ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

M.A. No. 03 of 2012

Date	Order with signature of Judge

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

EFU LIFE ASSURANCE LTD. ….. APPELLANT.

Versus

Mrs. ANWAR BEGUM. ….. RESPONDENT.

FOR HEARING OF CMA NO. 3511/2018

Date of short order : 20.11.2019

Appellant EFU Life Assurance Limited through Mr. Muhammad Aziz Khan, advocate.
Respondent Mrs. Anwar Begum through Mr. Ashfaq Nabi, advocate.

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O R D E R

FAHIM AHMED SIDDIQUI, J: By filing the listed application, the respondent intends to get the original plaint of the instant lis amended with certain insertion and substitution in the plaint filed by her before the lower forum.

2. The respondent filed a Suit under the Insurance Ordinance, 2000 for recovery of sum assured and other benefits as well as liquidated damages in connection of a life insurance policy of her deceased husband namely Muhammad Asghar. The said policy was issued by the appellant in favour of the husband of the respondent, which was matured after his death in 2002. The suit was proceeded and ultimately decreed in favour of the respondent. The appellant assailed the impugned judgment and decree of learned Insurance Tribunal by preferring the instant appeal, which was filed on

06.08.2012. During the pendency of the instant appeal, the respondent has filed the listed application on 29.11.2018 in which she sought certain amendments in the plaint of the suit filed before the learned Insurance Tribunal. Through the listed application, she is seeking substitution of the heading of memo of plaint and prayer clauses in a way that twice an amount of Rs.15,90,000/- may also be covered and become claimable as benefits of Investment Plan and Additional Term Assurance respectively in the instant appeal.

3. The learned counsel for the respondent submits that it could not come in the impugned judgment that the respondent was also entitled to the benefit of the Investment Plan amounting to Rs.15,90,000/- as well as the benefit of Additional Term Assurance amounting to Rs.15,90,000/-. According to him, it was just because the prayer clause inadvertently remained silent regarding such entitlement, while the same was also missing unintentionally. He submits that it will be in the interest of justice that now at this stage, the plaint, filed before the lower forum, is allowed to be amended suitably. He submits that such amendments will open a venue for the respondent to prefer her claim regarding the said amount also. He emphasizes that the appeal is continuity of the litigation; as such the appellate court is empowered to permit such amendments in the plaint. In support of his contentions, he relied upon the cases of **Fahim & Co vs NBP (PLD 1975 Karachi 1032), Ghulam Bibi vs Sarsa Khan (PLD 1985 Supreme Court 345),** and **Ahsan Kauser vs Ahmed Zaman Khan (1986 SCMR 1799)**.

4. In contra, the learned counsel for the appellant has strongly opposed to the listed application. According to him, it is a past and closed transaction as such no amendment can be sought at this belated stage. He submits that the respondent remained silent during the pendency of the Suit and even for a considerable period of time after filing of the instant suit. He draws attention to the fact that the listed application was also filed after a huge delay, which is sufficient to establish malice on the part of the respondent.

5. So far as the power of the appellate court to allow amendment in the plaint of original Suit is concerned, there is no question about it that the same is available to the appellate Court. Language of Order VI Rule 17 is very much clear, according to which, at any stage of the proceedings, a motion for amendment of plaint can be filed. Since an appeal is the continuance of the proceeding; therefore, a request for such amendments or alterations can be made by either party. The Hon'ble Supreme Court in the case reported as

Ghulam Bibi vs Sarsa Khan (PLD 1985 Supreme Court 345); while discussing the scope of Order VI Rule 17, has observed as under:

> *"Be that as it may, the learned Judge himself observed and rightly, so that the delay alone in applying for the amendment cannot be a determining factor for deciding an application under Order VI, rule 17, C. P. C. The use of the expression 'at any stage of the proceedings' in rule 17 is not without significance. The word "proceedings" has been interpreted by this Court in a liberal manner so as to give a proper scope to the rule in accord with its purpose, as including the appellate stage and that too up to the Supreme Court."*

6. In order to allow an amendment of a plaint or a written statement, the first point to be considered is whether the application has been filed *bona fide*. It is important to consider the intention of moving such an application by the respondent. In the present case, the act of the respondent itself indicates that the instant application is not filed with clean hands and she is only willing to seek some advantage with an unexplained delay of six years after filing of the instant appeal. It is an admitted position that the respondent has not challenged the judgment and decree by preferring an appeal. Even, she did not file a cross-objection to the instant appeal. Although, the respondent has discussed 'investment plan' and 'additional term assurance' within the body of the pleadings; but the same was not sought as a main or alternate relief in the prayer clause, which gives the inference that she has advisedly relinquished or omitted such part of her claim. As per the provision under Order II Rule 2, after relinquishing or omission; the respondent cannot prefer such claim in the same or subsequent proceedings.

7. It is settled law that any amendment in the pleadings can only be made with the permission of the Court. We are of the view that at the time of dealing with an application for amendment, a party may be accommodated for the amendment of the plaint by giving further and better particular of the claim made in the plaint but no such amendment should be allowed, which may alter the nature of the Suit. We are of the view that in case of amendment, the quality and quantity of relief sought should not be altered completely, whether the same should be granted or not is a different matter, as to which we are not called upon to express our opinion at this stage. As we have discussed above that for seeking such an amendment, the party must manifest *bona fide* first, which is lacking in the present case. Besides, the proposed amendments will utterly alter the relief claimed, which cannot be permissible. Now the question arises; if the aforesaid conditions are fulfilled then under what circumstances

the permission to amend the pleadings should be granted. In this respect, the correct principles have already been laid down in the case of **Kisandas Rupchand and others. vs Rachappa Vithoba Shilvant and others {(1900) I.L.R. 33 Bom. 644}**, wherein it is held as:

> *"All amendments ought to be allowed which satisfy the two conditions (a) of not working in justice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties."*

8. In the present case, neither the respondent is able to manifest *bona fide* on her part for moving such an application nor she fulfil the other requirements necessary for allowing such amendments in the pleadings. Moreover, after abandoning such claim at the time of filing suit, she cannot reassert the same at subsequent stage. Resultantly, we do not find any merit in the listed application, which accordingly was dismissed by us through a short order dated 20.11.2019 with no order as to cost and these are the reasons for the same.

JUDGE

JUDGE

Dated:_____