ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.920/2007

Date	Order with signature of Judge

Date of hearing : 18.03.2008

Amir Jamil Ansari
Plaintiff : through Mr.Kamal Azfar Advocate & Mr.Sardar Zulqarnain Advocate.

M/s. Al-Hoqani, Securities
Defendants :Mr.Munib Akhter Advcoate.

ORDER

KHALID ALI Z. QAZI.J.- CMA No.04/2008. This is an application under Order VI Rule 17 read with Order XXIII Rule 1(1) CPC and Section 151 CPC filed by the plaintiff wherein it is stated plaintiff be allowed to effect the following amendments in the plaint and / or abandon Prayer "A" which reads as under:-

(a) the existing title of the suit/plaint may kindly be allowed to be amended so as to read as follows:-

"Suit for damages"

(b) in Line No.3, para1 of the plaint the word "is" may kindly be allowed to be substituted with the word "was";

(c) in the Line No.2 para 2 of the plaint the word "is" may kindly be allowed to be substituted with the word "was";

(d) in the second last line of Para 7 the word "is" may kindly be allowed to be substituted with the word "was";

(e) the existing Para 12 of the plaint may kindly be allowed to be substituted by the following:-

> "12. Subsequent to the illegal / unauthorized sale and transfer of the subject shares by the Defendant the share value declined. However, in this suit the plaintiff is claiming for the deprivation of suit the plaintiff is claiming for the deprivation of his right to liquidate the subject shares at rates prevalent at the time of their illegal sale/transfer by the Defendant. Ali recently the Plaintiff has illegally been removed from Chairmanship of CTTL by some vested quarters. Such fact is being submitted so as to state all the subsequent events."

(f) The existing Para 13 of the plaint may kindly be allowed to be substituted by the following:-

> "13. The plaintiff claims for damages and monetary compensation as spelt in this suit".

(g) The Plaintiff may further kindly be allowed to delete prayer A and further prayer B may be allowed to be read as follows:-

> "A Damages to the tune of Rs.85,36,343,725/- with interest at the rate of 15% on the amount so claimed form the date of accrual till the date of payment."

(h) The prayer Clause "B" and "C" may be allowed to be renumbered as "A" and "B".

Brief facts of the case requisite for disposal of this application is that the defendant at material times illegally, unauthorizedly and malafidely sold / transferred 11.5 million shares of the plaintiff causing him grave loss and damage. It is the case of the plaintiff that the defendant illegally and unlawfully sold/transferred 6.5 million and 5 Million shares on dates when the price of such shares was Rs.80/- and Rs.70/- per share, respectively. Also the highest value of the shares reached Rs.103.70/- per share. It is further stated that while subsequently the value of the shares declined but in the fitness of things the plaintiff is entitled to compensation and damages, which are to be worked out by taking the value of the shares at Rs.80 and Rs.70/-0 per share at which they were sold by the defendant. It is further contended that in view of the subsequent events which include the decline in the value of the share the first prayer of the plaint alongwith its corresponding parts in the plaint where return of the share have beenb requested is no longer feasible and has become redundant. It may be noted that the CTTL has ceased commercial operations after the removal of plaintiff as Chairman. Even otherwise the cause of action has arisen at the time when the shares were illegally transferred or sold out by the Defendant and the damages caused to the plaintiff in view of the malfeasance of the defendant.

2. It is further urged that unauthorized and illegal sale of 11.5 Million shares of the CTTL held by the defendant, the plaintiff has lost control of CTTL. It is further contended that since the institution of the suit, the plaintiff was removed from Chairmanship of the CTTL by the Directors representing the majority of shareholders having no shares in the CTTL on account of the unlawful and unauthorized and illegal sale of shares by the defendant, the plaintiff has no prospect of being elected to any position or role in the

management or control of the Company. In the circumstances, the plaintiff abandons the prayer for declaration and injunction as sought in prayer "A" of the plaint. It is stated that amendments sought do not change the nature and character of the suit. In the suit the plaintiff has complained of the illegal and malafide transfer/sale of the shares by the defendant and the damage such action has caused to the said plaintiff. The essence of the suit will remain the same even if the amendment is allowed i.e the illegal sale/transfer of shares effected by the defendant having caused immense loss and damage to the plaintiff. Learned counsel further contended that no prejudice shall be caused to the defendant if the proposed amendments are allowed, whereas grave prejudice shall be caused to the plaintiff if the motion is declined.

3. In reply to the arguments of Mr.Kamal Azfar learned counsel for the plaintiff Mr.Munib Akhter learned counsel for the defendant advanced his arguments.

4. Mr.Munib Akhter learned counsel for the defendant contended that the purported narration of facts given by the plaintiff is wholly incorrect. Learned counsel denied that any loss or damage whatsoever was caused to the plaintiff. Mr.Munib Akhter learned counsel did not dispute the amendment in respect of word "is" and "was". Learned counsel stated that plaintiff is not entitled to any relief whatsoever. The valuation purported to be put by the plaintiff on the shares is incorrect and denied. Learned counsel contended that plaintiff is not entitled to any relief against the defendant, and denied that the relief referred to in the para under reply has become redundant or infeasible, whether as alleged or otherwise. Learned counsel stated that plaintiff may be put to the strict proof of his claim that he has been "removed" as Chairman of CTTL or that the said company has ceased commercial operations. Learned counsel stated that no cause has accrued to the plaintiff against the defendant. Learned counsel denied that any illegal or unauthorized or unlawful act was committed by the defendant if at all the plaintiff has been "removed" form the position of Chairman of CTTL, it is obvious that the plaintiff's own acts of misfeasance and malafeasance led to that situation arising. The plaintiff is attempting to burden the defendant with his own wrongdoing.

5. Mr. Munib Akhter learned counsel stated that plaintiff is not entitled to make the amendments sought in the plaint as per clause (d),(e), (g) and (h) of the Application.

6. In right of rebuttal Mr.Kamal Azfar learned counsel for the plaintiff contended that how the facts as narrated by the plaintiff are incorrect has not been specified by the defendant, who is put to strict proof. It is equally denied that no loss or damage was caused to the plaintiff. Once again the defendant is put to strict proof. Learned counsel stated that plaintiff is entitled to relief. The valuation of the shares given by the plaintiff is absolutely in order. How the same may be incorrect t has not been specified by the defendant. On one hand the defendant has contended that the referred relief has not become redundant or infeasible, while on the other hand the defendant has stated that the plaintiff is not entitled to any relief against defendant. The stance is contradictory and inconsistent. It is further stated that truth of the matter is that in view of the changed circumstances the relief earlier claimed has become redundant. It is stated that plaintiff was removed as the Chairman of CTTL and that the said Company has ceased commercial operations. Furthermore, it is stated that the cause of action as stated in the application /suit has accrued to the plaintiff against the defendant. Learned counsel reiterated the corresponding part of the application. Learned counsel stated that corresponding contents of the application and the affidavit are reiterated the removal of the plaintiff. As Chairman of CTTL is substantiated by Resolution dated 11.11.2007 all the adverse allegations and insinuation are denied as incorrect. Mr. Kamal Azfar learned counsel relied upon PLD 1985 SUPREME COURT 345 and AIR (34) 1947 Privy Council 173.

7. Order VI Rule 17, C.P.C. provides that the Court may at any stage of the proceeding allowed either party to amend his pleading in such a manner and on such terms as may be just or all such amendment shall be made as may be necessary for the purpose of determining the real question and controversy between the parties. The power to grant amendment, being procedural is to be used for the purpose of dispensation of complete justice. The Court may not hesitate in allowing the amendment to cure the formal defects, which is bonafide and has been occurred due to mistake of fact or misapprehension. Reliance may be placed on PLD 1985 Sc 345. The proposal amendment such as Amendment or Addition in the title of suit as “suit for damages” abandoning deleting prayer clause ‘A’ addition of clause ‘B’ substituting the word ‘was’ instead of ‘is’, substituting para 12 & 13 of the plaint without enhancing in the cause of action’s detail does not involve any drastic change in the suit to seek the relief. It is the duty of the Court while deciding the case to take into consideration the facts as circumstances of the

case even the subsequent events which might have come into existence after the institution of the suit.

8. It is well settled that the amendment in plaint can be allowed at any stage, even by the first and second Appellate Court or in revision or even in appeal before the Supreme Court. Reliance may be placed on 2003 SCMR 379.

9. It is also well settled principle of law that it should be liberally allowed where it is asked for before the written statement has been filed. Reliance may be placed on 1974 SCMR 181. In the instant case plaint of suit was presented on 22.7.2007 the application under order 14 Rule 17 read with Order XXIII Rule 1(1) (C.P.C.) under Section 151 C.P.C. has been filed on 1.1.2008 whereas written statement on behalf of defendant was filed on 14.1.2008. In my considered opinion to do substantial justice amendment is necessary for the purpose of determining the real matter in controversy, therefore, application is allowed. Plaintiff is permitted to file the Amended Memo of plaint within 15 days. The defendant is at liberty to file the amended written statement a well within 30 days from the date of received the copy of amended memo of plaint of the suit.

Karachi
Dated:_____ J U D G E