JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1302 of 2022
Converted into
Civil Revision No. ___

Syed Zaheer Hussain Naqvi

Vs.

Learned Civil Judge, West-Islamabad, etc.

Petitioners by	:	M/s Barrister Afzal Hussain and Waheed ur Rehman Advocate.
Respondents by	:	M/s Ch. Abdul Rehman Ur Bajwa and afrasiab Ahmed Rana Advocates for the Respondent No. 4. Mr. Atif Shahfiq Advocate for the Respondents No. 5 and 6. Respondents No. 2, 3, 7, 8 and 9, proceeded exparte.
Date of Hearing	:	**03.01.2024**.

SAMAN RAFAT IMTIAZ, J.-

1. This Writ Petition has been filed by the Petitioner to assail the Order dated 08.03.2022 **("Impugned Order")** passed by the learned Civil Judge, West-Islamabad whereby the Application filed by the Petitioner under Order VI, Rule 17, CPC was dismissed. At the very outset it may be noted that the Impugned Order is revisable under Section 151, CPC. As such, the instant Writ Petition is converted into a Civil Revision by relying upon *Ijaz Ahmad Chaudhry vs. learned Civil Judge and others*, 2020 CLC 291; *Chaudhary Muhammad Khan and another vs. Civil Judge 1st Class,*

uncertified

East-Islamabad and another, 2018 CLC 1505. The office is directed to assign number to the Civil Revision accordingly.

2. The brief facts of the matter are that House No.23, Street No.88, Sector G-6/3, Islamabad **("Subject Property")** belonged to the predecessors-in-interest of the Respondents No.2 to 8 (*hereinafter also referred to as the legal heirs*). A Civil Suit titled *Wisha Asif vs. Muhammad Shahid Yaqoob, etc.* was filed *inter se* the legal heirs, which was decided vide Consent Decree dated 15.07.2013. The Consent Decree was based on a Compromise Deed dated 05.07.2013 (**"Compromise Deed"**) entered into outside of Court, whereby the shares of the legal heirs were agreed upon according to which the Subject Property would be transferred in the names of such legal heirs. It was further agreed that the Subject Property would thereafter be sold to the Petitioner as it cannot be divided or partitioned under the terms and conditions of allotment and building zoning regulations of Capital Development Authority **("CDA")**. It is noteworthy that the Petitioner was not a party to the said Suit and as such was not a party to the Consent Decree but he was a party to the Compromise Deed dated 05.07.2013.

3. Prior to the Consent Decree and on the same date as the Compromise Deed, the Petitioner entered into a Sale Agreement dated 05.07.2013 with the Respondents No. 2 [Ghazala Asif] and 3 [Saeeda Iftikhar], which records that full consideration was paid to the said Respondents and the Petitioner was given possession of two rooms in the Subject Property. It is noted that no time period was agreed upon for transfer of the Subject Property in the name of the Petitioner by way of the said Sale Agreement dated 05.07.2013.

4. On 03.04.2014 a Suit for Specific Performance of Agreement, Mandatory and Permanent Injunction **("Subject Suit")** was filed by the Petitioner against the Respondents No.2, 3, and 9 [Office of the Registrar through Sub-Registrar, Islamabad] alleging that one week prior to the

uncertified

Subject Suit the Petitioner had asked the Respondents No.2 and 3 to perform their end of the bargain but they refused. It bears emphasis that the Subject Suit was filed for the enforcement of the Sale Agreement dated 05.07.2013 entered by the Petitioner with the Respondents No. 2 and 3 and not on the basis of the Compromise Deed dated 05.07.2013 wherein the Petitioner and all the Respondents Nos. 4 to 8 were party and as such none of the other legal heirs i.e., the Respondents Nos. 4 to 8 were impleaded as party in the Subject Suit. It is also relevant to note that no Suit has been filed to date seeking specific performance of the Compromise Deed dated 05.07.2013.

5. The Respondents No.2 and 3 recorded their conceding statements before the Trial Court on 07.04.2014 stating that they have received consideration and have handed over possession of two rooms in the Subject Property to the Petitioner and that they have no objection if the Subject Suit is decreed as prayed for.

6. Before the matter could be decided on the basis of such conceding statements, an Application was made by the Respondent No.4 [Muhammad Javed Janjua] under Order 1, Rule 10, CPC stating therein that as per the terms and conditions of the allotment letter and CDA bye-laws the shares are undividable and as such the only option is to put the Subject Property to auction and divide the sale proceeds amongst the legal heirs in view of which all legal heirs are necessary parties to the Subject Suit. The said application was allowed by the Trial Court vide Order dated 14.04.2015, whereby not only the Respondent No.4 was impleaded but also all other legal heirs i.e. the Respondents No.5, 6, 7, and 8 by finding that the said Respondents are necessary and proper parties in order to effectually and completely adjudicate upon all the questions involved in the controversy as they are also admittedly co-owners of the Subject Property. The matter was put off for submission of amended Plaint.

Uncertified

7. The Petitioner filed an amended Plaint whereby the title was amended to include the Respondents No. 4 to 8 in the array of Defendants and paragraph 1-A was added stating that the Suit had been filed against the Respondents No. 2 and 3 but the Respondents No. 4 to 8 were added as Defendants No. 2-A to 2-E pursuant to Order dated 14-04-2015. Neither the alleged cause of action nor the prayer was amended.

8. Nevertheless, a written statement was filed by the Respondents No.7 [Muhammad Ammar] and 8 [Wisha Asif] on 18.03.2019, wherein it was confirmed that they have received full consideration for their shares from the Petitioner and that the Suit may be decreed as prayed for. Similarly, the Respondent No.6 [Muhammad Zahid Ahmed Khan] filed his written statement on 18.05.2019, wherein receipt of part of the consideration was admitted. Thereafter statements of the Petitioner and the Respondent No. 6/Defendant No. 2-C was recorded on 11.11.2021, wherein the Petitioner stated that an Agreement dated 11.11.2021 has been entered into by and between him and the Respondent No. 6 and copy of Pay Order in the amount of Rs. 13,700,000/- is being tendered. The said Respondent No. 6/Defendant 2-C also accepted the contents of the said Agreement dated 11.11.2021 as correct and stated that he will hand over possession to the Petitioner to the extent of his share in the presence of a representative of the Court and will receive the original pay order of consideration and that he has no objection if the Subject Suit is decreed to his extent.

9. In the meantime, on 10.02.2020, an Application under Order VI, Rule 17, CPC was made by the Petitioner claiming that all the legal heirs refused to act upon the Compromise Deed and as such permission was sought to make amendments in the Plaint as follows:

> *I. **At Para No. 1 line No. 1 of the plaint** after word "defendant" word "and" to be deleted and instead of word "and" word "to" be permitted to be added. Likewise in the same line after word "2" word "E" be permitted to be added. Now the **same is to be read as defendant No. 1 to 2E.***

uncertified

II. At Para No. 3 line No. 6 of the plaint after 2013 word "is" to be deleted and following be permitted to be added; ***"along with Compromise Deed Ex-C1 are"***

III. At Para No. 4 line No. 6 of the plaint after word "plaintiff" following be permitted to be added; ***"Other defendant No. 2-A to 2-E also sold out their respective shares and received earnest money in the following manner;-***

a. ***Defendant No. 2A sold out his 30/128 share in the suit house to the plaintiff for a total sale consideration of Rs. 1,64,06,250/-*** *(One Crore Sixty Four Lac, Six thousand two hundred & Fifty, received Rs. 16,50,000/- as earnest money through Bank Cheque No. 27066059 dated 15 July, 2013 Standard Chartered Bank, Blue Area Islamabad Branch dully acknowledged in the Sale Agreement dated: 07-07-2013.*

b. ***Defendant No. 2B sold out his 30/128 share in the suit house to the plaintiff for a total sale consideration of Rs. 1,64,06,250/-*** *(One Crore Sixty Four Lac, Six thousand two hundred & Fifty, received Rs. 26,40,000/- (Twenty six Lac Forty Thousand) as earnest money through different Cheques and cash as detailed hereunder:-*

a) Rs. 200,000/- on 21". June.2013 by cheque no. 27066051 Standard Chartered Bank.
b) Rs. 14,50,000/- vide cheque no 27066062 Standard Chartered Bank.
c) Rs. 2,00,000/- cash sum of on 11-10-2013.
d) Rs. 50,000 cash on 11-11-2013.
e) Rs. 1,20,000/- out of which Rs. 20,000/- given in cash and Rs. 1,00,000/- vide cheque No. 28437541 Standard Chartered Bank Dtd 11-12-2013.
f) Rs. 1,00,000/- vide cheque No. 28437549 Standard Chartered Bank dtd 22-12-2013.
g) Rs. 1,00,000/- vide cheque No 31392471 Standard Chartered Bank Ltd 06-01-2014.
h) Rs. 4,20,000/- vide Comprehensive Receipt dated 4th March 2014 acknowledging receipt of Rs.120,000.00 in CASH & two Cheques (a) Rs,100,000.00 Vide Cheque No. 28437570 drawn at Standard Chartered Bank & (b) Rs.200,000.00 Vide Ch No. 019511812 Askari Bank for Rs. 2,00,000/-.

a. ***Defendant No. 2C sold out his 30/128 share in the suit house to the plaintiff for a total sale consideration of Rs. 1,64,06,250/-*** *(One Crore Sixty Four Lac, Six thousand two hundred & Fifty,) receiving Rs. 2,706,250/-(Rupees Twenty Seven Lacs Six Thousand Two Hundred Fifty only) as earnest money (i) Rs.1,650,000.00 on July 1, 2013 Vide Ch. 27066057 Standard Chartered Bank and then on May 17, 2019 (ii) Rs.1,000,000.00 vide Ch. No.56872045 for Rs.1,000,000/- (One Million) & (iii) Rs.56,250.00 vide Ch. No. 56872051 for Rs.56,250/-, both of Standard Chartered Bank, Blue Area Islamabad Branch which is dully acknowledge by Defendant No 2C.*

b. ***Defendant No. 2D & 2E sold out their 24.25/128 share in the suit house: to the plaintiff for a total sale consideration of Rs. 1,45,00,000/-*** *(One Crore Forty Five Lac) and received whole sale consideration in deferent time. It is pertinent to mention over here that the defendant No. 2-D &*

Uncertified

2-E acknowledged receipt of total sale consideration before this Honourable Court and recorded statement to this effect also and now • nothing is outstanding against the plaintiff.
It is pertinent to mention over here that it was further agreed between the parties that where balance sale consideration is to be paid to all shareholders at the time of transfer of share of them in the name of the plaintiff/his nominee name.

IV. At Para No. 5 line No.1 of the plaint after word "defendant" word "S" to be added and words ***"no 1 and 2"*** *be permitted to be deleted.*

VI. At Para No. 6 line No. 1 of the plaint after word ***"defendant" word "s" to be added and words "no 1 and 2"*** *be permitted to be deleted.*
Thereafter following will be permitted to be added;
The plaintiff is ready to pay balance of sale consideration to the remaining defendant No. 2 -A to 2E and that Plaintiff at request of all Defendants also advanced the Property Tax (2013-2014) due of the CDA. Thus the defendants are duty bound to specifically perform their part of Agreements and to transfer ownership of their shares in the suit Plot in the name of plaintiff/his nominee name.

VII. At Para No. 7 line No. 3 after words "transaction with the plaintiff" following be permitted to be added;
"secondly on --- when the defendant No. 2-A executed sale agreement with the plaintiff and received the earnest money, thirdly when the defendant No. 2-B executed sale with the plaintiff and received the earnest money, fourthly on when the defendant No. 2-C executed sale agreement with the plaintiff and received the earnest money, Fifthly when the defendant No. 2-D & 2-E executed sale agreement with the plaintiff and received the earnest money and thereafter received whole sale consideration."

VIII. ***At Paragraph No. 1 Line No. 3 of the prayer after word "defendant" word "s" be permitted to be added and words no 1 and 2" be permitted to be deleted.*** *Thereafter after words "in the" word "in the suit House/" be permitted to be added.*

IX. In same Paragraph and Line after word "described in" word "the plaint" be permitted to be deleted and following be permitted to be added;
Ex-CI along with Judgment and Decree dated 15.07.2013 passed by Muhammad Shoaib Akhtar, learned Civil Judge Islamabad West

X. ***At the same Paragraph No. 1 Line No. 4 of the prayer after word "and the defendant" word "s" be permitted to be added and words no. 1 and 2" be permitted to be deleted.***

XI. After Paragraph No. 1, following Paragraph be permitted to be added; "If the defendants fail to transfer ownership of their respective shares in the name of the plaintiff/his nominee name, the plaintiff be permitted to deposit the remaining sale consideration of remaining defendants No. 2-A to 2-E in the Court and their shares be transferred at the office of defendant No. 3 in the name of the plaintiff/his nominee name through representative of the Court".

Unverified

> *XII. At Paragraph No. 2 Line No. 3 of the prayer clause after word* ***(description given in the*** *word* ***"plaint"*** *be permitted to be deleted and word* ***"Judgment and Decree read with Ex-C1"*** *be permitted to added.*" [Emphasis added].

10. This application for amendments under Order VI, Rule 17, CPC has been dismissed by the Trial Court, hence, the instant Writ Petition.

11. The learned counsel for the Petitioner submitted that there is no bar of limitation as far as seeking amendments is concerned under Order VI, Rule 17, CPC, which may be made at any stage and that the Respondents will not be prejudiced by the proposed amendments as evidence has not yet been recorded. The learned counsel for the Petitioner in support of his contentions relied upon *C.A. Waheed vs. Aftab Ahmad Mian and another,* PLD 2006 Lahore 68 and *Mst. Ghulam Bibi and others vs. Sarsa Khan and others,* PLD 1985 SC 345.

12. The learned counsel for the Respondent No. 4 pointed out that the Respondents Nos. 4 to 8 were impleaded as additional Defendants by way of Order dated 14.04.2015 whereby the Petitioner was not restrained from making necessary amendments to the Plaint. Despite the forgoing, the Petitioner simply filed an Amended Title of the Plaint on 28.07.2015 without making any amendments to the contents of the Plaint. He argued that therefore the Petitioner is restrained from making any further amendments under Order II, Rule 2, CPC, whereby any claim left out intentionally or unintentionally is deemed to have been relinquished. He also highlighted that all the amendments sought to be made pertain to the year 2013 prior to the filing of the Suit and as such there is no reason why the Petitioner/plaintiff could not have made such amendments at the time when he filed the Amended Title of the Plaint. The learned counsel for the Respondent No. 4 argued that the amendments sought to be made by the Petitioner will change the entire complexion of the Suit and as such are not permissible. The learned counsel for the Respondent No. 4 further submits that the amendments sought to be made by the Petitioner are even

uncertified

otherwise not required as the same issues are the subject matter of another Suit titled *Javed Janjua vs. Syed Zaheer Hussain Naqvi, etc.* The learned counsel for the Respondent No. 4 has relied upon the judgment dated 16.08.2023 passed by the Supreme Court of Pakistan in Civil Appeal No. 1121/2018, *re: Ijaz ul Haq vs. Mrs. Maroof Begum Ahmed and others.*

13. The learned counsel for the Respondents No. 5 and 6 adopted the arguments made by the learned counsel for the Respondent No. 4. No one entered appearance on behalf of the Respondents No. 2,3,7,8, and 9 therefore the said Respondents were proceeded against ex parte.

14. In exercise of his right of rebuttal the learned counsel for the Petitioner highlighted that not all of the proposed amendments pertain to years prior to the filing of the suit and some also pertain to events that took place in the year 2019. He also denied the allegation that the proposed amendments are the subject matter of another Suit and submitted that the nature of the referred suit is entirely different. He argued that Order II, Rule 2, CPC only applies to the initial Plaint filed by a party and not to the Amended Title of Plaint filed by a plaintiff subsequently in response to the direction given by the Court to implead a party.

15. I have heard the learned counsel for the parties and have also perused the record.

16. At the risk of repetition, it is noted that the chronology of events shows that the Subject Property devolved upon the Respondents No. 2 to 8, as legal heirs, upon the death of their predecessors-in-interest. A suit was filed by and between the said legal heirs. During the pendency of such suit, a Compromise Deed dated 05.07.2013 was entered into by the Respondents No. 2 to 8 and the Petitioner whereby the shares of the said Respondents i.e. legal heirs were agreed upon and all the said Respondents agreed to sell their respective shares to the Petitioner against their mutually agreed sale consideration.

uncertified

17. On the same date as the Compromise Deed, the Petitioner entered into a Sale Agreement with the Respondents No. 2 and 3 to the extent of their share in the Subject Property. It was, *inter alia,* agreed by way of the said Sale Agreement that the Respondents No. 2 and 3 are bound to physically appear before the Sub-Registrar to execute the sale deeds in favour of the Petitioner failing which the Petitioner would have the right to get the agreement enforced through Court. The Subject Suit was filed by the Petitioner for the Specific Performance of the said Sale Agreement alleging that the Respondents No. 2 and 3 have refused to perform their end of the bargain.

18. The Respondents No. 4 to 8 were neither party to the Sale Agreement dated 05-07-2013 nor did the Plaint filed in the Subject Suit contain any allegation against the said Respondents. Later, the Respondent No. 4, by way of application under Order I, Rule 10, CPC, claimed that the shares in the Subject Property are undividable due to which there is no option but to put the Subject Property to auction and to divide the sale proceeds amongst all the co-owners/legal heirs i.e., the Respondents No. 4 to 8 according to their respective shares and as such prayed that all other legal heirs may be impleaded as Defendants in the Subject Suit.

19. The Petitioner resisted such application by filing a reply praying for its dismissal but did not specifically deny that the shares of the legal heirs in the Subject Property are undividable. In fact, the Compromise Deed dated 05.07.2013 on which the Petitioner himself relies also records that the Subject Property cannot be divided/partitioned under the terms and conditions of allotment as well as under CDA regulations based on which the Consent Decree dated 15.07.2013 was passed. Thus it can safely be concluded that there is no dispute amongst the parties that the Subject Property cannot be partitioned or divided.

20. The Respondent No. 4's Application under Order 1, Rule 10, CPC was allowed by the Trial Court vide the Order dated 14.04.2015 and the

uncertified

Respondents No. 4 to 8 were impleaded as Defendants No. 2-A to 2-E as parties necessary and proper for the complete and effectual adjudication of the controversy on the ground that they are admittedly co-owners of the Subject Property.

21. The matter was put off for submission of amended Plaint. But no substantive change was made by the Petitioner to the Plaint by way of the amended Plaint filed by the Petitioner on 28.07.2015 following the addition of the Respondents No. 4 to 8 to the array of Defendants by order of the learned Trial Court.

22. Long thereafter, on 10.02.2020 the Petitioner filed an application seeking amendments to the Plaint, which was dismissed vide the Impugned Order in view of the fact that the application was filed six years after filing of the Subject Suit and by finding that the proposed amendments would change the cause of action and the complexion of the suit and would also take away vested rights of the Respondents 2 to 8/Defendants.

Delay in filing of the application under Order VI, Rule 17, CPC:

23. The learned counsel for the Petitioner is correct to the extent that no limitation period has been provided for in law for the filing of an application under Order VI, Rule 17, CPC. The said provision of law is reproduced herein below:

> ***"Order VI, Rule 17:*** *The Court may* ***at any stage of the proceedings*** *allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."* [Emphasis added].

Bare perusal of the provision of law under consideration shows that it empowers the Court to allow either party to alter or amend pleadings *at any stage of the proceedings* in the manner provided, for the purpose of determining the real questions in controversy between the parties. There is

uncertified

abundant case law whereby it has been held that a party may be allowed to alter or amend his pleadings even at the appellate or revisional stage[1].

24. The most comprehensive and instructive for the purposes of the instant case is *Mst. Ghulam Bibi and others vs. Sarsa Khan and others,* PLD 1985 SC 345, wherein the appellant/plaintiff sought to amend the Plaint in the second appeal. The Lahore High Court rejected the application by specifically observing, *inter alia,* that it had been filed at a belated stage. The Supreme Court disagreed and observed that the words "at any stage of the proceedings" in Order VI, Rule 17, CPC is not without significance. It was held that the word *"proceedings" has been interpreted by the apex 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."*

25. In the instant case, the application for amendment of Plaint was made to the Trial Court and that too when the evidence has not even been recorded. Given that the apex Court has already held that amendments can be made to pleadings even at the appellate or revisional stage provided other considerations are satisfied, the learned Trial Court erred by factoring in delay in the filing of the application under Order VI, Rule 17, CPC for amendment in the Plaint as a ground for dismissal of such application.

Do the proposed amendments change cause of action and complexion/character of the Subject Suit?

26. The amendment of the Plaint is the right of a party when the same relates to the cause of action based on which the suit was filed and does not change the main substance, nature, complexion or the character of the suit nor causes prejudice to the other side[2]. It is also settled law that the power to permit amendment is discretionary with the Court which discretion is to be exercised liberally to meet the ends of justice and to determine the real

[1] Ahmad Bakhsh vs. Imam Bakhsh and others, 2023 MLD 1076; *Muhammad Zaman vs. Siraj ul Islam and 11 others*, 2013 YLR 1548; *Abaid Ullah Malik vs*. Additional District Judge Mianwali and others, PLD 2013 SC 239; *Jamil ur Rehman vs. Anisur Rehman*,2009 MLD 1082.
[2] *Muhammad Mushtaq vs. Abdul Rauf and 3 others*, 2006 YLR 669.

Uncertified

controversy between the parties[3] by keeping in view, various judicial principles[4]. The Lahore High Court in the case of *Ayesha vs. Additional Sessions Judge, Sialkot and others*, 2022 CLC 327 cataloged where and when amendment ought to be allowed based on past precedent as follows:

> *"19. It may be added here that* ***all rules of the Civil Procedure Code are geared towards securing proper administration of justice and should always be interpreted with this aim and purpose. Order VI, Rule 17 confers a discretionary power on a Court which a Court only exercises in consonance with and in the light of judicial principles contained in judicial precedents.*** *If this Court were to try and emulate and follow former Chief Justice Asif Saeed Khosa ("Mst. Sughran Bibi v. The State" (PLD 2018 SC 595), "Khizar Hayat and others v. Inspector-General of Police (Punjab), Lahore and others" (PLD 2005 Lahore 470) among other cases, Lord Diplock (GCHQ case 1985 AC 374 House of Lords) or even Lord Greene Wednesbury Corporation 1948 (1) KB 223) and try and catalogue when and where an amendment ought to be allowed then, perhaps, the following position will emerge:* ***An amendment in pleadings may be allowed where multiplicity of suits will be avoided, where the amendment does not alter the subject matter or the cause of action of the suit, where it does not take away any accrued right, where the plaintiff becomes entitled to further relief by reason of events subsequent to the filing of the suit, where the cause of action needs amplification,*** *where the interests of safe and accurate administration of justice so require, where on account of a plaintiffs' evidence a new statutory line of defence gets triggered, where no injustice will be caused, where a relief has inadvertently been left out - the list is not exhaustive but just an attempt at cataloguing instances where it will be in line with trite and established law to allow amendment in pleadings under Order VI, Rule 17, C.P.C." [Emphasis added]*

27. In the instant case, the original suit was filed against the Respondents No. 2 and 3 for the specific performance of the Sale Agreement dated 05-07-2013 pertaining to their respective shares in the Subject Property. The cause of action based on which the Subject Suit was

---

[3] *Abdul Rasheed through L.Rs. and 7 others vs. Muhammad Akhtar and another*, 2018 YLR 2482.
[4] *Federation of Pakistan through Secretary, Finance, Islamabad and another vs. E-Movers (Pvt.) Limited and another*, 2002 PTD 920.

filed was the alleged non-performance of the said Respondents of the said Sale Agreement.

28. In a nutshell, the proposed amendments (reproduced in paragraph 9 herein above) seek to introduce the Compromise Deed and the sale agreements allegedly made by the Petitioner with the Respondents No. 4 to 8 and/or payments made thereto in respect of their respective shares in the Subject Property and to allege the Respondents No. 4 to 8's refusal to perform while praying for relief arising from such alleged cause of action. Now let us see whether the proposed amendments change the cause of action and complexion/character of the Subject Suit.

Compromise Deed the Respondents No. 4 to 8's alleged refusal to perform their obligations toward the Petitioner; and the relief arising therefrom do not change the cause of action as alleged in the Subject Suit:

29. It may be recalled that the Compromise Deed was entered into to provide a roadmap to put to an end to the litigation ensuing between the legal heirs by agreeing upon each legal heir's share in the Subject Property. The Compromise Deed, of which the Petitioner was also a party, further envisaged the sale of the respective shares of each legal heir in the Subject Property to the Petitioner. For all practical purposes the Compromise Deed was the master agreement or a letter of intent between the parties and all the sale agreements between the Petitioner and the Respondents No. 2 to 8 and or payments made by the former to the latter including the Sale Agreement dated 05.07.2013 between the Petitioner and the Respondents No. 2 and 3 are rooted in the said Compromise Deed.

30. Therefore, the addition of the Compromise Deed in the factual matrix is not inconsistent with the case already set up by the Petitioner in the Subject Suit. The introduction of the Compromise Deed simply constitutes an additional fact or an additional element. Therefore, the addition of the Compromise Deed, the Respondents No. 4 to 8's alleged refusal to perform their obligations toward the Petitioner thereunder, and the relief arising therefrom as explained in *C.A.Waheed vs. Aftab Ahmad*

uncertified

Mian and another, PLD 2006 Lahore 68 does not change the nature of the suit or the underlying basis thereof and as such cannot be treated as a change of cause of action that alters the nature of the suit.

Sale agreements allegedly executed by the Petitioner with the Respondents No. 4 to 8 and/or payments made thereto in respect of their respective share in the Subject Property; the Respondents No. 4 to 8's alleged refusal to perform their obligations toward the Petitioner; and the relief arising therefrom do not change the cause of action as alleged in the Subject Suit:

31. The reason given by the Respondent No. 4 in his application seeking to implead the Respondents No. 4 to 8 as Defendants in the Subject Suit was the indivisibility of the Subject Property. The said application made by the Respondents No. 4 for impleading all other co-owners/legal heirs was allowed by the learned Trial Court by Order dated 14-04-2015. In contradiction to the said Order dated 14-04-2015, the learned Trial Court concluded in the Impugned Order that the share of the Respondents No. 4 to 8 is independent. No explanation has been given as to how such conclusion was reached when none of the parties involved in the dispute have at any stage denied that the Subject Property cannot be divided/partitioned. Clearly, such finding by the learned Trial Court is erroneous and factually incorrect.

32. Given that the Subject Property cannot be divided/partitioned, the controversy regarding the enforceability of the Sale Agreement dated 05.07.2013 executed between the Petitioner and the Respondent No. 2 and 3 cannot be decided without also determining the enforceability of the Compromise Deed and the alleged sale agreements (whether oral or written) between the Petitioner and the other co-owners of the Subject Property i.e. the Respondents 4 to 8 and vice versa.

33. Therefore, the amendment to the Plaint by way of the addition of the details of the Petitioner's sale agreements made with and/or payments made to the Respondents 4 to 8; their alleged refusal to perform their obligations toward the Petitioner; and the relief arising therefrom do not

uncertified

change the cause of action as alleged in the Subject Suit. In my opinion, the proposed amendments can best be described as an 'amplification' of the cause of action which does not change the main substance, nature, complexion or the character of the Subject Suit.

Successive Claim:

34. Alternatively, the proposed amendments would constitute a successive claim which in light of the Explanation given in Order II, Rule 2(3), CPC shall be deemed to constitute one cause of action.

35. The Sindh High Court at Karachi in *Abdul Maroof Khan Afridi vs. Karahi Development Authority through Director General, Civil Centre, Gulshan-e-Iqbal, Karachi*, 1990 MLD 2252 observed that one of the salutary provisions enshrined in Order II, Rule 1, CPC is that a suit shall be framed so as to afford ground for final decision upon all the subjects in dispute and prevent further litigation concerning them and that Rule 2 of the same Order explains that successive claims arising under the same obligation shall be deemed to constitute but one cause of action. It was further observed that the plaintiff, with a view to curtail the controversies, may, in the same suit, unite several causes of action against the same defendant or defendants under Order II, Rule 3, CPC as the law does not countenance any unnecessary duplication of proceedings. The Sindh High Court also held that even when a fresh cause of action accrues *pendent lite*, which could be part of the same transaction or series of transactions and relief may conveniently be sought in the pending litigation and parties can be confined to such proceedings without doing any violence to procedural requirements such due process ought to be followed.

36. It is reiterated that the Sale Agreement dated 05.07.2013 by and between the Petitioner and the Respondents No. 2 and 3 and the sale agreements and payments by the Petitioner to the Respondents No. 4 to 8 in respect of their share in the Subject Property are rooted in the Compromise Deed. Thus the Petitioner's claim against the Respondents No. 4 to 8's

uncertified

arises from the same obligation. Their alleged refusal to perform their respective obligations thereunder would be deemed to constitute the same cause of action as the one alleged by way of the Subject Suit as per the Explanation to Order II, Rule 2, CPC. At the very least it would constitute a cause of action which is part of the same transaction or series of transactions as involved in the Subject Suit which therefore can be joined under Order II, Rule 3, CPC. Hence the relief arising from such alleged cause of action can conveniently be sought in the pending Subject Suit so as to afford ground for final decision upon all the subjects in dispute and prevent further litigation as per the objective enshrined in Order II, Rule 1, CPC.

Real controversy:

37. In *Mst. Ghulam Bibi (Supra)* the Supreme Court divided Order VI, Rule 17, CPC into two parts and held that while the first part was discretionary the second part is mandatory in the following words:

> ***"The foregoing interpretation is also in accord with the mandatory language used in rule 17 to the effect that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy . . . . ." Therefore, once the Court decides that the amendment is necessary for the said purpose of determining the real question, the Court is required by law to not only to allow an application made by a party in that behalf but is also bound to direct the amendment for the said purpose.*** *Thus, the rule can be divided into two parts. In the cases falling under the first part, the Court has the discretion to allow or not to allow the amendment,* ***but under the second part once the Court comes to a finding that the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment.***
>
> ***What has been stated above is, however, subject to a very important condition that the nature of the suit in so far as its cause of action is concerned is not changed by the amendment whether it falls under the first part of rule 17 or in the second part, because when the cause of action is changed the suit itself would become different from the one initially filed.*** *Here this condition would not have been contravened if the amendment had been allowed by the High Court. The bundle of facts narrated in the plaint which constitute the cause of action, as the application for amendment shows, would not have suffered any material*

> *change if the request would have been allowed. Apart from the consequential technical changes mutatis mutandis in the context of the. grounds stated in the application for amendment, only two major amendments were sought to be made in the plaint. They would have been firstly, the change in the heading signifying the suit being for -specific performance etc. instead of declaration etc. and secondly, there was to be a similar change in the. prayer paragraph. These amendments would not have caused any embarrassment to the respondents defendants either in seeking and making similar amendments in their written statement. The inconvenience caused to the respondents as the provision itself visualises is not only natural but would ordinarily be occasioned in almost every case.* ***That is why the law visualises the award of adequate compensation : in that, the amendment has to be allowed "in such manner and on such terms as may be just".*** [Emphasis added]

38. As observed herein above, given that the Subject Property cannot be divided/partitioned, the Petitioner's claim against the Respondents No. 2 to 8 in respect of their shares in the Subject Property cannot be decided independently of each other. Thus the real controversy cannot be determined without the proposed amendments. Therefore, in light of *Mst. Ghulam Bibi (Supra)* it is mandatory to allow the Petitioner's application for amendment to the Plaint under Order VI, Rule 17, CPC to such extent.

Vested Rights:

39. The Trial Court also observed in the Impugned Order that allowing the Petitioner to make the proposed amendments would take away vested rights of the Respondents No. 2 to 8. Although the Impugned Order records that several rights have been created in favour of the Respondents Nos. 4 to 8 it only refers to limitation and no other rights. However, allowing the Petitioner to make the proposed amendments to the Plaint will not deprive any Respondent/Defendant to raise the objection of limitation if available at law by way of filing amended written statements.

40. Even otherwise, the Sindh High Court at Karachi in the case of *Begum Shaheen Hassan vs. Messrs Grindlays Bank, P.I.C.*, 1992 MLD 1972, observed that it was held in *Mst Ghulam Bibi (Supra)* that expiry of the period of limitation is no ground for refusing amendment in the plaint.

uncertified

The Court also quoted *Karamat Ali and another vs. Muhammad Yunus Haji and others,* PLD 1963 SC 191 wherein the appellants sought to amend their Plaint to include a prayer for possession of properties, aiming to rectify an omission in their original Plaint. This amendment was contested by arguing that the claim for possession had become time barred. The Supreme Court acknowledged that it would be reluctant to allow an amendment which would have the effect of totally altering the nature of the suit or taking away a valuable right accrued by lapse of time but where in the circumstances of a particular case it would plainly be inequitable to refuse such relief the Supreme Court would not hesitate to allow the amendment even where a legal right had accrued due to lapse of time if the special circumstances outweighed such considerations. Similarly, the Sindh High Court at Karachi in the case of *Treasurer of Charitable Endowments for Pakistan vs. Inamur Rehman Alvi*, 1993 CLC 2033 held that in special circumstances amendments would be justified notwithstanding that a fresh suit may be barred by limitation.

41. In the instant case, firstly it is yet to be seen whether the enforcement of the agreements between the Petitioner and the Respondents No. 4 to 8 is time barred or not. But even otherwise, I find that there are special circumstances in the instant case justifying the proposed amendment notwithstanding the question of limitation. The first is that the Subject Property cannot be divided or partitioned. Thus, if the proposed amendments are not allowed, the controversy between the parties will not be decided whereas there is complete consensus in past precedent that rules of procedure are meant to advance justice and to preserve the rights of litigants.

42. Secondly, the Respondents No. 4 to 8 have been impleaded as Defendants in the Subject Suit on application made by the Respondent No. 4. The Court cannot implead defendants to a suit as necessary and proper parties on one hand and on the other hand disallow the plaintiff to make changes to the Plaint that are necessary as a consequence of such addition

uncertified

of defendants. The plaintiff is entitled to amend the Plaint in the manner necessary under Order 1, Rule 10(4), CPC on impleading of a new defendant[5]. In fact the learned Trial Court did allow the Petitioner to make amendments to the Plaint vide its Order dated 14-04-2015 whereby the additional Defendants were impleaded to the Subject Suit. Therefore, the Trial Court's observations that the proposed amendments would change the cause of action and the complexion of the Subject Suit as share of the Respondents No. 4 to 8 in the Subject Suit is independent is a contradiction of its reasoning in the Order dated 14-04-2015.

43. Thirdly, the Respondents Nos. 2, 3, 6, 7, and 8 who are Defendants Nos. 1, 2, 2-C, 2-D and 2-E before the Trial Court have already filed their conceding statements acknowledging receipt of payment of consideration for their respective share in the Subject Property from the Petitioner. It would indeed be a travesty of justice if the Petitioner is non-suited despite acknowledgment of its claim by a substantial number of defendants.

44. As far as the Respondents No. 4, 5, and 6 are concerned, they failed to show any prejudice that would be caused to them in case the Petitioner's application for amendment to the Plaint is allowed. The application for amendment was filed by the Petitioner even before the Respondents No. 4 and 5 who are Defendants 2-A and 2-B filed their written statements. On inquiry, it was submitted that the Respondents No. 4's right to file written statement was closed on 11.06.2016. Under such circumstances no prejudice will be caused to any of the Respondents/Defendants if the Petitioner is allowed to make amendments to the Plaint as prayed for. Nor has any mala fide intent of the Petitioner been identified in seeking the proposed amendments. Even otherwise, as held by the Supreme Court in *Mst. Ghulam Bibi (Supra)* Order VI, Rule 17, CPC gives the Court ample power to compensate the other side for any inconvenience caused as a result of allowing amendments to the pleadings of any side. Therefore, at

uncertified

[5] *Muhammad Saleem Naseem vs. Additional District Judge, Dunyapur, and 12 others*, 2021 CLC 87.

the most the learned Trial Court could have allowed the Respondents compensation[6].

Multiplicity of proceedings:

45. Alternatively, the Petitioner could have instituted fresh suit against the Respondents Nos. 4 to 8 with regard to his alleged claim against them for their respective shares in the Subject Property. Such suit would inevitably have to be consolidated with the Subject Suit for the reasons discussed herein above and therefore would lead to unnecessary multiplicity of proceedings which Order VI, Rule 17, CPC seeks to avoid[7].

46. The Honorable Supreme Court observed in *Alam Khan and 3 others vs. Pir Ghulam Nabi Shah and Company*, 1992 SCMR 2375 that the plaintiffs had rightly joined two sale transactions in one single suit though on behalf of different persons and finalized through different mutations because even if the plaintiff had instituted separate suit they would have to be consolidated as common questions of law and facts arose.

47. In the instant case, too, the Petitioner can join the causes of action as the subject matter of all the sale agreements entered into by the Petitioner with each of the Respondents 2 to 8 pertain to the Subject Property which admittedly cannot be partitioned or divided. Thus the filing of separate suits would also lead to consolidation. As such, I see no fruitful result of not allowing the Petitioner to make the proposed amendments to the Plaint.

Order II, Rule 2, CPC:

48. This brings me to the argument raised by the Respondent No. 4's legal counsel. He argued that the Petitioner could have made the proposed amendments at the time of filing the first amended Plaint pursuant to the Order dated 14.04.2015 whereby the Respondents No. 4 to 8 were impleaded as Defendants. Since the Petitioner did not he is now precluded

[6] *Muhammad Bashir Khan and 5 others vs. Talay Muhammad Khan and 2 others*, 1987 CLC 1332;
[7] *Syed Nazir Hussain Rizvi vs. Zahoor Ahmad and another*, PLD 2005 SC 787.

uncertified

from making such amendments in view of Order II, Rule 2, CPC. However, this argument is misconceived. Order II, Rule 2, CPC refers to three distinct terms *'claim'*, *'relief'*, and *'cause of action'*. The Lahore High Court in *Kamila Aamir and another vs. Additional District and Sessions Judge and others*, PLD 2023 Lahore 601 has explained the three terms as follows:

> *"14.* ***There are three specific terms used in Order II Rule 2 which are required to be interpreted as these shall have bearing on a just decision of this case. These terms are cause of action, claim and relief.***
>
> *15.* ***The expression cause of action has not been defined in the Code*** *although several attempts have been made in the judgments to explain it. Various authorities have referred it to mean that every fact, which if traversed, it would be necessary for the plaintiff to prove to support his right to a judgment by of the court. This definition would generally suffice but it does not necessarily provide a satisfactory answer as to what is the cause of action. This Court shall not make an attempt to define the term cause of action in recognition of the fact that the scope thereof is vague and that it must be applied broadly to carry out the functions of the Code which are designed to achieve convenience and efficiency in trial of the suits. This policy of the Code is indubitably brought forth by Order II Rule 1 according to which all matters in dispute between the parties relating to the same transaction be disposed of in a single suit. Generally looking at the provisions of Orders I and II of the Code would make it evident that when the right recognized by law is violated constituting a legal wrong, a cause of action can be said to have arisen. A fortiori, it is the legally recognized wrong that creates the right to sue. It is axiomatic that facts which do not represent the existence of right in the plaintiff with a corresponding duty in defendant to observe that right and an infringement of that right or duty is no cause of action. In Stone v. Cass 34 Okla. 5, 124 P. 960, the Court stated that "There can be no cause of action, unless there is a wrong for which redress is afforded. Nor can there be a subject of action, unless there is a right and a wrong done to it. The right might exist for ages, but is not a subject of action until it is infringed upon. The wrong might be continuous, but is not a cause of action, unless relief is afforded." Cause of action thus comprises material facts (to borrow the term from the Code) constituting the right and its infringement which entitles a person to sue the wrongdoer or anyone liable for it. The logical progression of this rule dictates that a cause of action must include a set of primary or operative facts that represent a legally recognized wrong that creates the right to sue which gives rise to a claim enforceable in court. Each cause of action consists of points the plaintiff must prove, and all these elements must be satisfied before the court can take action. This broad categorization of the rule is in accord with the scheme of the Code.*
>
> *16. The Indian Supreme Court in the case of Om Prakash Srivastava v. Union of India and another 2006 6 SCC 207 expressed the principle of cause of action on the following terms which are not very dissimilar to what has been stated above:*
>
> *The expression "cause of action" has acquired a judicially settled*

Uncertified

meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. (Emphasis Added)

17. ***Order II, Rule 2 requires that a plaintiff must join all claims arising from the same set of facts in a single proceeding instead of bringing successive actions.*** *The bar contained in the rule is against splitting the claim in respect of the cause of action and not the cause of action itself. A cause of action is simply the technical, legal name representing the facts which give rise to a claim enforceable in court.* ***Although the term claim is generally used interchangeably with cause of action, its use within the confines of the rule refers to a right which would be enforceable if decreed by the court.*** *The cause of action signifies and provides the pivotal ingredients for establishing the basis for legal claim and is also relevant for other purposes such as computation of limitation period, determination of the proper forum for filing of claim (jurisdiction) and locus standi etc. In the case of breach of contract, for example, the injured party might sue for damages or specific performance both of which shall be the claims and facts supporting the breach of contract and losses sustained by the injured party shall constitute the cause of action.* ***A cause of action broadly speaking is the factual matrix forming basis of the claim and it also identifies the legal nature of those claims, which is the technical meaning of a cause of action.*** *This position is best illustrated by 1309489 Ontario Inc. (formerly known as Xincon Technology (Canada) Inc.) v. BMO Bank of Montreal et al. 2011 ONSC 5505 in which Justice Lauwers of the Ontario Superior Court of Justice noted as follow:*

[18] As I observed in Ivany v. Financiere Telco Inc., [2011] O.J. No. 4162, 2011 ONSC 2785, the proper definition of the term "cause of action" is somewhat elusive even though lawyers and judges routinely use it. Halsbury's Laws of England, 5th ed., vol. 11 (London: LexisNexis, 2008), at para. 21, explains:

'Cause of action "has been defined as meaning simply the facts the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from the earliest time to include every fact which is necessary to be proved to entitle the claimant to succeed, and every fact which the defendant would have a right to dispute."

Cause of action "has also been taken to mean that particular act on the part of the defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the claim, not merely the technical cause of action.

The same facts or the same transaction or event may give rise to more than one effective cause of action." (Internal footnotes omitted)

[19] Note the two expressions used in this excerpt: "cause of action" and "technical cause of action". These identify the two senses in which lawyers and judges use the term "cause of action". Sometimes they are speaking of a factual matrix, that is, the factual cause of the plaintiff's complaint. At other times, however, lawyers and judges use

Uncertified

the term "cause of action" to identify the legal nature of the claim; recognized causes of action in this legal sense include, for example, breach of contract, negligence, breach of fiduciary duty and so on, each of which has its own constituent elements. (Emphasis supplied)

The Court thus made the distinction between the claim on the one hand and cause of action on the other by holding cause of action as the factual matrix and claim being the legal basis upon which relief is based.

18. ***The claim must, however, be distinguished from relief which relates to the form of remedy a person seeks from the court. Relief or remedy is the means through which the cause of action is effectuated and the wrong is redressed*** *(see Balbir Singh v. Atma Ram AIR 1977 Allahabad 211). Generally speaking, there are four types of reliefs available in a civil action i.e. declaratory remedy, equitable relief, restitution, recovery and financial damages. Relief, it may be stated, does not form part of the cause of action.*

19. ***The rule prevents the plaintiff from splitting the claims and the reliefs which are based on the same cause of action with the aim that a single cause should not be segregated among several suits. The objective appears to safeguard against the defendant being vexed twice in respect of the same cause of action underpinning the claim. In case of omission to sue or intentional relinquishment of a claim, the rule places a bar on bringing a subsequent action in regard thereto. Similarly, the rule compels a plaintiff to sue for all reliefs arising from the same cause of action and in case of his omission to do so he shall be barred from that relief in a subsequent suit except where he took the leave from the court.***

…

25. The principle underlying Order II, C.P.C. cannot be properly grasped without considering the principle of joinder of parties and joinder of causes of actions. The two suits filed by the petitioners involved joinder of plaintiffs and defendants. The provisions of Order I Rules 1 and 3 provide guidelines for who may be joined as plaintiffs and defendants. Rule 1 of Order I states that all persons may be joined as plaintiff in one suit in whom any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative. The provision also specifies the test for such joinder to the effect that if separate suits were brought by such persons, any common question of law or fact would arise. Rule 3 is a similar provision regarding the joinder of defendants. Order II Rule 3 permits for joinder of causes of actions by a plaintiff in the same suit against the same defendant or the same defendants jointly. Order II Rule 4 qualifies the scope of joinder of causes of actions concerning recovery of immovable property by making leave of court as a necessary pre-condition. There are, however, certain exceptions to the rule one of which is where claim in which the relief sought is based on the same cause of action. These provisions illustrate that two or more causes of action and remedies may now be secured in a single action and by extension making it permissible for joinder of parties. The rule of joinder of parties and causes of actions informs that any narrow interpretation limiting the scope of cause of action to a single legal claim may limit or even prevent the effective operation of these provisions.

26. It can thus be seen that the Code provides a fairly liberal regime

Uncertified

> *for joinder of parties and causes of action. The Code made these provisions not on account of any problem relating to pleading rather what was aimed at was that all the matters at issue between the parties or set of parties should be settled as shortly and speedily as possible through one action."* [Emphasis Added].

49. In short Order II, Rule 2, C.P.C., bars the plaintiff from suing afterwards in respect of any claim or for any relief arising from the alleged cause of action which was omitted. In other words, the plaintiff must make the whole claim he/she is entitled to make in respect of and pray for all reliefs arising from the alleged cause of action[8] and in case some claim or relief arising from such cause of action is omitted it is deemed to have been relinquished. Whereas, the instant case is not one in which the Petitioner had alleged a cause of action against the Respondents No. 4 to 8 but omitted to sue for any claim or relief arising thereunder therefore the question of relinquishment of reliefs does not arise.

50. Moreover, the term 'afterwards' as used in Order II, Rule 2, CPC was interpreted in *Begum Shaheen Hassan (Supra)* by the Sindh High Court at Karachi to refer to second or subsequent suit with the effect that the said rule bars a party from suing for such relief which he omitted to sue for without seeking the leave of the Court but was held not applicable where omitted relief is sought to be incorporated in a pending suit. The Court relied upon *Promatha Narayan Bose vs. Nowsher Ali Bepari*, PLD 1951 Dacca 33 to hold that in case amendment is allowed the amendment shall be deemed to have been incorporated in the suit at the time of institution of the suit. Similar view was taken by the Azad Jammu and Kashmir High Court in *Muhammad Bashir Khan and 5 others vs. Talay Muhammad Khan and 2 others*, 1987 CLC 1332 by holding that Order II, Rule 2, CPC applies to second suit.

51. For all the foregoing reasons, the instant Civil Revision Petition is **allowed** and the Impugned Order dated 08.03.2022 passed by the learned Trial Court is set aside. Consequently, the Petitioner's application under

[8] *Syed Murshad Ali vs. Syed Amjad Ali and 3 others*, 2014 YLR 1620.

Uncertified

Order VI, Rule 17, CPC for the proposed amendments is accepted. The Petitioner/Plaintiff is directed to file amended memorandum of the Plaint as per proposed amendments where after the Trial Court shall allow the Respondents/Defendants an opportunity to amend their Written Statements if they so request.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on this 29th day of March, 2024.

JUDGE

Approved for Reporting.
Blue Slip added.

Tanveer Ahmed/*

uncertified