

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 748 of 2022 : Mohammad Tariq Chappra
vs. DFB Gypsum Industries & Others

For the Plaintiff/s : Mr. Muneer Ahmed, Advocate

For the Defendants/s : Mr. Abdul Haleem Siddiqui, Advocate

Date/s of hearing : 20.09.2024

Date of announcement : 20.09.2024

ORDER

Agha Faisal, J. Admittedly, Suit 1809 of 2019 was filed before this Court in respect of the same controversy and between the same parties. The suit was dismissed, as not pressed, as recorded vide order dated 14.09.2022.

Subsequently, the present suit was preferred and vide order dated 15.08.2024 the plaintiff's counsel was confronted as to how this suit could be entertained *inter alia* in view of the preponderant bar of *res judicata*. On 11.09.2024, the plaintiff's counsel sought time. Today, the counsel remained unable to demonstrate as to how a subsequent suit could be permitted to be perpetuated, *inter alia* per Order II rule 2 CPC, when the same relief could have been sought in the earlier suit with respect to the same *lis*.

Shafi Siddiqui J interpreted statutory *res judicata* in *Atta Elahi*¹ and observed that the law does not talk of identical issues / relief. It would suffice for the subsequent relief to be directly or substantially linked to the earlier one. It was further observed that any formal or informal addition of a party, having no substantial effect on the proceedings / relief claimed, would have no material effect on the application of the law. Sections 10² and 11³ CPC disapprove of multiple litigation and Order II rule 2⁴ requires *inter alia* consolidation of successive claims within the same proceedings.

¹ *Atta Elahi vs. Allah Bachaya* reported as 2024 CLC 18.

² 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title...

³ 11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit...

⁴ 2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished claim.

The plaintiff's counsel articulated no cavil to the consistency of parties, subject matter etc. across the successive suits, and also remained unable to justify as to how the subsequent suit could be permitted to be perpetuated, *inter alia* per Order II rule 2 CPC, when the same relief could have been sought in the earlier suit.

In view hereof, it is concluded that the learned counsel for the applicant / defendant has successfully befallen this matter within the strictures of Order VII rule 11 CPC, therefore, the plaint herein is rejected.

Judge

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief; but if he omits, except with the leave of the Court, to sue for all such relief, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.