

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 353 of 2003

ORDER

ON C.M.A. NO. 2881 OF 2007

Date of Hearing : 10.10.2007

Plaintiff : Qamran Construction (Pvt.) Limited through
Mr.S. Ali Abbas Zaidi, Advocate.

Defendants : Saleemullah & others through Mr. Abdul Karim
Siddiqui, Advocate.

NADEEM AZHAR SIDDIQI, J. By this application under Order VII Rule 11 C.P.C. the defendant No.3 has sought rejection of the plaint on the ground that the suit has been filed on behalf of a private limited company by an unauthorized person as no special resolution has been filed alongwith the plaint. In the application, it was further stated that the suit is not maintainable for mis-joinder of the parties and mis-joinder of cause of action.

The plaintiff has filed its counter-affidavit to the said application in which it has been stated that the suit has been filed by an authorized person of the company by way of duly passed resolution, a copy of which has been placed on record. It was further stated that the defendants Nos.1 and 2 are real brothers, who got allotment of their respective flats simultaneously and they were dealing with the company through their father the defendant No.3 jointly in all matters pertaining to the suit flats.

The learned counsel for the defendant submits that for filing a suit on behalf of a private limited company a Board Resolution is necessary. He further submits that alongwith the plaint neither the Board Resolution has been filed nor Memorandum and Articles of Association of the Company has been placed on record and the person, who has signed and verified the plaint, has not disclosed that under what authority he has filed the suit. He has relied upon following reported cases: -

1. KHAN IFTIKHAR HUSSAIN KHAN OF MAMDOT v. MESSRS GHULAM NABI CORPORATION LTD., LAHORE (PLD 1971 SC 550) AND
2. ABDUL RAHIM v. MESSRS UNITED BANK LTD. OF PAKISTAN (PLD 1997 KARACHI 62).

The learned counsel for the plaintiff submits that the suit was filed by a duly authorized person and a copy of the Resolution has been placed on record. He further submits that since factual controversies are involved the plaint cannot be rejected under Order VII Rule 11 CPC. He further submits that earlier similar type of application with similar grounds has been dismissed for non-prosecution and the second application on the same grounds is not maintainable.

I have heard the learned counsel for the parties and perused the record of this case very carefully.

From the perusal of the record it appears that neither the Board Resolution nor Memorandum and Articles of Association of the plaintiff has been placed on record. In the plaint in column “Documents filed – Annexures P-1 to P-8” has been shown to be filed alongwith the plaint and none of these documents is the copy of the Resolution or copy of the Memorandum and Articles of Association. In the body of the plaint also, it has not been stated that under what authority Mr. Ghulam Muhammad has signed the plaint. The designation of the person, who has signed the plaint on behalf of a private limited company, has also not been shown or disclosed. The learned counsel for the plaintiff has failed to satisfy with regard to filing of Board Resolution and Memorandum and Articles of Association.

Order XXIX Rule 1 C.P.C. provides that in suits by or against a corporation, any pleading may be signed and verified on oath on behalf of the corporation by the Secretary or by any Director or other Principal Officer of the corporation, who is able to depose to the facts of the case. It is now well-settled principle of law that a suit on behalf of a private limited company should be filed by an authorized person, who is duly authorized in accordance with the Memorandum and Articles of Association of the company. In order to determine whether a suit has been instituted by a person duly authorized to do so, reference will have to be made to the Articles of the Company.

The burden to show that the suit has been filed by the authorized person is upon the plaintiff and the plaintiff has failed to discharge that burden by not producing the Board Resolution and Memorandum and Articles of Association of the Company. It is also well-settled principle of law that in case there is a defect in institution of the proceedings the said defect was incurable.

In the reported case of KHAN IFTIKHAR HUSSAIN KHAN OF MAMDOT v. MESSRS GHULAM NABI CORPORATION LTD., LAHORE (PLD 1971 SC 550) it has been held that the suit on behalf of the company by a person not competent unless he is authorized by a resolution passed by the Company’s Board of Directors. In another reported case of ABDUL RAHIM v. MESSRS UNITED BANK LTD. OF PAKISTAN (PLD 1997 KARACHI 62) a Learned Division Bench of this Court has held that in case there is any defect in institution of the suit i.e. it is instituted unauthorizedly and incompetently the said defect remains incurable even by a subsequent ratification.

In an earlier reported judgment of this Court in the case of PICIC COMMERCIAL BANK LIMITED v. SPECTRUM FISHERIES LIMITED (2006 CLD 440) it has been held as under: -

“The upshot of the above judgments are that the objection regarding competence to institute the proceedings could only be decided after reference to the articles of association of the company from where it had to be seen as to whether the person delegating the power was competent to delegate such powers to the persons instituting the proceedings. The company had to act in accordance with the articles and it was the provisions of the Articles which reminded as to which person had the power to institute legal proceedings. It is now well settled that when a company is instituting legal proceeding it had to establish that the proceeding has been instituted competently and authorizedly.”

After considering the material available on the record, I am of the view that this suit has been instituted by an unauthorized person, therefore, the plaint is rejected under Order VII Rule 11 C.P.C. with no order as to costs.

The application is disposed of in the above terms.

Karachi
Dated 10.01.2008.

JUDGE

Farhan