

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.81 of 2019

Plaintiff: Muhammad Imran & another
Through Mr. Abdu Qayyum Abbasi,
Advocate.

Defendants No.2 to 4: Dr. Khalil Abdul Karim Al-Fraih, Abdul
Oudey Khalil Al-Fraih and Abdul
Wahab Khalil Al-Fraih, Through
Mr. Khalid Mehmood Siddiqui,
Advocate.

Defendants No.8: Agility Company LLC, Through
Mr. Farhan Minhas, Advocate.

For hearing of CMA No.1463/2019.

Date of hearing: 13.02.2020.

Date of order: 13.02.2020.

ORDER

Muhammad Junaid Ghaffar, J. This application has been filed by defendants No.2 to 4 under Order I Rule 10, CPC, for deleting defendants No.6 to 8 from the array of defendants in this matter. Notice was ordered and counter affidavit has been filed on behalf of plaintiffs by opposing the said application.

2. Learned Counsel for defendants No.2 to 4 submits that plaintiffs have joined defendants No.6 to 8 improperly as there is no privity of contract between plaintiffs and defendants No.6 to 8. According to him, instant Suit has been filed by joining these defendants to violate and circumvent the order dated 14.09.2018 passed in Suit No.1742 of 2018 as the plaintiffs were restrained from making any communication with third parties and therefore, this application be allowed and the said defendants No.6 to 8 be

deleted from instant Suit. According to him, such an application can be filed by any of the parties, including other defendants as has been done in this case.

3. On the other hand, learned Counsel for plaintiffs has referred to paragraph No.23 of his plaint and submits that defendants No.6 to 8 are necessary parties as specific plea has been taken in respect of their conduct and the plaintiffs have dealt with and performed assignments and projects of these two defendants, therefore, the application is misconceived. He has also raised an objection regarding maintainability of this application as according to him, it has been filed by an unauthorized person.

3. I have heard both learned Counsel and perused the record.

4. At the very outset, I had confronted learned Counsel for defendants No.2 to 4 for having filed an application for deleting other defendants i.e. No.6 to 8 and the locus-standi of his clients for maintaining such an application, to which learned Counsel has referred to Order I Rule 10(2), CPC, and has argued that Court can always pass an order for either deleting and/or joining a necessary and proper party. To that, there is no cavil; however, at the same time it may be noted that for the present purposes there is a specific application for such purposes and it is not that the Court is exercising such powers on its own. Once an application with a specific prayer is filed, then the onus to satisfy is on the applicant and no shelter can be taken for exercising suo-moto powers by the Court. In the given facts of this case, there does not seem to be any relevance or reason for entertaining such an application on behalf of defendants No.2 to 4, for deleting some other defendants

i.e. defendants No.6 to 8. As to the argument that instant Suit has been filed by the plaintiffs to violate and circumvent some orders passed in Suit No.1742 of 2018, it may be observed that in fact present defendants No.2 to 4 or for that matter, defendants No.6 to 8 are not even parties in Suit No.1742 of 2018; inasmuch as, the same has been filed by defendant No.9 in this Suit against two plaintiffs of the present Suit. Therefore, this argument also appears to be unconvincing as well as misconceived. Lastly, it is also of relevance that the plaintiffs in their plaint have made specific reference to these defendants and therefore, no justifiable ground exists at this movement to exercise power to grant such an application, which is even not filed by the aggrieved defendants, if any.

5. It is otherwise a settled proposition of law that while deciding an application under Order 1 Rule 10 (2) CPC, for deletion from the array of the defendants the Court has to minutely examine the pecuniary facts of each case and after satisfying itself, as to whether the case for deleting/striking out of the name has been made out in the matter, pass necessary orders by allowing such request. The Court has to see and examine the averments made in the plaint primarily to decide this aspect of the case, as there is no standard rule or procedure laid down, except to examine the contents of the plaint and the facts and circumstances of the case. In fact, the case of impleadment of parties to a Suit is dependent upon the Plaintiff as the Plaintiff is, as a general rule, "*Dominus Litis*", that is the controller of the suit or litigation, (**see *Altaf Parekh v/s Delements Construction Company* 1992 CLC 700**) and cannot be compelled to initiate litigation against a specific person,

or drop the same, as the case may be. It is entirely dependent on the case set up by the Plaintiff in the plaint, as to who should be sued and arrayed as a defendant, as it is for the Plaintiff to first determine the cause of action against a specific defendant and then prove it in evidence. Merely for the fact that, at the pre-trial stage, one feels that no case would be proved or cannot be proved, the name of a defendant cannot be strike out or deleted, except in very remote cases, not at least in the case in hand.

6. In view of hereinabove facts and circumstances of the case, listed application was dismissed by means of short order in the earlier part of the day and these are the reasons thereof.

Judge

*Faizan PA/ **