

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

Syed Muhammad Asif v. Muhammad Ayub and Seven Others

Constitution Petition No.D-2278 of 2018

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| Petitioner: | Syed Muhammad Asif, through Mr Adnan Ahmed, Advocate |
| Respondent No.1: | Muhammad Ayub s/o Late Khurshid Ali Khan, through Nemo |
| Respondent No.2: | Muhammad Tahir s/o Late Khurshid Ali Khan, through Nemo |
| Respondent No.3: | Shahina d/o Late Khurshid Ali Khan through Nemo |
| Respondent No.4: | Mst Khalida Begum, through Mr Syed Ashar Askar Zaidi, Advocate |
| Respondent No.5: | Karachi Development Authority, through Nemo |
| Respondent No.6: | The Director, Housing Managing Director, KDA, through Nemo |
| Respondent No.7: | XIth Additional District Judge, Karachi East through Nemo |
| Respondent No.8: | IIIrd Senior Civil Judge, Karachi East through Nemo |
| Date of hearing: | 16.11.2023 |
| Date of decision: | 27.11.2023 |

J U D G M E N T

Jawad A. Sarwana, J: This Constitution Petition is filed by the Petitioner/Applicant-Intervener (“Syed Muhammad Asif”) against the Order dated 23.02.2018 passed by the learned XIth Additional District

Judge, Karachi East in Civil Revision Application No.12/2017 dismissing the Civil Revision filed by Syed Muhammad Asif wherein he had impugned the Order dated 06.01.2017 passed by the learned Illrd Senior Civil Judge Karachi East in Civil Suit No.443/1996 and Execution No.06/2004 (hereinafter referred to as the “trial court”). The trial court had dismissed Syed Muhammad Asif’s Application under Section 12(2) CPC. Syed Muhammad Asif has impugned both the Addl District Court’s Judgment dated 23.02.2018 and the trial court’s Order dated 06.01.2017. He contends that the trial court could not have decided the application under Section 12(2) CPC after issues had been framed and the parties had recorded evidence during the hearing of the said application based on only one of the three issues settled by the Court and without deciding the remaining issues. He submits that the Impugned Orders of the Additional District Court Karachi and the trial court are without lawful authority and beyond jurisdiction, hence this Petition.

2. At the outset, for clarity, it may be noted that the litigation history of the Petition involves several cases between the parties filed between 1996 and 2018. This Petition concerns Plot No.148 (including 148/1), ST-.20, Block-1, Shah Faisal Colony (behind Al-Mashaiq Chamber), Karachi (hereinafter referred to as “the Subject Property”). The brief facts which emerge from the documents filed with the Petition, as narrated herein, are tentative until all litigation about the Subject Property is concluded,

3. By way of background, in the year 1996, Respondent Nos.1 to 3 filed Suit No.443 of 1996 against Respondent Nos.5 and 6 in the Court of Illrd Senior Civil Judge at Karachi East (“trial court”) for Declaration and Possession of Subject Property, which relief was granted to the said Respondents mentioned above by Judgment dated 26.11.2002 and Decree dated 30.11.2002. Thereafter, Respondent No.4 (Mst Khalida Begum, widow of Abdul Quddos) filed Civil Suit No.782/2008 against one Mst Wasifa Begum w/o

Muhammad Hisamuddin Ansari, Syed Muhammad Asif (Petitioner/Intervener-Applicant), and others for declaration, cancellation and possession of the Subject Property. The 1st Senior Civil Judge, Karachi East, after recording evidence and hearing the parties, vide Judgment dated 10.12.2011, dismissed the suit and held that Syed Muhammad Asif:

“has established by producing the documentary as well as oral evidence that the execution of sale date dated 15.05.2006 is genuine, legal and lawful and not any misrepresentation has taken place. . . .”

4. Thereafter, the Petitioner, Syed Muhammad Asif, in the year 2012, filed an Application under Section 12(2) CPC for setting aside the trial court's Judgment and Decree dated 26.11.2002 and 30.11.2002, respectively. After hearing the parties, on 05.10.2012, the trial court framed three issues, namely:

- (i) Whether the application [under section 12(2) CPC] itself is not maintainable under the law?
- (ii) Whether the plaintiff/D.H. has obtained judgment and decree by mis-representation of fact and practicing fraud upon the court?
- (iii) What should the order be?

5. The trial court recorded evidence, heard arguments, and proceeded to decide the matter except only on the first issue: “Whether the application [under section 12(2) CPC] itself is not maintainable under the law?”. It did not decide on the remaining issues that it had framed on 05.10.2012 and dismissed the application under Section 12(2) CPC.

6. While deciding the first issue regarding the maintainability of the Application filed under Section 12(2) CPC, the trial court held that the

power of attorney dated 03.04.2010 granted by Syed Muhammad Asif to his attorney, Mirza Niaz Baig, did not grant power to the said attorney to file the application under Section 12(2) CPC. Consequently, he held that an unauthorised person had filed the application under 12(2) CPC, hence, “there is no need to discuss the other issues” and dismissed the said application. In the Revision, the learned Addl. District Court Judge observed that the general power of attorney did not confer any power to the attorney to appear in Civil Suit No.443/1996 and to file an application under section 12(2) CPC in the said Suit. He affirmed the trial court order dated 06.01.2017 and dismissed the Revision vide Impugned Order dated 23.08.2018.

7. The Counsel for the Petitioner argued that the Orders of the trial court and the Addl. District Court suffered from infirmity as the Court exercised jurisdiction improperly. The Power of Attorney in question correctly authorized Mirza Niaz Baig to file the said application and expressly referred to Suit No.782/2008 and mentioned the Subject Property described, separately. The Subject Property was the subject matter of both Suit Nos.782/2008 and 443/1996. He argued that the said Power enabled Syed Muhammad Asif to safeguard his interests in relation to the Subject Property regardless of whether or not the Suit No.443/1996 was not mentioned in the said Power. Counsel for the Respondent No.4 opposed Petitioner Counsel’s contentions. He argued that the issue of maintainability went to the root of the matter, and once it was decided that the said application was not maintainable, then there was no need for the Court to traverse to the remaining issues. He contended that there was no reference to Suit No. 443/1996 in the said Power and the same could not be read into it. The General Power had an slash sign which had to be read as either an “and” or an “or”. Therefore, it related to either the Suit No.782/2008 or the Subject Property but not the Suit No.442/1996. As a result, the powers that relate to court procedure contained in the General Power of Attorney are meant for Suit No.782/2008, and those powers cannot be read as meant for Suit No.442/1996. Therefore, the attorney had no power to initiate any court proceedings in Suit

No.442/1996, including no power to file an application under Section 12(2) CPC. Further, the powers relating to the property mentioned in the General Power of Attorney are confined to looking after property matters and not court matters. Thus, the Judgment and Order dismissing the application under 12(2) CPC was proper and good in law.

8. We have heard the arguments of both Counsels and perused the documents filed with the Petition.

9. We have carefully read the Power of Attorney in question as well as the trial court's Impugned Order dated 06.01.2017 and, the Additional District Court's Impugned Order dated 23.02.2018. Before further discussion, it would be appropriate to reproduce the relevant provisions of the General Power of Attorney, which was seen and interpreted by the two Courts below. The relevant sections of the said Power are reproduced before with the text in bold and underlined for emphasis:

"GENERAL POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS THAT I SYED MUHAMMAD ASIF S/O SYED MUHAMMAD RAFIQ, Muslim, adult, resident of 1/159, Commercial Area, ST-20, Block-1, Faisal Colony, Karachi having NIC No.42201-02845509-1 hereby nominate, constitute, appoint and ordain to MR. MIRZA NIAZ BAIG S/O LATE HAKEEM MUNAWAR BAIG, Muslim, adult, residing of House No. b-27/367, Al-Falah Society, Shah Faisal Colony, Karachi having NIC No.42201-x26x892-1 [illegible], as may true and lawful GENERAL ATTORNEY to look after, manage and safeguard my rights and interest in respect of **Civil Suit No.782/2008** (Mst. Khalida Begum V/S City District Government, Karachi & Others) subjudiced before IVth Senior Civil Judge Karachi (East) **and Commercial Plot No.1/148, admeasuring 118.22 Sq. Yds.** situated at Block-1, Shah Faisal Colony, Karachi (**herein after referred as the said case/property**) and I do hereby authorized and ordain my said ATTORNEY to do and cause to be done the following acts, deeds, things and matters in my name and on my behalf:-

1. To look after, control, supervise, deal with and manage the above said **case/ property**.
2. To appoint and engage any advocate and legal practitioner sign and execute Vakalatnama, settle and pay his fee and impart necessary instructions in respect above said **case/property**.
3. . . . case/property.
4. . . . case /property.

5. . . . case /property.
6. To institute, defend and prosecute legal proceedings before any Court, Tribunal, Authority whatsoever as my above named GENERAL ATTORNEY may deem fit and proper in respect of the above said case /property.
7. AND GENERALLY to do and cause to be done all the acts, deeds, things and matters in respect of the above said case /property which may be necessary, proper or incidental thereto or. . .

...

In the witnesses whereof, we have signed this deed on this 3rd day of April 2010 at Karachi.

WITNESSES:

1. . . .

(EXECUTANT)
SYED MUHAMMAD ASIF
S/O . . .
...

2. . . .

(ATTORNEY)
MIRZA NIAZ BAIG S/O
...

ATTESTED

...
Naweed Jahan
Advocate & Notary Public
KARACHI (Pakistan)"

(bold and underlining added for emphasis)

10. It is evident from the bare perusal of the General Power of Attorney that it refers to (i) "Civil Suit No.782/2008" and (ii) "Commercial Plot No.1/148, situated at Block-1, Shah Faisal Colony". The references to (i) and (ii) above are followed by being described as "hereinafter referred to as the said case/property." The key syntax in the phrase is the use of the forward slash "/" sign appearing between the words "case" and "property". The word "case" is not mentioned independently. There is no express indication that the word "case" mandatorily refers to the "Civil Suit No.782/2008" or anything else. Indeed, the mention of Civil Suit No.782/2008 is not in parenthetical brackets. No suggestion in the General Power of Attorney references that "the case," hereinafter in the General Power

of Attorney, means a reference to the aforesaid docketed civil suit. There is no such indication in the General Power of Attorney. The word “case” is followed by a slash, which is in turn followed by the word “property”. There are two kinds of permutations with the slash (/) sign. The first permutation is where there are no character spaces between: “case”, “slash sign”, and “property”. This occurs twice in the General Power of Attorney. The second permutation is where, in the remaining parts of the General Power of Attorney, the word “case” and the slash sign are joined together, but there is a character space between them and the next word, “property”. All the above syntax concerning the slash (/) sign has context and deeper meaning, is a tool of interpretation and provides a signpost to the person relying on it to plead his rights. Therefore, there is merit in spending some time with the slash (/) sign to decide this Petition.¹

11. The slash (/) - a forward sloping line (/) - technically known as a virgule but also called a slant, solidus, or stroke, an oblique, an oblique stroke, a diagonal, a solidus, a forward slash, and a separatrix is a mark of punctuation that serves several purposes in writing, essentially standing in for other words as a quick and clear way of showing the connection between two things. *The Concise Oxford English Dictionary* defines “slash” as “an oblique stroke (/) used between alternatives, in fractions and ratios or between separate elements of a text”.² *The Merriam-Webster Dictionary* defines, “slash” as “a mark / used typically to denote "or" (as in *and/or*), "and or" (as in *straggler/deserter*), or "per" (as in *feet/second*) called also *diagonal, slant, solidus, virgule*”.³ In the case of *Howards v. Fifth Third Bank*, No. 18-cv-00869, 2023 U.S. Dist. LEXIS 20088,

¹ The discussion regarding the slash (/) sign is a summary of information available on the subject online through multiple web links as a result of Google, ChatGPT, and Microsoft AI, Bard, which has been put together and localised in the context of this Judgment. It is not complete. Several meanings of the slash (/) sign have been omitted as the same is irrelevant to this Judgment.

² “*The Concise Oxford English Dictionary*”, 12th Edition (2011), Edited by Angus Stevenson and Maurise Waite, Oxford University Press, UK.

³ <https://www.merriam-webster.com/dictionary/slash>

2023 WL 1778522, at *7 (S.D. Ohio Feb. 6, 2023), concluded that "a forward slash, allow[s] the inference that [the terms preceding and succeeding it] are so closely related as to be interchangeable."⁴ Finally, it may be noted that a slash (/) is conventionally used without spaces between it and the words it connects (although it is also common to see spaces used, especially if one or both of the things being joined contain multiple words).

A slash (/) may be used in place of *or*

12. One of the most common uses for the slash is to stand in for the word *or* to express a choice between two things. For example:

- "Each candidate must be sure to provide **his/her** references before the interview."
- "This is not a simple **right/wrong** issue; it has much more complexity than that."
- "Please limit your responses to **yes/no**."
- "Ask your **parent/guardian** before purchasing any online content."

A slash (/) may be used as an *and/or*

13. One somewhat specialised use of the slash is in the term *and/or*, meaning, "one or the other or both." Because *or* is already present in the compound, the slash does not represent a second *or*, but the implication of a choice between the two remains nevertheless. For example:

- "Expect rain **and/or** snow over the weekend."

We can also use *and/or* with more than two items, generally meaning "one or more." For example:

"Please provide proof of identity, address, current residency status, **and/or** an existing employment permit (as applicable) when filing your visa application."

⁴ [Howards v. Fifth Third Bank, 1:18-cv-869 | Casetext Search + Citator](#)

- “Expect rain **and/or** snow over the weekend.”

We can also use *and/or* with more than two items, generally meaning “one or more.” For example:

- “Please provide proof of identity, address, current residency status, **and/or** an existing employment permit (as applicable) when filing your visa application.”

A slash (/) for expressing connection, conflict, or contrast

14. It is also common to see a slash used to express connection, conflict, or contrast between two things, a function that is normally reserved for an **en dash** (or, more informally, a **hyphen**) or the Latin loanword *cum* (meaning in this case “also functioning as” or “as well as being”).

In place of en dashes (-)

15. We sometimes use an en dash (-) when we want to express a direct connection between two people, things or places. It is not uncommon for slashes to be used instead of en dashes for this purpose: they’re easier to type than en dashes while still maintaining the meaning (which might be lost if we used hyphens instead).

- “The President is trying to drum up support for the **China-Pakistan trade deal.**”
- “The President is trying to drum up support for the **China/Pakistan trade deal.**”
- “We will begin boarding the **Karachi-Sukkur-Lahore flight** shortly.”
- “We will begin boarding the **Karachi/Sukkur/Lahore flight** shortly.”

In place of cum

16. The Latin word *cum* is a preposition meaning “with” (as in the term *summa cum laude*, “with highest honors”. For example, “Yough Fazl ur R In modern writing, when joining two or more separate nouns that function as a single entity. It has also come to mean “combined

with”, “as well as being”, “or also functioning as”. It is often but not always italicised, and it is joined with hyphens between the two things it connects if a writer chooses to use a slash instead of *cum*, we replace the hyphens as well as the word. Note that we can also use a single hyphen this way as well. For example:

- “I started up my own business as an **agent-cum-promoter** about five years ago.”
- “I started up my own business as an **agent/promoter** about five years ago.”
- “I started up my own business as an **agent-promoter** about five years ago.”

17. In the context of the Orders of the trial court and the District Court, both forums have not given importance to the slash (/) sign appearing in the General Power of Attorney. The General Power of Attorney referred to both the Suit and the Subject Property, describing the two as “case/property”. The use of slash (/) meant that the word “case” and “property” should be read interchangeably. As discussed hereinabove as “case and/or property”. This meant that all the powers set out in the General Power of Attorney related to both the Suit and the Subject Property. A restrictive meaning could not be read into the General Power of Attorney. A power of attorney, which is related to the accretion of the right to the properties and assets of the principal, has to be interpreted liberally and not in a restrictive and stringent manner. The attorney, Mirza Naim Baig was acting on behalf of the principal, Syed Mohammad Asif, for his benefit in relation to the Subject Property with clear power to safeguard the interest of the Petitioner. When read as a whole, the General Power of Attorney grants powers to the attorney to do all things on behalf of the principal in relation to protecting his rights. As such, the trial court and the District Court could not deprive the attorney from exercising his power to file a suit, written statement or, as in the present case, from filing an application under Section 12(2) CPC on behalf of his principal. Of course, this interpretation is in the context of the facts and circumstances peculiar to the case at hand. The application of the rules of interpretation regarding the punctuation slash (/) will have

different outcomes depending on the facts and circumstances of each case. In the instant case, we find that the attorney was duly authorized and competent to file the application under Section 12(2) CPC.

18. There is another aspect of the matter. The trial court had settled three issues for deciding the application under Section 12(2) CPC, but the case was decided based on a single issue without taking up the other two remaining issues. For efficiency and speed, it was expedient to decide the first issue, which went to the root of the matter, and yet for the purpose of administration of justice, the trial court should have decided the application filed by Syed Muhammad Asif, completely and fully, including on merits. The issue of maintainability decided by the two Courts did not involve limitation or the ouster of jurisdiction. The issue settled by the Courts turned on interpretation based on the facts and circumstances of the case. The situation required considering the evidence recorded and preparing an order with reasoning involving all three issues. No doubt such exercise is time-consuming. Yet given the right of appeal and the current court congestion, it is prudent for trial courts (which is the initial forum of all litigation), especially after the settlement of issues and the parties have recorded their evidence, to decide all the aspects of the matter in a single Order addressing all the issues framed by the Court which arise from the contest between the parties, including the issue of maintainability. Deciding the lis after the stage of final arguments, may be avoided. The appellate forum will benefit from a complete order by the trial court that has discussed all the issues framed by the Court. Even if the issue of maintainability is kept aside, multiple grounds should be available to the appellate forum to decide the appeal in totality and bring litigation to an end. Of course, there is also the potential that we can decide the matter now; however, doing so now would curtail the aggrieved party's right of appeal. In the long run, the suggested approach may be more efficient administratively and

economically for Courts. Notwithstanding, the approach may also discourage frivolous litigation, especially from the litigious litigant.

19. The observations made herein are strictly to decide this Constitution Petition and shall not in any way affect the decision of the trial court in deciding Syed Muhammad Asif's application under section 12(2) CPC on merits based on the evidence brought on record and the applicable principles of law to the case at hand.

20. The above are the reasons for the Short Order passed on 16.11.2023 allowing the Petition and remanding the case to the trial court for deciding the application under Section 12(2) CPC on the strength of evidence/merit in about eight weeks' time after hearing the parties.

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