

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constt. Petition No.D-404 of 2025

(Jazib Jamal through attorney v. Genetic Pharmaceutical & ors

DATE OF HEARING	ORDER WITH SIGNATURE OF HON’BLE JUDGE.
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- 1. For orders on CMA No.1874/24 (u/A)
- 2. For orders on Office objections at flag-A.
- 3. For orders on CMA No.1875/24 (Ex/A)
- 4. For orders on CMA No.1876/25 (S/A)
- 5. For hearing of main case.

08.04.2025

Miss. Kiran Raees, Advocate for petitioner.

Ali Haider ‘Ada’ J. Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the Petitioner assails the order passed by the learned Senior Civil Judge-II, Sukkur (Trial Court), whereby the application filed by Respondent/Defendant No.08 under Order I Rule 10 of the Civil Procedure Code (CPC) for striking off his name from the array of defendants was allowed. The said order was subsequently upheld by the learned IInd Additional District Judge, Sukkur (Revisional Court), in Revision Application No. 127/2024. Both orders have been impugned in the present petition with a prayer that the same be set aside and the matter be remanded for rehearing of the application on merits.

Briefly stated, the facts of the case are that the Petitioner instituted a civil suit for recovery and damages against the defendants, having served as a Sales Manager in a private pharmaceutical company by the name of Genetics Pharmaceutical (Company). The key officials of the said company have been arrayed as defendants in the suit. The Petitioner alleges that the company obtained his resignation through coercion and subsequently failed to settle his financial dues. He claims that this conduct caused him irreparable loss and seeks damages for the non-settlement of his dues as well as the alleged coercive actions. During the proceedings, Respondent/Defendant No.08 filed an application under Order I Rule 10 CPC, contending that he, being the Dean of the Faculty of Neurosurgery at

Chandka Hospital, Larkana, has no direct or indirect association with either the petitioner or the contesting company. He asserted that the grievance of the petitioner pertained solely to the financial obligations of the company, therefore, he is not a necessary or proper party to the proceedings. The application was allowed by the learned Trial Court and the said order was upheld by the Revisional Court.

Learned counsel for the petitioner submits that the application under Order I Rule 10 CPC was decided by the learned Trial Court without affording an opportunity of hearing to the petitioner. She further contends that Respondent No.08 is a necessary party to the suit, which pertains to the settlement of accounts and a claim for damages against the company. It is, therefore, prayed that the impugned orders be set aside and the matter be remanded to the Trial Court for rehearing of the said application in accordance with law.

Heard arguments; and perused the material available on record.

Record reflects that the application under Order I Rule 10 CPC was filed by Respondent No.08 on 10-08-2024. Thereafter, the petitioner failed to submit objections despite having been granted sufficient opportunities. Consequently, the learned Trial Court debarred the petitioner from filing objections. On the date of the impugned order, i.e., 12-10-2024, another application under the same provision, filed by the remaining respondents, was also listed for hearing. The learned Trial Court, after hearing arguments on the application submitted by Respondent No.08, granted an adjournment specifically for the purpose of allowing the petitioner to file objections to the separate application filed by the other respondents. Unfortunately, the petitioner appears to have conflated both applications as one and the same, whereas the record clearly indicates they were distinct and independent proceedings. Furthermore, the order dated 12-10-2024 reflects that learned counsel for the petitioner was present and was afforded a hearing by the Trial Court on the application filed by Respondent No.08.

Moreover, on merits, a plain reading of the plaint reveals that no specific relief or prayer has been sought against Respondent No.08. It has been expressly stated in the pleadings that Respondent No.08 holds no official position in the company and, in fact, serves as the Dean of the Department of Neurosurgery. Thus, he has neither a direct nor

indirect association with the company or the petitioner. The petitioner's grievance is solely directed against the employer company, and there is no assertion of any employer-employee relationship between the petitioner and Respondent No.08. In light of these facts, both the learned Courts below have rightly and judiciously exercised their discretion in holding that Respondent No.08 is neither a necessary nor a proper party to the proceedings and consequently struck off his name from the array of defendants.

To further enlarge the case, it is imperative to consider the scope and object of Order I Rule 3 CPC, which deals with the joinder of defendants, the same is read as under:-

“3. Who may be joined as defendants-- *All persons may be joined in one suit as defendants where—against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.*”

In light of the above provision, the inclusion or exclusion of a party from a civil suit must be governed by the twofold criteria embodied in Order I Rule 10 of the Civil Procedure Code. Firstly, there must exist a right to relief against such a party, and this right must arise out of the same act or series of acts or transactions which form the subject matter of the suit. Secondly, there must be a common question of law or fact involved in the suit as between the party sought to be impleaded and the existing parties to the litigation. Unless both these conditions are met, the addition of a party would amount to an improper joinder and is liable to be struck off.

The provision vests discretionary power in the Court to either add or strike off a party who has been improperly joined or whose presence is unnecessary for the effective adjudication of the dispute. The guiding principle behind this provision is to ensure that all matters in controversy between the parties can be finally and completely decided without multiplicity of proceedings or injustice caused by the presence of irrelevant parties. The Latin maxim *pars non necessaria in judicio*, meaning “a party not necessary in the suit,” aptly captures this principle. A person who neither has a direct legal interest in the subject matter of the suit, nor whose rights are likely to be affected by the judgment, cannot be

considered a proper or necessary party. The emphasis is always on the expedient and effective adjudication of disputes, and not the inclusion of persons who are only peripherally or remotely connected to the factual narrative.

In the present case, as already highlighted, the Petitioner's pleadings themselves do not attribute any actionable act to Respondent No.08 nor is any relief sought against him. The petitioner's own assertions in the plaint negate any direct or indirect nexus between the said respondent and the controversy at hand. His position as the Dean of Neurosurgery at a public hospital is completely extraneous to the petitioner's claim, which concerns purely civil liability and damages arising out of alleged coercion and financial misconduct by a private company. The pleadings of the petitioner do not even vaguely indicate that Respondent No.08 was either acting on behalf of the company or had any influence over its employment decisions. In the absence of such a linkage, he can neither be treated as a necessary nor as a proper party to the proceedings.

Coming to the prayer for remand, it is now trite law that remand should be the exception rather than the rule. Where the record before the Court is sufficient to allow for a just and fair adjudication of the matter, no useful purpose would be served by remanding the case back to the trial Court. The superior courts have consistently held that remands merely for the sake of technicality, or to rectify procedural lapses attributable to the negligence of the party seeking such remand, should be avoided in the interest of judicial economy and substantive justice. The principle has been clearly laid down by the Supreme Court of Pakistan in the case of *Ashiq Ali and others v. Mst. Zamir Fatima and others* (PLD 2004 SC 10), where it was held as under:

“We have adverted to the contention as agitated on behalf of the petitioner that the case should have been remanded, which appears to be a fallacious one. Only those cases should be remanded which cannot be decided on the basis of the available record and where remand would serve the interest of justice. We are of the firm view that if a controversy can be resolved on the basis of available evidence, then the question of its remand does not arise. It is well settled that where the evidence on record is sufficient for the Court concerned to decide the matter itself, remand should not be ordered. More so, a Court will not remand a case where the defect is attributable to the negligence or default of the party seeking remand.”

The Petitioner in the instant case was afforded due opportunity to contest the application under Order I Rule 10 CPC. He not only failed to avail the said opportunity but also misapprehended the scope and content of the application itself. The findings recorded by both the Trial and Revisional Courts are not only based on sound judicial reasoning but are also supported by the material on record. The matter does not involve any disputed factual controversy that would necessitate remand for fresh adjudication. Rather, the issue hinges purely on a legal question regarding the joinder of an unnecessary party—a question that has been rightly answered by both subordinate Courts in the affirmative, by striking off the name of Respondent No.08. Therefore, no case for interference or remand is made out.

In view of the foregoing reasons and discussion, the conclusion drawn by the learned Trial Court, subsequently affirmed by the learned Revisional Court, appears to be based on sound judicial reasoning and a proper appreciation of the material available on record. No illegality, infirmity, or jurisdictional error has been pointed out that may justify interference by this Court in the exercise of its constitutional jurisdiction. Consequently, the instant writ petition, being devoid of substance and merits, is hereby dismissed in *limine*.

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