IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.178 of 2016
High Court Appeal No.179 of 2016
High Court Appeal No.180 of 2016

Date	Order with Signature(s) of Judge(s)

Present:
Aqeel Ahmed Abbasi, J.
Abdul Maalik Gaddi, J.

For hearing of CMA No.2175/2016

Date of hearing: 16.08.2016

Date of Judgment: 20.09.2016

Mr. Amel Khan Kasi a/w Ms. Nahl Chamdia, Advocates for Appellants
Mr. Salahuddin Ahmed Advocate for Respondents

JUDGMENT

Abdul Maalik Gaddi, J. – Through this common Judgment, we intend to dispose of the captioned High Court Appeals, as these appeals relate to same subject matter involving common question of laws and facts.

2. By these appeals, the appellants are aggrieved by the common Orders dated 09.05.2016, passed by the learned Single Judge of this Court in Civil Suits Nos.815, 772 and 1158 of 2010, filed by the respondents. In the aforesaid suits, applications under Order VI Rule 17 CPC were filed by the respondents seeking amendments in the original plaints to include the additional relief of damages in the memo of plaint and in prayer clause of the suits, which were opposed by the appellants, however, the learned Single Judge after hearing the parties allowed the aforesaid applications. Now the appellants

have preferred the instant High Court Appeals with the prayer to set-aside the aforesaid impugned Orders.

3. The relevant facts of the case, in brief as alleged in original suits are that the respondents, who are permanent employees of the appellant were vide separate Notice dated 19.04.2010 informed that their services with the appellant have been terminated with immediate effect with provision of one month salary in lieu of notice. The respondents through the above suits filed on 19.05.2010, sought the following reliefs:-

i) Declare that the plaintiffs are entitled to continue their services at their respective posts/designations and receive all applicable benefits and privileges thereto, as prevailing on 18.04.2010;

ii) Cancel the purported termination notices dated 19th April 2010 issued by the KESC to the plaintiffs;

iii) Restrain the KESC from dismissing, terminating compulsorily retiring or awarding any penalty against the plaintiffs except in accordance with Chapter 6 of the KESC Officers Policy, 2002 and after initiating proper show-cause proceedings and observing the rules of natural justice;

iv) Restrain the KESC from altering or revising the terms of the KESC Officers Policy, 2002 to the detriment of the plaintiffs without their consent;

v) Grant costs of the instant suit;

vi) Grant such further relief and/or modify the relief, as may be just and appropriate;

4. It is pertinent to mention here that on 27.05.2010, the learned Single Judge sitting on original side, on the very day granted ad-interim injunction in favour of the respondents, whereby the

operation of the termination notice issued by the appellant was suspended. This order was assailed in High Court Appeal No.104 of 2010 by the appellant for vacation of the injunction order, however, the said appeal was dismissed vide Order dated 03.06.2010. Being aggrieved with the said order, appellant had filed Civil Petition No.1033 of 2010 before the Hon'ble Supreme Court, however, the Hon'ble Supreme Court vide Order dated 12.10.2010 disposed of the said petition with direction to the learned Single Judge to decide the injunction application on merit within four (04) weeks. It also appears from the record that the learned Single Judge allowed the injunction application in favour of the respondents vide Order dated 28.07.2011. Again appellant filed High Court Appeals bearing Nos.127 to 129 of 2011, 137 of 2011 and 57 of 2012 by challenging the confirmation of the injunction order, however, the said appeals were allowed vide Order dated 08.08.2012 and the injunction orders in favour of the respondents were recalled. Consequently, the respondents filed Civil Appeals Nos.56-K, 79-K and 80-K of 2012 for grant of injunction in their favour. These appeals were heard by Hon'ble Supreme Court and disposed of by consent of the parties on 09.11.2015 in the following terms:-

> "The trial Court, seized of the original suits instituted by the appellants, shall ensure proceedings in these suits expeditiously by consolidating and framing issues within two weeks from the date of communication of this order. If parties, so agree, the evidence of both the parties will be recorded on commission within next three months and in any case these suits will be proceeded and disposed of finally within six months from today.
>
> Mr. Khalid Javed Khan learned ASC for the Respondents has offered for payment of undisputed claim of the appellants as regard the pensicnary benefits, gratuity etc. If the appellants so choose, they can avail such

> benefit, which will be without prejudice to the pending litigation, and subject to the final fate of the suits."

5. It also appears from the record that this case has chequered history and written statement had been filed on 19.05.2010. The appellant vehemently resisted the claim in suits. It was specifically mentioned that the suits filed by the respondents, are not maintainable and barred by law and liable to be dismissed without any further proceedings. The subject matter of the suits are an alleged dispute between master and servant and under the law an unwanted servant cannot be imposed upon an unwilling master and under the Specific Relief Act, the contract employment of the plaintiff/respondents cannot be enforced. According to appellant, only remedy lies with plaintiff/respondents to file a separate suit for damages.

6. It appears from the record that in this case issues have not been framed so far, despite of directions issued by the Hon'ble Supreme Court in Civil Appeals Nos.56-K, 79-K and 80-K of 2012 but all of sudden, the respondents had filed applications under Order VI Rule 17 read with Section 151 CPC dated 05.01.2016 much after expiry of two weeks' time for framing of issues, for seeking amendments after paragraph No.19 as paragraph No.19-A as well as in prayer clause of the Suit bearing No.815 of 2010 with insertion of claim of damages. For the sake of convenience, it would be appropriate to reproduce the amendments sought in prayer clause, which reads as under:-

> "b. after Prayer Clause (vi) the following prayer clause may be added:
>
> vii) In the alternative, and without prejudice to the foregoing, if the Plaintiffs or any of them cannot be granted declaratory or injunctive relief in terms prayed for; to grant special damages to each one of such

> Plaintiffs to the extent set out in Annexure 'L' to the Plaint (alongwith any profits/accretions to provident fund dues up to time of payment to the Plaintiffs but less any amount paid out to such Plaintiffs by the Defendant No.1 during the pendency of the suit) in addition to general damages of Rs.10 million to each of the Plaintiffs;"

As mentioned above that the proposed amendments sought in the suits filed by the respondents were allowed, which are impugned before this Court.

7. It is contended by learned counsel for the appellant that the impugned order passed by the learned Single Judge of this Court is against law and facts. According to him, the Hon'ble Supreme Court vide Order dated 09.11.2015, remanded the cases to the learned Single Judge, who is seized of the original suits instituted by the respondents. According to him, the word original suits in the order denotes that no amendment could be made in the suits and it is to be ensured that after consolidating the suits and framing of the issues expeditiously, the judgment and decree be passed and amendment, if allowed, would amount to negate the very purpose of its remand. He further submitted that by allowing the amendments, which substantially and materially change the complexion of the suits as the relief of reinstatement is different and distinct from the relief of damages. It is further claimed that although there is no limitation prescribed for considering the applicant under Order VI Rule 17 CPC but insofar, as the prayer clause is concerned since additional relief is being claimed, therefore, to that extent the limitation would prevail and the plaintiffs/respondents are under obligation to assist as to maintainability of the suits in terms of the Limitation Act.

8. Conversely, learned counsel for the respondents has supported the impugned order and according to him, the case of the respondents that in terms of amended prayer clause, which is based

on same cause of action, which relates to the termination of the respondents by the appellant. It is claimed that through this amendment, the respondents sought relief of damages in consequence of alleged unlawful termination. He submitted that the Hon'ble Supreme Court has remanded the case for its expeditious disposal in three months; however, this would not curtail the legal remedies and rights available to respondents under the law. He further submitted that by allowing the amendments in prayer clause for the inclusion of relief of damages would not cause any prejudice to the appellant and according to him, by allowing the amendments, full and final adjudication of the case would take place. In support of his arguments, learned counsel for the respondents has placed his reliance upon the case of Mst. Ghulam Bibi and others v. Sarsa Khan and other reported in PLD 1985 SC 345.

9. We have heard learned counsel for the parties at length and perused the record with their assistance.

10. There is no cavil to the legal proposition that Court always has the jurisdiction under Order VI Rule 17 CPC and enjoys vast discretionary powers to allow amendments in a plaint at any stage of the proceedings, which in the opinion of the Court, are just and necessary for final disposal of case in between the parties in accordance with law, whereas, delay alone in applying for amendment is not considered as a valid ground for refusing proposed amendments in the plaint. However, at the same time, the Court is bound to exercise such discretion in accordance with settled judicial principles, firstly, while allowing request for amendment in the plaint, no prejudice shall be caused to other side, and secondly, amendment shall be necessary for accurate determination of the dispute between

the parties. It needs no reiteration that while allowing amendment in the plaint, the defendant's right should also be kept in view and no amendment should be allowed, which is aimed to change complexion of the suit altogether or to introduce a new case based on new cause of action.

11. From careful perusal of the provisions of Order VI Rule 17 CPC and after examination of the judgments as relied upon by the learned counsel for the respondent in the instant case, the following principles can be deduced:-

(1) Amendment can be allowed at any stage, if it does not change the cause of action of the suit.

(2) Amendment can be allowed to seek consequential relief arising from the cause of action originally incorporated in plaint.

(3) Amendment can be allowed to add additional relief available to plaintiff even before the higher Courts of jurisdiction, including High Courts and Supreme Court.

(4) Amendment can also be allowed to base a plaint on different title.

(5) However, amendment cannot be allowed when malafide on the part of plaintiff is explicitly visible in the pleadings.

(6) Amendment cannot be allowed to raise a plea of fact, which is derogatory to the plea already taken up in the plaint particularly, when such fact amounts to admission in favour of other side.

(7) Amendment cannot be allowed to substitute a cause of action.

(8) Amendment would also not be allowed to change complexion of the case.

(9) Amendment cannot be permitted if it amounts to cause prejudice or injustice to opposite party.

(10) Amendment would also not be allowed which may amount to introducing a new cause of action, which was not available at the time of filing of suit.

(11) Amendment cannot be allowed on the ground of findings made by another Tribunal in respect of the same subject matter.

(12) Rights accrued in favour of one party would not be allowed to be snatched away by allowing amendment in a casual manner, unless it qualifies the test in the light of decisions of Superior Courts as referred to hereinabove.

(13) Amendment is not allowed when (i) it is moved not in good faith, (ii) it is likely to result in injustice to opposite side, and (iii) the period of limitation has run, since the accrual of actual cause of action.

It will be advantageous to reproduce the relevant paragraph of the Judgment of the Hon'ble Supreme Court in the case of **Mst. Ghulam Bibi and others v. Sarsa Khan and others** reported as **PLD 1985 SC 345**, which reads as follows:-

> "What has been stated above is, however, subject to a very important condition that the nature of the suit insofar as its cause of action is concerned is not changed by the amendments 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 one 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 show 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. There amendments would not have caused embarrassment to the respondents defendants either in seeking and making similar amendments in the written statement. The inconveniences caused to the respondents as the provision itself visualizes is not only natural but would ordinarily be occasioned in almost every case. That is why the law visualizes the award of adequate compensation: in that the amendment has to be allowed "in such manner and on such terms as may be just."

12. In the instant case, it is an admitted position that suits were filed in the year 2010 but the application for amendment under Order VI Rule 17 CPC were moved on 05.01.2016 after the expiry of about six (06) years from the date of filing of the suit, particularly on remand of the cases from Hon'ble Supreme Court, when there was no injunction order in favour of the respondents. This fact alone indicates the object and aim of the respondents. We have gone through the memo of plaint and prayer clause of original suits filed by the respondents in which the reliefs of declaration, cancellation and injunction were sought, whereas, it is yet to be determined by the Court as to what would be the status of the respondents. The amendment applications in the instant matter have been filed by introducing the relief of damages, which is based on different cause of action, with the prayer that if relief sought in the original suit cannot be granted then in alternative, special damages to each of the plaintiff may be granted. In our view, the respondents/plaintiffs were not entitled to seek the amendment in the plaint including the prayer

clause of the suits with the object to change the nature and complexion of the suits by introducing new cause of action. We have examined the pleadings of the parties in the instant case and would like to observe that the plea of amendment under the facts and circumstances of the case is inconsistent/irreconcilable with the plea setup in the plaint, as now the suit is being based on claiming of damages, therefore, this would amount to putting up a new cause of action. Therefore, the complexion of the suit shall also be changed, which would result in causing serious prejudice to the other side. Thus, in our opinion, if request for amendment in plaint are allowed, it would amount to permitting the respondents to put up a new case having a different cause of action, which is contrary to spirit of law. It is settled law that the amendment which may change the entire nature of the suit cannot be allowed. Reliance in this respect is placed in the cases of **(1) Mst. Khudeja v. Jehangir Khan and 37 others** reported in **1971 SCMR 395**, **(2) Mst. Maryam Begum and 5 others v. Riaz Muhammad** reported in **2005 SCMR 1945**, and **(3) Muhammad Iqbal v. Muhammad Ramzan and 2 other** reported in **PLD 1987 Azad J & K 170**. Whereas, in the case of **Mst. Imam Hussain v. Sher Ali Shah and other** reported in **1994 SCMR 2293**, the Hon'ble Supreme Court, while dealing the question of amendment in the plaint, has observed as under:-

> "4. In our view the petitioner was not entitled to seek the amendment of the plaint in the above civil revision after the expiry of nearly five years from the date of filing of the suit with the object to change the complexion of the suit. No doubt this Court has held in a number of cases that an application for amendment of the pleading can be entertained at any stage of the proceedings, but, at the same time, it has been consistently held that the amendment of the plaint cannot be allowed to change the

> complexion of the suit. In the present case, the above belated attempt of the petitioner to amend the plaint was not warranted by the facts and law. No exception can be taken to the impugned order as the High Court has maintained the concurrent finding of the two Courts that the gift was valid. Leave is refused."

The case law cited by the learned counsel for respondents has been perused, however, the ratio of such decisions is not applicable to the facts of the present case, hence, of no avail to the respondents.

13. In view of hereinabove facts and circumstances of instant case, we are of the opinion that learned Single Judge has erred in law and fact while allowing proposed amendments through impugned common judgment dated 09.05.2016, which is hereby set-aside, whereas, these appeals are allowed. Resultantly, the applications for amendment under Order VI Rule 17 CPC, filed by the respondents stand dismissed. Since the appeals are allowed, therefore, the listed applications are disposed of for having become infructuous. Parties are left to bear their own costs.

14. Before parting with the judgment, we may observe that the learned Single Judge may proceed with the Suit(s) expeditiously and shall decide the same in conformity to the order of the Hon'ble Supreme Court dated 09.11.2015, whereas, parties shall not seek any un-necessary adjournments.

15. Above appeals are allowed in the above terms.

JUDGE

JUDGE

Faizan/