

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit No.1771 of 2017**

-----  
**DATE            ORDER WITH SIGNATURE    OF JUDGE**  
-----

**Present:-  
Mr.Justice Muhammad Ali Mazhar**

**Engro Foods Limited.....Plaintiff**

**Versus**

**Province of Sindh & others.....Defendants**

**Date of Hearing: 14.12.2017**

Mr. Ali Almani, Advocate for the plaintiff.

Mr. Jamshed Ahmed Faiz, Advocate for the Intervener.

\*\*\*\*\*

**Muhammad Ali Mazhar, J:** This is a suit for declaration and permanent injunction. The plaintiff has predominantly pursued the declaration that since they are trans-provincial establishment, therefore, Sindh Factories Act, 2015 and Sindh Terms of Employment (Standing Orders) Act, 2015 are not applicable to their organization.

2. The record reflects that on 25.07.2017, the Director of Labour, Sukkur issued a circular to the plaintiff and reminded the bar against third party contractual employment in manufacturing process/production related work under the Sindh Factories Act, 2015 and Sindh Terms of Employment (Standing Orders) Act, 2015. The suit was fixed on 01.08.2017 when the learned judge of this court ordered that the reply of the impugned notice may be submitted but till next date no coercive action shall be taken against the plaintiff.

3. In the meanwhile, the Engro Dairy Farm Mazdoor Union through their General Secretary has filed this application (CMA No.13800/2017) under Order I Rule 10 C.P.C for impleading them as defendant No.4.

4. The minutiae of the plaint makes it somewhat obvious that the plaintiff has raised a pure question of law as to whether a trans-provincial organization/establishment which is governed and regulated under the provisions of Industrial Relations Act, 2012 may be subject to a number of legislations made by the province of Sindh for the benefit of employees/workers.

5. I feel no reluctance in my mind to hold that the intervener Mazdoor Union is one of the stakeholders in the matter obviously for the reason that if in future any judgment/decreed is passed to the effect that Sindh labour legislations do not apply to the transprovincial establishments then it will indeed affect the interest of employees as well as their union so in all fairness they must be given an evenhanded right of audience to advance the cause of justice.

6. The learned counsel for the plaintiff argued that the employees represented by Mazdoor Union are working in the Dairy Farm and not involved in the manufacturing process. Be that as it may. no matter, the union members are engaged in Dairy Farm or the manufacturing process, the fact remains that they are the employees of one and the same establishment and group of establishments. The learned counsel for the plaintiff during course of his arguments did not object or oppose that the intervener union is not the union of plaintiff's establishment or they

are strangers to the plaintiff hence they have no right to move this application.

7. It is well settled that only those persons are necessary and proper party to the proceedings, whose interest are under challenge in the suit and without their presence matter could not be decided on merits. The necessary party is one who ought to have been joined and in whose absence no effective decision can take place. The object of Order I, Rule 10, C.P.C. is to avoid multiplicity of proceedings and litigation and to ensure that all proper parties are before the court for proper adjudication on merits. Once the court comes to the conclusion that a person applies for becoming a party is a necessary party then the court ought to pass an order directing such person to be impleaded as party in the proceedings. It is well-settled proposition of law that court is empowered under this provision to add any person as plaintiff or defendant in the suit at any stage and even in appeals. Joining of party at any stage is binding in all subsequent proceedings until set aside in legal manner. Order I, Rule 10, C.P.C. read with section 107, C.P.C. is even applicable to appeals and the appellate court has discretion to substitute or add any person as appellant or respondent provided they are proper and necessary party to the proceedings. Though the plaintiffs are Dominus litis, (masters of suit) whom this suit belongs and who have real and direct interest in the decision of the case. They will derive benefits if the judgment comes in their favour or suffers the consequences of an adverse decision. The general rule with regard to impleading the parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be

compelled to sue a person against whom he does not seek any relief but a proper party is a party who, though not a necessary party but is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. **Reference may be made to the orders authored by me in the cases reported in (i) 2012 CLC 1477 (Mst. Farasa Aijaz vs. Messrs Qamran Construction (Pvt.) Ltd.), (ii) 2017 YLR 1579 (Aroma Travel Services (Pvt.) Ltd. vs. Faisal Al Abdullah Al Faisal), (iii) 2010 YLR 1666 (Jiand Rai vs. Abid Esbhani), and (iv) 2010 CLC 1622 (Shams Mohiuddin Ansari vs. Messrs International Builders).**

8. So in my considerate view, the presence of intervener is necessary to enable the court to completely, effectively and adequately adjudicate upon the question in dispute therefore the application is allowed and intervener is impleaded as defendant No.4. The learned counsel for the plaintiff is directed to file amended title so that the newly added defendant No.4 may file their written statement. Both learned counsel contended that there is no factual controversy involved so the court may settle only the issues of law. For further proceedings the matter is adjourned to 15.01.2018. Interim order passed earlier to continue till next date.

**Judge**