

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6533/2014

Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Syed Saeeduddin Nasir

Syed Sarfraz Ali.....Petitioner

V E R S U S

M/s.Standard Chartered Bank

and another.....Respondents

Mr. Muhammad Anwar Shahid,
Advocate for Petitioner.

Mr. Muhammad Khalid Hayat,
Advocate for Respondent No.1.

Ch. M. Rafiq Rajauri, Addl. A.G.

28.11.2016

MUHAMMAD ALI MAZHAR, J: The petitioner filed Suit No.1109/2013 against Respondent No.1 for declaration, damages and compensation in the court of VIth Sr. Civil Judge, Karachi (South) with the following prayers:-

- “a. *Declare that the plaintiff is lawful claimant and entile to claim damages to the tune of Rs.28,00,000/-.*
- b. *Direct the defendants to pay to the plaintiff the decretal amount of Rs.28,00,000/- before termination of service or pronouncement of judgment of this Hon’ble Court whichever falls earlier with the following brake-ups.*
- (i) *Pay damages on account of mental torture, harassment and tortuous act Rs.25,00,000.*

- (ii) *Lump sum amount of compensation for financial injuries sustained due to non-payment of Rs.3,00,000/- in time payment of raise in salary and bounces during 2007 and 2008.*
- c. *To grant the cost of this suit.*
- d. *To grant any other relief or reliefs which this Hon'ble Court may please deem fit and proper under the circumstances of the case”.*

2. The respondent No.1 filed written statement in which while denying the claims of the petitioner, it was further alleged that the petitioner was never denied the lawful rights and on time promotion and payment of increased salary. It was further stated that the petitioner was promoted from G-8 to G-7 with increased salary. During the pendency of the suit, the petitioner filed an application under Order VI Rule 17 CPC for some amendment in the plaint. He wanted to add the relief of proforma promotion, seniority differential amount, annual increment, bonuses, Provident Fund, Gratuity, pension and EOBI contribution as per seniority in G-7. Vide order dated 4th September, 2013, the learned trial Court allowed the application for amendment. Being aggrieved of this order, respondent No.1 filed Revision Application No. 105/2013 in the court of VIIth Additional District Judge, Karachi (South), which was allowed. Consequently, the order passed by the learned trial Court dated 04.09.2013 was set aside and the application moved under Order VI Rule 17 CPC was dismissed. While allowing the revision application, the learned Appellate Court held that the application was filed after filing of written statement. Some negligence or

omissions have also been attributed to the petitioner as to why he failed to move amendment application immediately when the defect was disclosed in the written statement. It was further observed in the impugned order that allowing amendment would mean to reward the petitioner for his negligence. At the same time, it was further observed in the order that Order VI Rule 17 CPC is to aid justice by making it possible for parties, who had not framed their pleadings in a proper form to correct the mistake or supply the omission. It was further held that the trial Court while allowing application under Order VI Rule 17 CPC failed to consider delay in filing the application.

3. In the judgment of the Hon'ble Supreme Court reported as **Mst. Ghulam Bibi and others vs. Sarsa Khan and others, PLD 1985 S.C. 345**, the Apex Court while dealing with the provisions of Order VI Rule 17 CPC held as under:-

“Expression “at any stage of proceedings” used in Order VI, Rule 17, C.P.C. not without significance word “proceedings” to be interpreted in a liberal manner so as to give a proper scope to rule in accordance with its purpose, as including appellate stage and that too upto the Supreme Court”.

It was further held that as under:-

“Language used in rule 17 of Order VI, C.P.C. to the effect that “all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy is mandatory in nature....Therefore, once the Court decides that the amendment is necessary for the said purpose of determining the real question, the

Court is required by law not only to allow an application made by a party in that behalf but is also bound to direct the amendment for the said purpose. Thus, the rule can be divided into two parts. In the cases falling under the first part, the Court has the discretion to allow or not to allow the amendment, but under the second part once the Court comes to a finding that the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment. What has been stated above is, however, subject to a very important condition that the nature of the suit in so far as its cause of action is concerned is not changed by the amendment 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. The amendment has to be allowed "in such manner and on such terms as may be just".

4. Learned counsel for Respondent No.1 has referred to the case of **Muhammad Hassan vs. Khawaja Khalil ur Rehman, 2007 SCMR 576** wherein the Apex Court has held that "In case of divergent findings of two courts below, High Court has to give due attention to findings of Lower Appellate Court unless it suffers from grave irregularity or the same are perverse or reasons given by Lower Appellate Court are not sustainable". He also referred to the case of **Abdur Rashid alias Muhammad Rashid vs. Muhammad Hanif and 2 others, 1994 SCMR 2035**, wherein the Apex Court has held that "Proposed amendment as stated in the application was such which was within the knowledge of petitioner and he could have easily mentioned it in the written statement which he did not do and there was no

justifiable reason for him to wait for seven years to divulge it for the first time so late". The judgments relied upon by the learned counsel for the respondent No.1 are distinguishable.

5. After perusal of the documents available on record and the impugned judgment passed by the learned Appellate Court, we are of the firm view that the order of the learned trial Court while allowing the amendment does not suffer from any irregularity or illegality. On the contrary the learned Appellate Court without proper application of mind set aside the order which is beyond the spirit and premise of the provisions laid down under Order VII Rule 17 CPC. Being fortified by the dictum laid down by the Full Bench of the Hon'ble Supreme Court in the case of **Mst. Barkat Bibi (supra)**, we have no hesitation in our mind to hold that the amendment sought in the application has no capability or tendency to change the complexion of the suit but it is simply a suit between Master and Servant where the petitioner has claimed his proforma promotion, seniority, differential amount, annual increment, bonuses, Provident Fund, Gratuity, pension and EOBI contribution as per seniority which, of course, require to be proved by the petitioner before the trial Court. The earlier plaint was only confined to some amount of damages and compensation and on adding some reliefs by way of amendment, there would be no change in the complexion of suit. We are also of the view that the amendment sought for is necessary to determine the real question and by allowing such amendment the

nature of the suit in so far as the cause of action will not be changed.

6. As a result of the above discussion, the impugned order dated 17.11.2014 is set aside and the order passed by the learned trial Court is restored, however, respondent No.1 may file amended written statement within one month. At this stage, both the learned counsel jointly made a request that the matter is pending since long in the trial court so some directions may be issued to the learned trial Court to expedite the proceedings. This request seems to be reasonable, therefore, the learned trial Court after filing of the amended written statement make all best possible efforts to decide the suit preferably within a period of three months. Petition along with listed application are disposed of accordingly.

JUDGE

JUDGE