes it manifest that the Court is vested with wide discretion to allow amendment of pleadings at any stage of the proceedings, provided such amendment is necessary for determining the real controversy between the parties and does not cause injustice or prejudice which cannot be compensated in terms of costs.

11. Furthermore, since the controversy circles around the effect of the impleadment of respondent No.6 as a party to the suit, it would be relevant to examine the provisions of Order I Rule 10, particularly sub-rule (4), C.P.C. For ready reference, the same is reproduced as under:—

“Order I Rule 10(4), C.P.C.— Where defendant added, plaint to be amended. Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendants.”

12. A plain reading of the above provision makes it clear that once a defendant is added to the proceedings, the plaint is required to be amended in such manner as may be necessary, unless the Court directs otherwise. The provision itself contemplates consequential amendment of the plaint so as to bring the pleadings in conformity with the addition of a new party, thereby enabling the Court to effectively adjudicate upon the matter in controversy.

13. Now accordingly, it is the prime duty of the Court to proceed with the cases and decide the same on merits, and in such like situations, the principle *Ex debito Justitiae* be applied. *Ex debito justitiae* is a Latin legal phrase meaning "from a debt of justice," signifying a remedy or action that a Court is bound to grant as a matter of right rather than discretion.

14. Moreover, an amendment may be allowed where it is necessary for determining the real question in controversy. Such an amendment should ordinarily be permitted provided it does not introduce a new cause of action, and does not alter the fundamental nature of the suit, and where the same is just and necessary for proper decision of the matter. Support in this regard is drawn from the case of *Nazir Ahmad and 10 others v. Hasanullah and 17 others*, reported in 2023 MLD 1541.

15. That, likewise, in *Syed Nazir Ali Rizvi v. Zahoor Ahmad*, (PLD 2005 SC 787), it has been held at paragraph No.6 as under: —

"6. There is no cavil with the proposition that the proposed amendment can neither change the complexion of the suit nor introduced a new cause of action. No amendment will be allowed where its effect would be to convert the character of the suit. *Shahsawar v. Najamul Hassan* 1981 SCMR 730, *Khudeja v. Jehangir Khan* 1971 SCMR 395, *Atlantic Steamer's Supply Co. v. M.V. Titisee* PLD 1993 SC 88 and see *moreso* "the fundamental character of the suit including the subject-matter and cause of action cannot be allowed to be substituted." *Ghulam Bibi v. Sarsa Khan* PLD 1985 SC 345, *Ghulab v. Fazal Ilahi* PLD 1955 Lah. 26. It is however, to be kept in view that subject to certain exceptions "even alternative and inconsistent pleas may be allowed to be raised by way of amendment". *Ghulam Ali v. Pakistan* PLD 1960 Kar. 581, *Alauddin v. Central Exchange Bank Limited* PLD 1960 Lah. 446 "or a new ground of claim can be introduced because merely introduction of fresh matter cannot alter the nature of the suit and leave ought not be refused in such cases. "*Muhammad Essa v. Haseena Begum* 1989 SCMR 476."

In "*Muhammad Mian v. Syed Shamimullah and 2 others*"

(1995 SCMR 69), it has been held at paragraph No.3 as follows:-

"The application has been contested by the respondents. It has been stated that the application has been filed after long delay. The suit was filed in the year 1979, but the relief of possession was not claimed, therefore, the application for amendment may not be allowed at this belated stage. The amendment claimed by the petitioner will not alter the nature of the suit or relief. The relief of possession is a consequential relief for declaration. This relief arises out of the claim of the appellant. The amendment sought by the appellant is only of technical nature. No further evidence is required. In' Ahmad Din v. Muhammad Shafi (PLD 1971 SC 762) it has been observed that "the suit could not fail merely by reason of fact that consequential relief by way of possession had not been claimed. If the suit was otherwise maintainable and the appellant was otherwise entitled to the relief it was open to the Courts to allow him to amend the plaint by adding a prayer for possession and paying the appropriate ad valorem court-fees." In Zubaida Bibi v. Hashmat Bibi (1993 SCMR 1882) the prayer for amendment of plaint was allowed. We, therefore, allow the amendment at the cost of Rs.5,000."

16. The most relevant precedent case with respect to the present subject matter is reported as "**Karamat Ali and another v. Muhammad Yunus Haji and others**" (PLD 1963 SC 191). In this case, the plaintiff sought the relief of repossession at the appellate stage before the Hon'ble Supreme Court of Pakistan, and even at that stage the amendment was allowed. It was held that the nature of the suit was not altered by the additional prayer for repossession.

17. In view of this beneficial rule, the proposed amendment in the present case was expedient for determining the real questions in controversy between the parties and did not change the nature of the pleadings. An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments, and if such amendment is allowed, no injustice is caused to the other party. Reference may also be made to **Mst. Ghulam Bibi and others v. Sarsa Khan and others** (PLD 1985 Supreme Court 345), **Mst. Barkat Bibi v. Khushi Muhammad and others** (1994 SCMR 2240), **Muhammad Abdullah Khan Niazi v. Rais Abdul Ghafoor and others** (PLD 2003 Supreme Court 379), **Abaid Ullah Malik v. Additional District Judge, Mianwali and others** (PLD 2013 Supreme Court 239), and **Manzoor Hussain and others v. Mst. Fazloon Bibi and others** (2020 CLC 2001).

18. Keeping in view the foregoing reasons and discussion, the instant Constitutional petition is hereby allowed. The order of the trial Court dated 06.02.2024, as well as the order dated 10.04.2025 passed by the Revisional Court, whereby the application under Order VI Rule 17, C.P.C., was dismissed, are hereby set aside. The application under Order VI Rule 17, read with Section 151, C.P.C., is accordingly allowed, and the trial Court is directed to permit the Petitioner to file the amended plaint as proposed in the said application.

JUDGE