

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

High Court Appeal No. 62 of 2024**Mukesh Kumar**..... **Appellant**

through Mr. Ghulam Murtaza Khuhro, Advocate

vs.

Arshad Mahmood & others..... **Respondents**

Mr. Saad Fayaz, Advocate for respondent No.2

Date of hearing : 28.03.2024

Date of judgment : 28.03.2024

JUDGMENT

Omar Sial, J.: Suit No. 1646 of 2008 is pending adjudication in this Court. The Suit has been filed by Mr. Arshad Mahmud and the National Academy of Performing Arts against the Province of Sindh. NAPA is situated within the premises of the Hindu Gymkhana and has been allowed to operate there pursuant to an agreement dated 23.09.2005 entered into between NAPA and the Government of Sindh. On 13.09.2008 the Government of Sindh wrote to NAPA alleging that NAPA had breached certain terms of the agreement between the parties and hence they were notified that the agreement would stand terminated after a period of three months and NAPA should hand over the possession to the Government of Sindh, of the premises ear-marked for its use. The notice dated 13.09.2008 has been challenged by NAPA in Suit No 1646 of 2008. Mr. Mukesh Kumar (the appellant in these proceedings) filed an application under Order 1 Rule 8(2) C.P.C. to be made a party to the Suit; however, that application was dismissed by a learned Single Judge of this Court vide order dated 25.01.2024.

2. We have heard Mr. Mukesh Kumar in person and perused the record.
3. When we inquired from Mr. Kumar as to what his grievance was and why should he be included as a party in Suit No. 1646, he replied, that earlier in time Shree Ratheshwar Maha Dev (a Hindu Welfare Society) was impleaded in the case under Order 1 Rule 8(2) even though they had not fulfilled the notice requirement given in the said Rule. As he is himself a Hindu, Mr. Kumar was of the view that a notice should have been sent to him or should have been a public notice. We are unable to agree with Mr. Kumar. The record reflects that his argument is misconceived. Shree Ratheshwar Maha Dev had moved an application not under Order 1 Rule 8 but under Order 1 Rule 10. There is no requirement of a notice to be given to all individuals.
4. We then asked Mr. Kumar that what was his interest in the matter pending adjudication. Mr. Kumar submitted that as he is a Hindu, he is affected directly by the Suit and therefore should be made party. With much respect we do not agree with his contention. The dispute in Suit No. 1646 is between NAPA and the Government of Sindh. It happens to be that NAPA is situated within the premises of the Hindu Gymkhana. Nothing has been brought to our attention to show that the Government of Sindh did not have the legislative competence to enter into the agreement. Keeping in view the relief sought in the Suit, it cannot be said that it is a representative Suit.
5. No plausible explanation from Mr. Kumar has been forthcoming to explain why it took a self-claimed public spirited person 16 years to take heed of the alleged "injustices" at the Hindu Gymkhana and come into action. Neither was a plausible reason given as to why he did not file his own Suit if he had his own set of grievances.
6. Given the above, we find no reason to interfere with the order of the learned Single Judge, which in our opinion is correct in law.

JUDGE

JUDGE

