

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 128 of 2012

Hum Network Limited

Versus

Naveed Khan & others

Date of hearing: 18.12.2017

Appellant: Through M/s. Ijaz Ahmed and Waqar Ahmed
Advocate

Respondents: Through Mr. Muhammad Ali Hakro Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The subject matter of this second appeal is an order passed by the appellate Court confirming order of rejection of plaint by the trial Court under Order VII Rule 11 CPC.

Brief facts leading to filing of the suit, as incorporated in the plaint, are that on account of breach of employment agreement by respondent No.1, the appellant filed a suit for specific performance, permanent injunction, damages and recovery. On receipt of notices and summons, the respondent No.1 filed an application under Order VII Rule 11 CPC. Respondent amongst other grounds pleaded in the application that the suit has not been filed by a duly authorized person. Counter affidavit and rejoinders were exchanged whereafter the Civil Judge allowed the application under Order VII Rule 11 CPC and rejected the plaint. The appellant filed an Appeal bearing No.30/2012 before the District Judge which was also dismissed, which order is impugned here.

The point requires determination is whether the suit was filed by duly authorized person and whether on such assertion, and being denied by the appellant, the plaint is liable to be rejected.

The suit was filed by one Muhammad Abbas Hussain on behalf of the appellant in terms of Special Power of Attorney dated 18.10.2011 executed by the Chief Executive of the appellant in pursuance of powers that he derived by virtue of Power of Attorney dated 08.8.2008. Said Power of Attorney enabled the Chief Executive to commence any legal proceedings and may also delegate such powers to appoint one or more substituted attorneys. The Special Power of Attorney in favour of Muhammad Abbas Hussain was executed by Mr. Duraid Qureshi on 18.10.2011 when said Mr. Duraid Qureshi, was the Chief Executive in terms of Form-29 duly certified by the Companies Registration Officer carrying presumption of genuineness in terms of Article 92 of the Qanoon-e-Shahadat Order, 1984. On these counts and facts the trial Court was inclined to reject the plaint and appeal met the same fate.

Heard the learned Counsel and perused the material available on record.

These appears to be question of facts when, for the purpose of deciding application under Order VII Rule 11 CPC, averments of plaint to be considered.

Form 29 of different dates including the period when subject Special Power of Attorney was executed were/are on record and they may have been successfully challenged, but ultimately may lead to dismissal of suit but not, at this stage, lead to rejection of plaint. Reliance is placed on the following cases:

1. ***ANZ Grindlays Bank Limited vs. Saadi Cement Company Limited & others reported in PLD 2001 Karachi 143.*** Operative part of the judgment is reproduced as under:

“-----There is also presumption of regularity of official acts particularly regarding execution and authentication of the Power of Attorney, which takes the same as valid and effective under the provisions of Article 95 of the Qanun-e-Shahadat Order.-----“

2. **KASB Bank Limited vs. Mirza Ghulam Mujtaba & others reported in 2011 CLD 461** wherein it is observed as under:

“-----The upshot of the above discussion is that since the plaint in the present suit has been presented by two signatories who are attorneys and were authorized by the bank, it is valid presentation and the suit is maintainable under the law. Even otherwise, section 9(1) of the Ordinance, 2001 provides that financial institution may institute a suit in Banking Court by presenting a plaint which shall be verified on oath by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by Power of Attorney or otherwise.-----“,

3. **Allied Bank Limited vs. Muslim Cotton Mills (Pvt.) Limited & others reported in 2011 CLD 393**, it was observed as under:

“-----The examination of the record shows that two persons namely Amjad Hussain Aftab and Mushtaq Ahmed have filed the suit under their signatures who have been appointed attorney by the Bank under its common seal. Power of Attorneys of both the above officers are available on record as Annexures ‘A’ and ‘A/1’ respectively. The power of attorney brought on record have been executed by the President of the Bank in favour of the above named attorneys and the same is notarized in accordance with law.

The upshot of the above discussion is that since the plaint in the present suit has been presented by the two signatories who are attorneys and were authorized by the bank, it is valid presentation and suit is maintainable under the law.---“

The requirement of passing a resolution is set at par with the powers of directors under section 183(1) of the Companies Act, 2017 which is parametria to Section 196 (1) of the Companies Ordinance, 1984. Since the Board is vested with the powers of management which has delegated all such rights through a Power of Attorney to the Chief Executive with further powers to delegate such powers therefore, such strict action in terms of under Order VII Rule 11 CPC for rejection of the plaint is uncalled for. This delegation of power further gets support in

terms of Articles of Association which reiterate the aforesaid authority as statutory delegation of powers which was vested with the Board of Directors. Reliance is placed on the case of Pak Turk Enterprises (Pvt.) Limited vs. Turk Hava Yollari reported in 2015 CLC 01. The relevant part of the judgment is reproduced as under:-

“----Two points, of fundamental importance, require attention. Firstly, the Supreme Court held that an examination of the Articles of Association was necessary in order to ascertain whether the directors were empowered to delegate the power the instituting legal proceedings to someone else. Secondly, and perhaps even more importantly, the Supreme Court observed that it was not necessary to see whether, in fact, the board had actually done so. The production of the resolution passed in this regard was considered to have been only “a matter of abundant caution”, and it was expressly noted that it could have been dispensed with “as it was not strictly necessary.

38. Turning now, once again, to the facts and circumstances of the present case, in my view it is clear that the present proceedings involve, insofar as the present plaintiff is concerned, a third party (i.e. the present defendant) in a situation to which the rules of indoor management is applicable. The controlling authority therefore is Australasia Bank and not Khan of Mamdot. As it is clear, all that is required is an examination of the Article of Association. The production of the board resolution is not, as such strictly necessary, although it may be produced by way of abundant caution. The objection in the present application is not based on any no-production of the Articles of Association. In any case, this is a document that is in the public domain and may be produced at any time for examination and consideration by the Court.” ----“

The difference is to be carved out between the Board Resolution and Special Resolution. The Special Resolution gets its strength from Section 3(36) of the Companies Ordinance, 1984 which is distinct from the resolution in terms of Section 172 of the Companies Ordinance, 1984 and hence they may not be required to file before SECP in view of the above facts and circumstances of the case.

The two Courts below have also failed to look at it, as to whether it is curable at subsequent stage or otherwise, as the appellant has

pleaded that the suit is being filed by authorized person therefore, the principle as laid down while deciding the application under Order VII Rule 11 CPC is that the contents of plaint is to be considered as correct unless otherwise proved which may ultimately ended up in the dismissal of the suit rather than rejection of the plaint.

These are the reasons for a short order dated 18.12.2017.

Dated:_____

Judge