

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

High Court Appeal No. 156 of 2016

Dr. Farida Ashraf Rana
Versus
Adila Kazmi & 10 others

For the Appellant : Mr. Abdul Waheed
Kanjoo, Advocate

For the Respondents : Ms. Rizwana Ismail
Advocate

Date of Hearing : 22.05.2018

JUDGMENT

Agha Faisal, J: The crux of this matter is the locus standi of the ostensive appellant to institute the present appeal, which has apparently been signed, sworn and instituted by an advocate on behalf of the Appellant (“**Advocate**”).

2. The brief facts of the case culminating in the present appeal are delineated in chronological order herein below:

i. The learned Single Judge of this Court was seized of J.M. No. 53 of 2010, wherein, he passed an order dated 05.04.2016 (“**the Impugned Order**”) dismissing six listed applications in the following terms:

“It is matter of fact that two JMs, viz. J.M No.53/2010 and 100/2011 were filed; subsequently JM No.100/2011 was same party on the basis of registered power of attorney which is available at page 427 of the file, JM No.53/2010 was withdrawn, subsequently review application was preferred, same was also withdrawn.

Learned counsel for petitioner contends that in fact rectification can be sought at any time, learned counsel relied upon 1999 YLR 1529; he further contends that earlier power given by Mst. Farida Ashraf Rana was result of a fraud.

Since above referred order reveals that Mst. Farida Ashraf Rana was represented by other counsel on the basis of power of attorney and such JM was withdrawn, again same lady through another counsel is agitating her claim. If any fraud is committed by any person or that registered power of attorney was not executed by Mst. Farida Ashraf Rana, she has every right to sue that attorney but the manner which has been adopted before this Court by repeatedly moving applications is not permissible under the law, accordingly instant application is dismissed.”

ii. The present appeal was instituted assailing the Impugned Order and it is manifest from the memorandum of appeal that the same has been signed by the Advocate, as not only the Advocate for the Appellant but also for the Appellant herself.

iii. The title and narrative of the memorandum of appeal do not make any reference to the Advocate having any ostensible authority whatsoever on behalf of Appellant.

iv. The affidavit, filed in support of the memorandum of appeal, has also been filed and sworn by the said Advocate and the narrative contained therein provides no credence to the Advocate's claim that he is entitled to prefer the said Affidavit / Appeal.

3. The matter came up for hearing today and this Court was of the view that prior to undertaking any other proceedings in the present appeal it may be just and proper to determine the very maintainability thereof, as the person who has sworn and filed the present appeal appears to be devoid of any authorization in such regard.

4. Advocate representing to act on behalf of the Appellant submitted that the Appellant is an old, infirm and bedridden lady and hence unable to appear before this Court and therefore he has filed the present appeal, and sworn the accompanying affidavit, for and on her behalf.

5. It is imperative to maintain the distinction that pleading a case as an advocate, on the strength of a vakalatnama or memorandum of appearance, is entirely at variance to signing a memorandum of appeal and swearing the accompanying affidavit by a counsel.

6. On being specifically queried about the existence of a specific power of attorney empowering him to act in such regard, the Advocate replied in the negative.

7. Learned counsel for respondents forcefully argued that the present appeal has prima facie been filed by a stranger, who has no authority to represent the Appellant.

8. It was further contended that the present appeal cannot be maintained on behalf of a person, whose authorization and or even consent in such regard is glaringly absent from the proceedings.

9. The Court considered the arguments of both sides and reviewed the record available on file.

10. It was observed that even at the time when the present appeal was instituted, an office objection was raised requiring the Appellant to sign memorandum of appeal. The reply submitted in response thereto, by the Advocate, is reproduced herein below:

“She is bedridden since 2013 and appeal is being filed by the counsel.”

11. The question of maintainability was raised in this appeal earlier also and the same is reflected vide the order of this Court dated 29.01.2018, the content whereof is reproduced herein below:

“Mirza Sarfaraz Ahmed, advocate holding brief for Mr. Abdul Waheed Kanjoo, advocate for Appellant, who is reportedly busy before another bench and requests for adjournment.

Learned counsel for the respondent has raised an objection as to maintainability of instant appeal, which according to learned counsel, has been filed without proper authorization by the counsel on the basis of memo of appearance, whereas, the was not a counsel in the suit. It is further contended by the learned counsel for the respondent that after dismissal of the J.M. No.53 of 2010, frivolous application has been filed for recalling such order, which was earlier withdrawn, whereas, Revision Application was also dismissed as withdrawn and thereafter, filed similar applications, which have also been dismissed.

Adjourned to 07.03.2018, when learned counsel for the Appellant may assist this Court on the objections raised by the learned counsel for the respondent, however, no further adjournment will be granted. Learned counsel for the respondent is directed to place on record certified copies of order sheet of the aforesaid J.M. before the next date of hearing.”

12. It is apparent from the orders dated 07.03.2018 and 13.04.2018 respectively that addressing the Court with regard to the objection as to maintainability was continually eschewed by the Advocate on one pretext or another.

13. The proclivity of the Advocate to seek continuances in the present matter is demonstrated by the orders dated 29.01.2018 and 07.03.2018 respectively, and as a consequence thereof it had been specifically recorded therein that no further adjournment would be granted.

14. The law contains specific provisions for the assistance of persons suffering from infirmities. Even though in the present case there is no evidence to suggest that the purported Appellant was precluded by ill-health from personally instituting the present

proceedings, even if, the same was correct her authorization for the institution of the present appeal could have been obtained through a commission sanctioned by an order of the Court.

14. The Advocate has been unable to demonstrate any authority under which his institution of the present proceedings could be determined to have had the sanction of law.

15. This Court was thus constrained to dismiss the present appeal vide a short order dated 22.05.2018

16. These are the reasons for our short order.

JUDGE

JUDGE

Karachi.

Dated : 05.2018