

## **IN THE HIGH COURT OF SINDH AT KARACHI**

High Court Appeal No. 137 of 2017

Date of hearing: 20.09.2017

Appellant: M/s Rahat & Company through Mr. H. A Rahmani and Ms. Naheed Akhtar, Advocates.

Respondent: Trading Corporation of Pakistan through Mr. Ghulam Haider Shaikh, Advocate.

### **JUDGMENT**

**ADNAN-UL-KARIMMEMON, J.** Through instant Appeal, the Appellant has prayed for setting aside Order dated 18.01.2017 passed by the learned Single Judge of this Court (OS) in Civil Suit No. 196 of 1996.

2. Brief facts of the case are that on 22.1.1996, Rice Export Corporation of Pakistan (**RECP**) filed Suit No. 196 of 1996 against Appellant for accounts and recovery of Rs.56,803,786.64/- The Appellant has averred that during pendency of the said suit, Rice Export Corporation of Pakistan was merged with Trading Corporation of Pakistan (**TCP**). And, with permission of this Court vide order dated 12.03.2001, Trading Corporation of Pakistan became Plaintiff in the suit and filed amended plaint on 21.03.2001. The Appellant has further averred that as a result of above mentioned merger, Respondent/Plaintiff sought further

amendment in the title of plaint, which was allowed by this Court vide Order dated 04.02.2002 and amended title was filed on 06.02.2002. It is further averred that on 16.9.2010, Appellant filed application under Order XIV, Rule 5 CPC, 1908 bearing CMA No. 9854 of 2010 with a prayer for framing of following legal issue:-

“Whether the suit has been filed without authorization by the Board of Directors of Rice Export Corporation of Pakistan, (the original Plaintiff),if not its effect.”

The Appellant further averred that for institution of a suit on behalf of a “corporate entity” a “**Resolution**” passed by its Board of Directors in its duly convened meeting is compulsory and said mandate is followed by the High Courts as well. He placed reliance upon Supreme Court of Pakistan judgment in Khan Iftikhar Husain Khan of Mamdot Vs. Ghulam Nabi Corporation Limited, Lahore. (**PLD 1971 SC 550**). Per Appellant, the instant suit was instituted by defunct Rice Export Corporation of Pakistan without resolution passed by its Board of Directors. However, the Appellant has mentioned in internal noting produced by the Respondent in the Court, whereby filing of Suit No. 196 of 1996 as well as amended plaint in the said suit in pursuance of this Court order dated 12.3.2001 were authorized. Appellant further added that in cross examination of the witness of Plaintiff / Respondent on above mentioned additional issue, he answered that no specific Resolution was passed by the Board of Directors of Rice Export Corporation of Pakistan, predecessor in interest of present Respondent (**TCP**). He further averred that Resolution passed by TCP (**present plaintiff**) could not legally and validly cure fatal

defect of non-passing of resolution by Board of Director of Rice Export Corporation of Pakistan. Having explained his case as such, the Appellant has concluded in memo of Appeal that the impugned Order being against the principle laid down by Hon'ble Supreme Court in the case of Iftikhar Husain Khan Mamdot discussed supra, is not sustainable in law. Appellant being aggrieved by and dissatisfied with the impugned Order dated 18.01.2017 has filed the instant High Court Appeal No. 137/2017 on 6.2.2017.

3. Mr. H. A Rahmani assisted by Ms. Naheed Akhtar learned counsel for the Appellant argued that learned Single Judge failed to appreciate the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of Khan Iftikar Hussain Khan Mamdot Vs. Ghulam Nabi Corporation (PLD 1971 SC 550) discussed supra. He further argued that absence of objection to legal competency of the suit did not convert or render the suit competent when mandatory legal requirement of resolution was not complied with. The learned counsel for the Appellant further contended that learned Single Judge has erred in placing reliance on "**internal noting**" of Respondent in substitution of mandatory legal requirement of "RESOLUTION" and thereby held the suit as competent. Having explained his case as such, he prayed that the impugned Order dated 18.01.2017 be set aside and the Suit No. 196 of 1996 be dismissed. Learned counsel for the appellant in support of his contention has placed reliance upon the case of **Abu Bakar Saley Mayet Vs. Abbot Lab (1987 CLC 367)**, **Dr. S.M. Rab Vs. National Refinery Ltd. (PLD Karachi 478)**, **Razo Pvt. Ltd. Vs. Director**

**Karachi City Region (2005 CLD1208), Rafiq Dawood Vs. Haji Suleman Gowa Wala (2009 CLC 1070), Cargil incorporated Vs. TCP (2010 CLC 420), Hassan Ali Co Vs. TCP Pvt. Ltd (2017 CLC 169), Government of Pakistan Vs. Premier Sugar Mills (PLD 1991 Lahore 381).**

4. Mr. Ghulam Haider Shaikh, learned counsel for Respondent supported the impugned Order dated 18.01.2017 and while giving brief history of the case argued that Rice Export Corporation of Pakistan (RECP) was a duly registered Corporation under Companies Act, 1825 (now Companies Ordinance, 1984) and was owned and controlled by the Federal Government; main function of RECP was receiving, storing, inspecting, handling, clearing, forwarding and shipment of rice for export for and on behalf of Government of Pakistan, while the Appellant is a partnership firm carrying on business at Karachi as handling agent. Per learned counsel, both the parties, upon accepting the tender, executed a written contract bearing No. RECP-5/M&M/89-90/2 on 4<sup>th</sup> January, 1990; thus, Appellant was appointed as Contractor/Handling Agent for '**rice-crop**' of year 1989-90 at Landhi Rice Godown of the Corporation as well as for the handling of any other rice stock which the respondent/RECP may entrust them/Appellant during the said period of the contract. As such, per terms and conditions of the contract, the Appellant was under contractual obligations to exercise due care in handling of rice stocks including byproducts etc. He further added that Appellant (partnership firm) as per contract was liable to make good loss (es)

or damages sustained by the Respondent/Plaintiff. He contended that no doubt as per Clause 4(a) of the Tender Document period of contract was initially for two years from the date of acceptance of tender but, due to non-export of a considerable amount of rice crop 1989-90, the Respondent's/Plaintiff's management extended period of contract till 06.01.1993. Learned counsel added that the instant suit is signed, verified and filed by one Mr. Abdul Rehman Sial, the then Director Technical of RECP (now merged in TCP), who was not only authorized to sign the plaint, but was also competent to institute the instant suit on the basis/strength of noting para 97, 99,107,108 and 118. Learned counsel next contended that no any weight can be given to the objections of Appellant/ defendant in suit raised at the time of arguments particularly when no any objection was raised at the initial stage regarding authorization and or incompetency of the officer, who signed, verified and instituted the instant suit on behalf of Rice Export Corporation of Pakistan in accordance with Order XXIX, Rule 1, CPC, 1908. In support of his contention, learned counsel placed reliance in the case of Kathiawar Cooperative Housing Society Ltd. Vs. Macca Masjid Trust and others (2009 SCMR 574), Trading Corporation of Pakistan (Pvt.) Ltd. Vs. Merchant Agency (2007 CLC 1811), Trading Corporation of Pakistan Vs. Muhammad Alam (2016 CLD 2106) and Collector of Customs Vs. Shaikh Shakeel Ahmed (2011 PTD 495).

5. We have heard learned counsel for the parties, as well as, perused the material available on record and case law cited at the bar.

6. On perusal of the impugned order it transpires that learned Single Judge in Suit No. 196/1996 (**Trading Corporation of Pakistan Vs. M/s Rahat& Company**) has discussed every aspect of the case including objection raised by the learned counsel for Appellant and held that suit is competent in law and is not liable to be dismissed merely for want of authorization. Learned single judge quite correctly dealt with the issue in hand and reached at the correct conclusion. Therefore, we concur with the finding of learned single judge that Suit is competent to proceed on merits after filing of amended plaint by TCP, along with **Board's Resolution** and producing the same by PW-1 namely Muhammad Atiq Khan in his evidence.

7. Addressing the objection of the Appellant as to competency of person who signed and verified the plaint we have noted that in the written statement filed by the Appellant no such objection was raised. The law is very clear that parties to a suit cannot travel beyond pleadings. Besides, Order XXIX, Rule 1 of CPC, 1908 is clear in terms; that where no specific objection has been taken by the party regarding competency of the person who signed and verified the plaint in the first instance the same cannot be done at final stage of a suit. Record reveals that this Court vide Order dated 12.03.2001 allowed and directed the Respondent/Plaintiff to

submit amended plaint in the suit within a period of two weeks. Accordingly, the plaintiff filed amended plaint on 21.3.2001 and no objection, whatsoever, was raised by the Appellant about competency of the suit at that time.

8. Record further reveals that the learned single judge of this Court passed an another Order on 04.02.2002, whereby the Respondent/plaintiff (TCP) was allowed to file amended title of the plaint due to merger of RECP into Trading Corporation of Pakistan. Accordingly, the Respondent/plaintiff (TCP) filed amended title on 06.02.2002; but no objection was raised by the Appellant/defendant on competency of the suit. Lastly, Issues were framed, evidence of the parties was recorded, side of the parties were closed on 10.8.2010 and matter was fixed for final arguments vide order dated 19.10.2010 and at this stage Appellant filed application bearing CMA No. 9854 of 2010 (U/O XIV, Rule 5, CPC, 1908) and raised objection about competency of the suit.

9. We have noted that veracity and authenticity of aforementioned Noting Portion is not disputed. And, verification portion/clause of the plaint itself mentions the name of above said Abdul Rehman Sial, the then Director Technical of RECP, meaning thereby that he was holding one of those offices, which is within the parameters of Order XXIX, Rule 1 CPC, for filing of a suit

10. The case law relied upon by the Appellant is distinguished on facts and circumstances of the instant Appeal.

11. In such circumstances absence of formal resolution could only be treated as technical omission, which in the peculiar circumstances cannot be regarded as incurable defect. Furthermore, the Respondent filed a copy of Board's Resolution of (TCP) ratifying the act of the person who filed the suit on behalf of RECP.

12. We are of the considered opinion that the decision rendered by the learned Division Bench of this Court in the case of **Abdul Rahim v. United Bank Limited (PLD 1997 Karachi 62)** attach a summary of law laid down by taking into account various judicial precedents including the Judgment of Honorable Supreme Court rendered in the case of Khan Iftikar Hussain Khan Mamdot Vs. GhulamNabi Corporation (**PLD 1971 SC 550**). The decision given in the case of **Trading Corporation of Pakistan v. Merchant Agency (2007 CLC 1811)**, accurately applies to the case in hand.

13. We do not see any violation of Order XXIX, Rule 1, CPC which can be adjudged fatal to Respondents/Plaintiff's case. Thus we hold that the suit is maintainable and can be heard and decided on merit. Since, the learned Single Judge has deliberated in detail on contention of the Appellant; therefore no further deliberation is required.



14. In view of foregoing facts and circumstances of case, we are of humble opinion that the objections raised by the Appellant are not sustainable in law and we find no justification to interfere with the impugned order passed by the learned Single Judge on 18.1.2017. Hence, the appeal is dismissed with the listed applications.

15. Let the learned single judge of this Court (Original Side) decide the suit No. 196 of 1996 after hearing the parties on merits.

JUDGE

JUDGE

**Shafi P.A**