

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**C.R No.508-M/2023**

**Mst. Bibi Salima alias Katkai Vs. Hasan Bahadar and others.**

**Present:**      **Qazi Ishaque, Advocate for petitioner.**  
                         **M/S. Saifullah Mangol and Mumtaz Ali Qazi,**  
                         **Advocates for Respondents.**

Date of hearing:                      **18.10.2024**

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.**-Through instant petition filed u/s 115 of the Code of Civil Procedure, 1908 (C.P.C), the petitioner has questioned the order of the learned District Judge, Chitral Upper dated 26.07.2023, whereby appeal of the petitioner against the order of the learned Senior Civil Judge, Chitral Upper dated 03.05.2023 allowing her prayer for cancelation of special power of attorney in favor of Mazhar Ullah but declining her request to the extent of submission of amended written statement, was dismissed.

**2.**      It appears that during the pendency of the instant petition, respondent No.6 passed away, the legal heirs were brought on record and power of attorney/ *wakalatnama* on behalf of her legal heir was placed on record in favor of Mr. Saif Ullah Mangol, Advocate. Office is directed to make necessary entries in this respect in the memo of the instant petition and the record as well. Arguments of Qazi Ishaq, Advocate representing the petitioner, Mr. Saif Ullah Mangol, Advocate for respondents No.3 to 6 & 7

to 11 and Mr. Mumtaz Ali, Advocate for respondents No.1 & 2 heard and with their able assistance, record perused.

3. Record shows that Hasan Bahadar, the respondent No.1 along with his sister Mst. Nawat, the son and daughter of Mst. Aman Begum who was the daughter of Mubarak Khan, have filed a suit for declaration and recovery of possession through partition to the extent of their shares in the properties, as per the 'Zamima Bay' annexed with the plaint, being devolved upon them from their mother who had succeeded her shares in the legacy of Mubarak Khan (her father). Along with the plaint, the pedigree-table was also annexed reflecting that Mubarak Khan was survived by sons namely Ghazi, Rustam and Wazir and a daughter namely Mst. Aman Begum. The property described in 'Zamima Bay' was alleged to be the legacy of Mubarak Khan, the total measurement of which is 125 chakoram, on whose death, his legacy was devolved upon all his legal heirs including the predecessor in interest of the respondents/ plaintiffs and on the death of their mother Mst. Aman Begum, they are entitled for their legal and *shari* shares, which could neither be denied nor they could be deprived of separation thereof through partition. Allegedly, the parties are from Shia sect. Joint written statement was filed by the defendants except defendants Nos. 14 to 16 & 34 and by defendants No. 13 to 16 i.e., two sets of the defendants, however, the first set resisted while the latter i.e., defendants No.13 to 16 have filed a cognovit. Mst. Bibi Salima, the present petitioner is defendant No.12 of the suit before the learned trial

Court, who has moved an application on 21.11.2022 that she has neither appointed anyone including Mazhar Ullah who is the son of defendant No.1, as her special attorney nor she has signed, or thumb impressed any such document in this regard. Allegedly, it was brought into her knowledge that the power of attorney has been placed on record, she requested that since she had appointed her son namely Abdur Rashid as her special attorney, thus she may be allowed to place on file the power of attorney in favour of her son Abdur Rashid whereas, the special power of attorney in favour of Mahar Ullah /Mazhar-Ud-Din may be cancelled, which is available on the record. However, on 28.11.2022, she has moved another application that Para No.2 & 3 of the application submitted by her were not correct rather inadvertently written in the application submitted by her before the Court, nonetheless Mazhar Ullah/ Mazhar-Ud-Din, her special attorney, could not protect her rights, for which, she has cancelled the power of attorney in favour of Mahar Ullah and appointed her son namely Abdur Rashid s/o Abdul Khaliq as her special attorney. Another application for correction of written statement only to the extent of defendant No.12 (petitioner) was also filed. The learned trial Court allowed the application to the extent of cancellation of power of attorney in favour of Mazhar Ullah, however, her prayer for filing of correct /separate amended written statement was declined vide order dated 05.03.2023. The order was questioned by the petitioner /defendant, but her appeal failed through impugned order dated 26.07.2023.

4. It appears from the record that the suit was filed in the year 2020, whereby the plaintiffs are seeking recovery of possession of the property allegedly devolved upon them from the legacy of their predecessor in interest, however, after the lapse of good five years, the matter is still at the same stage. The record annexed with the instant petition reflects the joint written statement of defendants except Nos.14 to 16 and 34 and that of the defendants No.13 to 16. Undoubtedly, the defendant No.12 (the present petitioner) has moved an application for permission of separate written statement through her son (special attorney) as the one filed by her attorney (Mazhar Ullah) has not filed correct written statement on her behalf which resulted into cancellation of power of attorney, hence, she may be allowed to submit separate written statement (amended written statement) for presenting her true stance through her special attorney Abdur Rashid. It has not been disputed that the special power of attorney in favor of Mazhar Ullah, who was the son of defendant No.1, has been cancelled. Cancellation of power of attorney and appointing another attorney are not uncommon in legal proceedings. It is the choice of the principal to delegate his/ her powers for his/her representation in legal proceedings to anyone and the principal may cancel the powers bestowed upon the attorney. The powers of the principal cannot be restricted either by the act of the court or by any other implication. Abdur Rashid, the special attorney for the petitioner is her real son in whose favour special power of attorney has been executed. The pedigree-table annexed with the plaint (available at

page No.14 of the instant petition) shows that the present petitioner (defendant No.12) is one of the legal heirs of Rustam, the son of Mubarak Khan. The controversy on behalf of the plaintiffs was that the disputed property was the legacy of their mother Mst. Aman Begum, who was the daughter of Mubarak Khan, and whether written statement filed jointly by all the defendants except defendant Nos. 14 to 16 & 34 is clearly reflecting the stance of petitioner (defendant No.12) or whether the amended written statement, if allowed to be filed by petitioner would change the complexion the already filed written statement? Perusal of record would reveal that since there was a joint written statement for the defendants including the petitioner, thus, no details for petitioner were specifically mentioned therein except the details of legal heirs of the erstwhile predecessor in interest of the parties, however, the significance aspect was the denial of the defendants including the petitioner, thus, the filing of written statement, at this stage, could not be termed as repelling to the written statement already filed by the defendants. It is significant to mentioned that this court in the case of *The United Bank Limited through its Chief Executive and others Vs. Imran Ghani and others W.P No.158-P/2024 decided on 31.07.2024* has held that *"the parties seeking amendment of the plaint must be specific and the proposed amendment is essential to be before the court prior to permission. Neither the powers of the court are unfettered, nor blanket permission could be granted to the litigating party to amend his pleading as per his whim, wishes,*

desire without any restriction or direction. Admittedly, neither the specific proposed amendment was shown in the application, nor the court has restricted the plaintiff in filing the amended plaint. Institution of fresh suit with the permission to bring a fresh and filing of an amended plaint are two different phenomena, as such, could not be amalgamated with each other. The object of amendment must be kept in mind not only for the party for and against but also for the court itself.” It was also observed in the ibid petition that: The procedural tenets of the Civil Procedure Code (1908), coupled with the judgement made paw, shape the contours of how and when pleadings may be amended. These decisions collectively embroider a broader legal principle that underpins the administration of justice; the courts’ commitment to ensuring that the real questions in dispute are adjudicated in a fair, just, and efficient manner. Whenever a party intends to amend his pleadings, he placed before the court the proposed amendment for determination from the court that whether he is entitled for amendment or not? Unless the proposed amendment is specified the court would be unable to decide the application within the four corners of order VI rule 17 CPC. It is the basic concept that proposed amendment cannot be used to introduce a new cause or action or to alter the complexion of suit. Rel: (2020 CLC 340). (1999 MLD 2968) & (PLJ 1999 Karachi 852).

Moreover, proposed amendment is essential for determining the real question in dispute and if no proposed amendment was mentioned in the application the court could not decide the

application in either way. Reference: PLJ 1992 Lahore 158. In the case of "Mumtaz Baig and 5 others v. Sarfraz Baig" (2003 CLC 713) this Court has held that "There is no cavil with the proposition that Court is always empowered under Order VI, rule 17, C.P.C. and enjoys jurisdiction to allow amendments in plaint at any stage which are just and necessary for final disposal of the case in between the parties. Needless to add that at the same time the Court is bound to exercise such jurisdiction in accordance with settled judicial principles particularly while allowing request for amendment that no prejudice is caused to other side and secondly for accurate determination of case, amendment is necessary. Amendment can be allowed at any stage, if it does not change the cause of action of the suit.

5. Moreover, in the case of Alamzeb and others Vs. Mian Masaud and others (C.R No. 925 of 2006) decided on 28.03.2022 this Court, while discussing the object of amendment, has held that: The provision enumerates that a court may allow either party at any stage of the proceedings to alter or amend his pleadings, if it considers necessary for the purpose of determining the real question of controversy between the parties. The said provision provides mandatory guidelines upon the court to allow only such amendments which are necessary for determination of real controversy between the parties to the suit. Whether the defendant No.12 could be allowed to submit amended/ separate written statement is the

question for determination before this Court? In view of the object of amendment qua the significance of pleadings unless the written statement is filed, the Court would be unable to move ahead for resolution of the dispute between the parties towards its logical conclusion. Declining the request of the petitioner for submission of her written statement (amended) would amount to depriving her of placing her actual stance before the Court and it would negate the provisions of order VI rule 17 C.P.C, which is not permissible. The Court would be unable to decide the *lis* in accordance with law unless the written statement is placed before the court. The Court in the case of Mumtaz Baig and 5 others v. Sarfraz Baig (2003 CLC 713) has held that:

“4. ... Provisions of Order VI, rule 17, C.P.C. confers authority for allowing amendment of pleadings at any stage of the proceedings in such manner and on such terms as may be just and such amendments are to be allowed if necessary for the purpose of determination of real question in controversy between the parties. Order VI, rule 17, C.P.C. reads: -

“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 question in controversy between the parties.”

5. There is no cavil with the proposition that Court is always empowered under Order VI, rule 17, C.P.C. and enjoys jurisdiction to allow amendments in plaint at any stage which are just and necessary for final disposal of the case in between the parties. Needless to add that at the same time the Court is bound to exercise such jurisdiction in accordance with settled judicial



*principles particularly while allowing request for amendment that no prejudice is caused to other side and secondly for accurate determination of case, amendment is necessary. Amendment can be allowed at any stage, if it does not change the cause of action of the suit. Amendment can be allowed to seek consequential relief arising from the cause of action originally incorporated in plaint. Amendment can be allowed to add additional relief available to plaintiff even before higher Courts of jurisdiction. Amendment can also be allowed for converting a suit from one relief to another i.e. if suit was filed for declaration, same can be converted into possession etc. However, amendment cannot be allowed when mala fide on part of plaintiff is explicitly visible in the pleadings. Amendment cannot be allowed to raise a plea of fact which is derogatory to the plea already taken up in the plaint particularly when such fact amounts to admission in favour of other side.”*

Viewing the joint written statement where no specification of the clear stance, cancellation of power of attorney, appointment of fresh attorney, principle of amendment, determination of real controversy, the petitioner was entitled for submission of separate written statement. The presiding judge was required to decide the application of the petitioner with proper application of law and mind. It appears from the record that both the learned Courts below though have not decided the fate of the applications of the petitioner through proper application of mind and have not applied the law in its true perspective as the decision impugned through instant petition is not the mandate of law, as such, it could not be sustained.

6. Insofar as the contention of learned counsel for the respondents that no such prayer was made by the petitioner for submission of the amended/ separate written statement is concerned, suffice is to say that the prayer of the petitioner manifests that she has requested for the submission of better written statement. Part prayer of the petitioner has been allowed by the learned trial court while part was declined. The matter before this Court is in revisional jurisdiction u/s 115 C.P.C and it has come into the knowledge of this Court that the orders passed by the learned Courts below while disposing of an application for representation of the petitioner through her son (special attorney) was allowed only to the extent of placing on record the special power of attorney but declining her request with regard to presentation of the separate amended written statement, which orders of the learned Courts below, are not in accordance with law, therefore, irrespective of any such prayer in the petitioner's application, this Court has got ample powers for exercising suo motu jurisdiction u/s 115 C.P.C pertaining to the illegality committed by the learned Courts below. This aspect of the power of the Court under section 115 C.P.C has been discussed by the Hon'ble Supreme Court of Pakistan in the case of "Province of Punjab through District Officer, Revenue Rawalpini and others Vs. Muhammad Sarwar" (2014 SCMR 1358) and has held that:

"The revisional suo motu powers had earlier been discussed by this Court in Haji Rehdil v. The Province of Balochistan (1999 SCMR 1060) wherein it was recognized that section 115(1), C.P.C. confers two distinct kinds of jurisdiction; one the normal where the

revisional powers are invoked by an aggrieved party and the other where the Court acts on its own motion. More recently in the case of Province of Punjab through Collector T.T. Singh and others v. Muhammad Farooq and others (PLD 2010 SC 582) after drawing the said distinction it was held: --

"It is a matter of commonsense and simple logic that if such power is vested in a High Court, it should not be restricted by any period of limitation. So, it does when section 115, C.P.C. was originally enacted. The controversy seems to have cropped up because of the amendment in the year 1992 when, through second proviso, a period of 90 days was fixed for filing a revision petition, A plain perusal of first and second proviso would indicate that a limitation of 90 days is relevant only when some Revision petition is filed by some person or party to the proceedings. Such impediment is non-existent when Court itself exercises the power of Revision under subsection (1) of section 115, C.P.C."

It was also held by the apex Court in Para No.14 of the supra case that:

"14. It follows from the above discussion that there are two situations in which the Court can exercise its revisional powers; on its own motion; or on the application by an aggrieved party. The former is the general supervisory power and discretionary in nature where the Court is empowered to examine the record of any case decided by a Court subordinate to it to rectify any error or irregularity. Such power is exercisable where the Court itself finds any error of the nature provided in section 115, C.P.C. without there being any right in favour of a party aggrieved of an order or judgment of a subordinate Court. However, when the revisional jurisdiction is invoked by an aggrieved party, it is subject to the statutory provisions now incorporated in section 115, C.P.C. The second proviso thereto in unambiguous terms lays down the period of limitation for applying to the Court by mentioning that "provided that such application shall be made within ninety days". Like all other statutory provisions prescribing time period in which a matter is to be brought before the Court the second proviso to section 115(1), C.P.C. to be applied with the same vigour. Thus, where an aggrieved party seeks redressal against the Judgment or order through the revisional powers of the Court under section 115, C.P.C.

he has ninety days to make the application, failing which the application is liable to be dismissed

7. As per the ratio of the judgement the general jurisdiction of this Court under section 115 C.P.C, 1908 may be exercised by this Court to correct the error, illegality, or exercise of jurisdiction not so vested in the subordinate Court. Reliance may be placed on the case of "Banori vs. Jillani" (PLD 2010 SC 1186). The general powers under section 115 C.P.C have no nexus with limitation and cannot be curtailed or restricted by the limitation. Such power is exercisable where the Court itself found any error of the nature provided in section 115 C.P.C without there being any application by aggrieved person. High Court in its revisional jurisdiction can take cognizance for correction of illegalities and irregularities in judgments and orders of subordinate court as *suo motu* and no bar of limitation can be placed against *suo motu* jurisdiction of revisional court. It has been further settled that revisional jurisdiction is corrective and supervisory in nature; hence, no harm would be caused if the Court seized of a revision petition exercises its *suo motu* jurisdiction to correct the errors of jurisdiction committed by the courts below. Such fact and the powers of the Courts can be ascertained from the plain language used in Section 115 of C.P.C and the intention of the legislature, whereas exercise of this jurisdiction if allowed to go into the spiral of technicalities and restrictions of limitation, the very purpose behind conferring such jurisdiction would be defeated.

8. Thus, on acceptance of the instant petition, the impugned orders of the learned Courts below are set aside, resultantly the application of the petitioner for her representation through her special attorney and that too with permission to submit her amended/separate written statement is allowed. The petitioner/defendant No.12 shall submit her amended written statement before the learned trial Court and the learned trial court shall proceed with the matter in accordance with law by expediting the proceedings as the suit was filed in the year 2020 but it is still in initial stage. Parties are directed to appear before the learned Senior Civil Judge, Chitral Upper on 14.11.2024. In view of the above legal discussed status of the matter, the parties shall bear their own cost.

Announced.  
18.10.2024

  
JUDGE