JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 2798 of 2022

Abdul Qadir Abbasi, etc.
Versus
Muhammad Rafique, etc.

Petitioner by	:	Chaudhry Manzoor Ahmed Kamboh, Advocate
Respondents by	:	Barrister Asim Muzaffar Khan, Advocate
Date of Hearing	:	19.01.2023

ARBAB MUHAMMAD TAHIR, J:- Through the instant writ petition, petitioners-*LRs of original defendant namely Aziz Muhammad Khan*, *Fazal-ur-Rehman Wani* and *Mst. Saeeda Bibi* impugn order dated 02.06.2022, passed by the learned Civil Judge 1st Class, Islamabad-West, whereby application under Order 1 Rule 10 read with section 151 CPC (**"the application"**), filed by respondent No. 1/plaintiff namely *Muhammad Rafique*, was allowed and their names were struck off from the suit.

2. Tersely, respondent No. 1 filed a suit for specific performance of agreement-to-sell dated 04.04.2009 against *Aziz Muhammad Khan Abbasi, predecessor in interest of petitioners 1 to 10, Fazal ur Rehman Wani, Mst. Saeeda Bibi petitioners 11 and 12* in respect of land measuring 484 Kanal 9 Marla, Khasra No. 709, 672, 675, 388, 392, 420, 595, 1198, 80, 851, 661, 642, 538, 130, 368, 196, 1003/2, 122, 192, 995, 1007, 165, 378, 373 and 770, situated in Mouza Dhoke Abdullah Shah Dakhli Shah Allah Ditta Tehsel and District Islamabad. Petitioners 11 and 12 *Fazal ur Rehman Wani* and *Mst. Saeeda Bibi* also filed a separate suit for declaration, cancellation and recession of the agreement to sell and perpetual injunction regarding the same subject matter. Both the

suits were consolidated vide order dated 31.10.2021, consolidated issues were framed and the proceedings are being conducted in the suit filed by the respondent No. 1 *Muhammad Rafique* wherein the evidence of the latter has since been concluded and the case is at the stage of evidence of the defendants/petitioners when, according to the petitioners, after lapse of 13 years, the respondent No. 1 filed the application which was contested by the petitioners by filing a written reply and the learned trial Court after hearing the parties allowed the application vide order dated 02.06.2022, being impugned through the instant writ petition.

3. The learned counsel for the petitioner vehemently questioned the impugned order being against the law and the facts of the case, it being against the principle of natural justice and is a non-speaking order. According to the learned counsel, respondent No. 1 dragged the petitioners in litigation for about 13 years and then opted to oust them from the array of defendants despite the fact that they were/are necessary and proper party for all intents and purposes. The learned counsel argued that not only the subject matter in both the suits, one filed by the respondent No. 1 and the other filed by the petitioners, is one and the same, but the parties are also common; that the grounds agitated in reply to the application of the respondent No. 1 were not considered; that the suits were consolidated, evidence of the one side has since been completed and only evidence of the petitioners is left to be recorded, there was no justification to accept the application and that, too, without taking into consideration the important aspects highlighted by the petitioners in their reply to the application. The learned counsel lastly prayed for setting aside of the impugned order with costs throughout for which the learned counsel has placed on record the memo of the costs in terms of section 35 (1) (i) CPC.

4. On the other hand, learned counsel for respondent No.1 repelled the above submission by contending that the impleadment

of predecessor in interest of petitioners 1 to 10 in the year 2009 as party had been due to his status as of an attorney of the principle i.e. defendants 1 & 2 which has been revoked in November, 2008 while the respondent No. 1 is seeking specific performance of the agreement executed subsequent to said revocation on 04.04.2009. The learned counsel further asserted that execution of compromise on 16.02.2010 after the cancellation and revocation of the special attorney in November, 2008, is an attempt to defeat the lawful right of respondent No. 1 and that the predecessor in interest of the petitioners 1 to 10 had been causing unnecessary delay as neither he was party to the agreement to sell nor had/is in possession of any title against the suit property, essential to contest the suit in any capacity therefore, petition is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the document annexed with the petition with their able assistance.

6. The admitted facts that glean out of proceedings and arguments advanced by the learned counsel for the parties at-bar are to the effect that both the sides have filed separate suits regarding the same subject matter i.e. *the suit property*. Both the suits were consolidated, and after framing of consolidated issues, evidence of one side i.e. the respondent No. 1 has since been completed and the case is at the stage of petitioners, evidence. Thus, the case is at an advance stage where the respondent No. 1 has already concluded his evidence and the petitioners have to produce the same. The parties to the suit have set-in their respective pleadings, claim against the suit property and when the rival claimant has already tendered evidence to substantiate his claim, the other side cannot be kept aside not only to counter the claim by producing evidence in rebuttal but also to have a chance to substantiate their claim.

7. The principle of *dominus litis* bestows authority to a plaintiff being a controller of a suit or litigation and under the

principle cannot be compelled to initiate litigation against the specific person or drop the same, as the case may be. The case, as mentioned *ibid*, is not at the pre-trial stage rather is at the advance stage of evidence. The petitioners have all along participated in the suit by filing written-statement, attending the evidence not as an observer but as the defendants by exercising the right to cross examine the plaintiff, therefore, at this belated stage, the provision of Order 1 Rule 10 (2) CPC cannot be invoked as it would amount to contravene the principle of natural justice and fair trial envisaged in Article 10-A of the Constitution as by doing so, the petitioners will be left with no right to rebut the claim set in by the respondent No. 1 and also to substantiate counter claim, set in suit filed independently, consolidated with the suit of the respondent No. 1.

8. The filing of the application at the stage of recording of evidence appears to be an attempt to frustrate the proceedings and to cause in ordinate delay in disposal of the matter as early as possible and that too when a direction for early disposal of the cases had already been passed. The discussion on the merits and counter claim, set in by the parties in their respective pleadings more particularly in the application and reply thereto, are purposely avoided so to avoid causing prejudice to the case of either side. Suffice is to observe that as the case is at advance stage, it would not be just to pass orders in piecemeal and efforts should be made to conclude the proceedings once for all.

9. Before parting with the order, it is deemed necessary to mention that if any of the parties, at the conclusion of the trial, is found in brining frivolous, vexatious and speculative litigation by unduly burdening the Courts, may be burdened with costs in order to discourage frivolous claims or defenses brought to the Courts. Reliance is placed upon the latest pronouncement of the Hon'ble Apex Court **dated 12.01.2023**, in the case of ***"Qazi Naveed ul Islam v. District Judge Gujrat,etc (CP No. 3127/2020"*** and

judgment of this Court in the case of **"*Edwin Coe LLP v. Naseim Ahmed Sarfraz (2022 CLC 1064".***

10. In view of above, the instant writ petition is **allowed,** impugned order dated 02.06.2022, passed by the learned Civil Judge 1st Class, Islamabad-West, is set aside. Consequently, application under Order 1 Rule 10 read with section 151 CPC filed by the respondent No. 1 is **dismissed.** The learned trial Court shall make every endeavor to conclude the trial of the subject cases at the earliest. Copy of this judgment shall be sent to the learned trial Court for compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on **01 .02.2023**.

JUDGE

//*Kamran*//