

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Revision Application No.82 of 2014

(*Izhar ul Haq v. Ms. Waseem Ejaz & Others*)

DATE: **ORDER WITH SIGNATURE(s) OF JUDGE(s)**

Hearing of Case:

For Hearing of Main Case

9-4-2026

Mr. Ahmed Nawaz Osmani, Advocate for Applicant

Mr. Sakhiullah Chandio, Advocate for Respondent No.3 (PTCL)

ORDER

1. **Sana Akram Minhas J:** This Appeal assails the order dated 22.1.2014 (“**Impugned Order**”) passed by the learned Additional District Judge, Karachi in Civil Appeal No.206/2013 (*Izhar ul Haq v. Ms. Waseem Ejaz & Others*) (“**Civil Appeal**”), whereby the Applicant’s application under Order 41 Rule 19 CPC (“**Restoration Application**”) was dismissed. Through the said Restoration Application, the Applicant had sought recall of the order dated 4.11.2013 and restoration of Civil Appeal, which had been dismissed for non-prosecution on 4.11.2013.

Pertinent Facts

2. The facts are as follows:
- i) The Applicant, an employee of Respondent No.3 (“**PTCL**”), claims that since 1986, he and his family had been residing in Quarter No.F-34, P&T Colony, Choudhry Khaliqzaman Road, Gizri, Karachi (“**Subject Property**”), allegedly by virtue of his employment with PTCL.
- ii) By allotment order dated 8.2.2007, PTCL allotted the Subject Property to Respondent No.2, also its employee. Additionally, the Applicant and the private Respondents No.1 and 2 are related – the Respondent No.1 is the Applicant’s real sister, and the Respondent No.2 is her husband.

- iii) In 2009, the Applicant instituted Civil Suit No.1369/2009 (*Izhar ul Haq v. Ms. Waseem Ejaz & Others*) (“**Civil Suit**”) for declaration, possession, cancellation, mesne profit & permanent injunction, against the Respondents, seeking, inter alia, a declaration of “*constructive ownership*” of the Subject Property.
- iv) PTCL categorically denied allotting or authorising the Applicant’s occupation of the Subject Property and, instead, affirmed its allotment in favour of Respondent No.2.
- v) At the evidence stage, the Applicant failed to appear for cross-examination, did not cross-examine the Respondents, and produced no allotment order or documentary evidence to substantiate his possession or alleged “*constructive ownership*”.
- vi) Consequently, Applicant’s Civil Suit was dismissed by judgment and decree dated 31.5.2013.
- vii) The Applicant thereafter filed Civil Appeal, which was prima facie time-barred and was dismissed for non-prosecution by order dated 4.11.2013.
- viii) The Applicant’s Restoration Application, filed thereafter on or about 9.12.2013, was dismissed by the Impugned Order.

Respective Arguments

3. Learned Counsel for the Applicant submits that, after retiring under PTCL’s “*Voluntary Separation Scheme*”, the Applicant had moved to Canada. During a visit to Pakistan, and upon learning of the allotment of the Subject Property to Respondent No.2, the Applicant instituted the Civil Suit, which was dismissed by the Trial Court on merits. The Civil Appeal against the said decision was also dismissed, albeit for non-prosecution, by the Impugned Order. Referring to paragraphs 5 and 7 of the Restoration Application, Counsel contends that the dismissal for non-prosecution occurred solely due to the negligence of the Applicant’s previous advocate, and that the Applicant ought not to be prejudiced on account of such negligence.
4. On the other hand, learned Counsel for PTCL submitted that the Applicant’s Civil Appeal was prima facie time-barred and the learned Additional District Judge’s query on maintainability remained unanswered due to the repeated absence of the Applicant and/or his counsel. It was contended that the dismissal for non-prosecution stemmed from persistent non-appearance on

multiple dates, rather than a single absence, as reflected from the Impugned Order. He further averred that mere appointment of an advocate does not absolve a litigant of the duty diligently prosecute his case and remain vigilant in its conduct. Counsel also maintained that the present Revision Application has instituted without proper authority, as the Special Power of Attorney – allegedly executed by the Applicant in Canada – has not been attested by Pakistan’s Embassy or Consulate in Canada and therefore cannot be acted upon. To buttress his submissions regarding a litigant’s duty of diligence, he relied upon:

- i) 1974 SCMR 162 (*Zulfiqar Ali v. Lal Din*)
- ii) 1982 SCMR 1229 (*Rafiq Ahmed Khawaja v. Abdul Haleem*)
- iii) 2009 SCMR 1030 (*Muhammad Asif v. Fahad*)

Decision

5. Although the Diary Sheet of the proceedings in the Civil Appeal are not on record, however, the Impugned Order clearly records that the learned District Judge had raised a question of maintainability of the Civil Appeal, which was never addressed due to the repeated absence of the Applicant and/or his Counsel. The Civil Appeal was adjourned to 18.9.2013, 30.9.2013, 14.10.2013, and 4.11.2013, on which last date it was ultimately dismissed for non-prosecution. opportunities and the Civil Appeal was adjourned to 18.9.2013, 30.9.2013, 14.10.2013 and 4.11.2013, on which last date the Civil Appeal was ultimately dismissed for non-prosecution. It is, therefore, evident that the dismissal for non-prosecution was not based on a solitary instance of absence, but resulted from the continued non-appearance of the Applicant’s Counsel across several dates.
6. No explanation whatsoever, no cogent grounds – let alone “*sufficient cause*” within the meaning of law – has been furnished by the Applicant’s Counsel for this continued absence and lack of representation by the previous advocate. The only assertion made is that the said advocate acted negligently by remaining absent.
7. Similarly, no explanation has been offered for the Applicant’s own absence or his failure to remain in contact with his counsel and stay apprised of the proceedings over the considerable period from 18.9.2013 to 4.11.2013.
8. In **Zulfiqar Ali** (supra), a similar argument was raised – that the appeal had been dismissed for default due to the advocate’s negligence rather than that of the litigant. The Supreme Court declined to retore the appeal, holding that the mere act of engaging a counsel does not discharge a litigant from responsibility, and that it is equally the litigant’s duty to ensure that the case is

diligently prosecuted. It was further observed that where a litigant engages an irresponsible counsel, the consequences must fall upon the litigant and not the opposing party.

9. In **Rafiq Ahmed Khawaja** (supra), the appellant therein similarly contended that he should not suffer due to the negligence of his counsel, who had failed to appear or inform him of his inability to do so upon taking up a government position. This contention was likewise rejected, and the appeal was dismissed, with the Honourable Supreme Court reaffirming the principle laid down in *Zulfiqar Ali*.
10. The last contention raised by PTCL's Counsel pertains to the very maintainability of the present Revision Application, on the ground that it has been instituted by the special attorney of the Applicant without lawful authority under an invalid "*Special Power of Attorney*".
11. Article 95 of the *Qanun-e-Shahadat Order, 1984* provides that the Court shall presume a document purporting to be a power of attorney to have been duly executed and authenticated if it is shown to have been executed before, and authenticated by, a Notary Public, Court, Judge, Magistrate, or a Pakistani Consul or Vice-Consul. Authentication is not mere attestation; it entails verification of the executant's identity and the fact of execution. Accordingly, a power of attorney authenticated by any of the authorities mentioned in Article 95 is treated as sufficient evidence of its execution by the apparent executant. This provision of Article 95 is mandatory. The effect of the said provision is to raise a rebuttable presumption in favour of the validity and due execution of such document, thereby dispensing with the need for formal proof in the first instance. However, such presumption arises only where the document bears the requisite authentication; in its absence, no such presumption can be drawn and the document cannot be accorded legal efficacy. Reliance in this regard may be placed on **Masood Ahmed Khan v. Khalid Anwar Khan** (2023 CLC 176) and **Iqbal Bibi v. Kareem Hussain Shah** (2024 SCMR 1233).
12. The instant Revision Application has been filed through a purported special attorney. A perusal of the "*Special Power of Attorney*" dated 16.10.2012 – allegedly executed by the Applicant while residing in Canada – reveals that it has not been attested by the Pakistan High Commission or any Consulate in Canada.
13. The law on the subject is well settled that, in the case of a power of attorney executed outside Pakistan, attestation by the concerned Pakistan High Commission or Consulate is not a mere formality but a mandatory legal requirement. In **Muhammad Yaseen Siddiqui v. Tahseen Jawaid Siddiqui** (2003 MLD 319), **Muhammad Maroof Ahsan v. Beach Developers** (2011

MLD 36), and **Muhammad Younus Billoo v. Piyari Sadiq Wahab** (PLD 2023 Sindh 235), it has consistently been held that non-compliance with this mandatory requirement renders such document legally ineffective and devoid of any evidentiary value, and consequently incapable of conferring lawful authority to institute legal proceedings.

14. Tested on this touchstone, the said "*Special Power of Attorney*" relied upon by the Applicant, being unattested, is legally invalid and incapable of conferring authority upon the alleged attorney or empowering him to institute the present Revision Application. The same is, therefore, rendered incompetent and not maintainable, and is liable to be dismissed on this ground alone.
15. In light of the foregoing discussion, this Court finds no merit in the present Revision Application, and the Impugned Order warrants no interference. The Revision Application is further held to be incompetent and not maintainable for want of lawful authority. Accordingly, the instant Revision Application is **dismissed**, with no order as to costs.

JUDGE