

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.85 of 2014

Date	Order with signature of Judge
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Hearing/Priority case.

1. For order on CMA No.7103/2014 (Ex/A)
2. For hearing of CMA No7104/2014 (Stay)
3. For hearing of main case.

22.11.2018

Mr. Sikandar Khan, advocate for the appellant.
Mr. Abdul Razzaq, Advocate for Respondent.

NAZAR AKBAR,J:- This IInd Appeal is directed against the dismissal of Civil Suit No.937/2008 as well as Civil Appeal No.163/2014. The appellant's suit for Declaration and Permanent Injunction was dismissed by the II-Senior Civil Judge, West Karachi by Judgment dated **31.5.2013** on the ground that suit was hit by **Order XXIX Rule 1 CPC** and the appellate Court by judgment dated **30.4.2014** endorsed it.

2. To be very precise, the trial Court has framed following seven issues and recorded evidence of both the sides.

1. Whether the plaintiff was entitled to hearing before the renewal of lease at increased rate?
2. Whether the defendant has power to fix rate of rent for renewal of lease under law and contract?
3. Whether the defendant can verbally increase the lease rent at only level?
4. Whether the plaintiff is entitled to renewal of lease @ the previous rate/or with reasonable increase?
5. Whether the rate of rent offered by defendant is reasonable under prevailing circumstances in country and Karachi?
6. Whether the plaintiff is entitled to any relief?
7. What should the decree be?

Thereafter, instead of taking advantage of labour done in recording of evidence, the trial Court preferred to go for a shortcut and dismissed the suit as not maintainable on the ground that the person who has appeared in the witness box for evidence on behalf of the appellant/ plaintiff was not authorized person. In support of such finding the trial Court has relied on the provisions of **Order XXIX Rule 1 CPC** which deal only with the authority of a person to institute or file suit on behalf of a Company. The Respondent has not disputed that suit was not filed by the competent person. Exhibit A/7 at page-87 clearly indicates that the Secretary of the appellant was duly authorized by the Board of Directors on **14.11.2015** to institute the suit. The evidence of appellant's witness was recorded and the witness was cross-examined by the counsel for the Respondent.

3. The trial Court declared that witness was not competent to step into witness box since the witness was not authorized by a Resolution of the Board of Directors to appear as witness. Therefore, without deciding other issues, only **issue No.7** was answered and the suit was dismissed in the following terms:-

ISSUE NOS.1 TO 6.

*I have already discussed in issue No.7 and as a result of issue No.7 the **plaintiff is not competent to sue against the defendants therefor, I do not find any need to discuss the other issues.** Hence, the same issues are answered as redundant.*

The appellate Court also endorsed the judgment of trial Court, therefore, the instant second appeal.

4. I have heard learned counsel for the parties. Learned counsel for the appellant contended that in fact the witness was authorized

by the competent authority to appear as a witness, which authorization is available at page No.99 of the file. Learned counsel for the appellant submits that Resolution of Board of Directors is not required for every step in the course of proceedings of suit once the suit is filed with authorization of the Board of Directors. He has relied on the case law reported as *Ittehad Chemicals Ltd. vs. VIIth Additional District and Sessions Judge and others (2010 CLC 599)* relevant para-25 is reproduced below:-

25. *On behalf of Saudi Pak Commercial Bank one Mr. Asif was produced as witness. The learned counsel submits that since he did not have specific power granted to him by the Board of Directors to come as a witness he could not do so and his evidence should be discarded. In case of a company, law does not require that everything to be done by a company, be it purchase of pin cushion or hiring of a gardener or writing a letter to the government department should be done only and only if Board of Directors specifically approve it. Board of Directors exercises overall superintendence and in each case approves appointment of Chief Executive, who subject to supervision and control of the Board of Directors, carries on affairs of the company. To claim that Chief Executive cannot even wag his pencil without having every wag being separately and specifically authorized by Board of Directors would be stretching the things to the extent of incredulity. No doubt, essential principal and fundamental things like appointment of principal officers, institution of litigation etc., must be done with the approval of Board of Directors but if in a case a witness is sent in which the company is not even a party, I do not think that approval of the Board of Director would be required for such a minor act.*

5. In rebuttal for the last four years neither any counter affidavit to appeal has been filed nor the contentions raised by the appellant have been seriously challenged at the bar. The counsel for the Respondent, however, insisted that since there was no Resolution of the Board of Directors in favour of the WITNESS to record evidence on behalf of Plaintiff Company the suit was rightly dismissed. He has not referred to any provision of Law in CPC or Evidence Act or any

other statute which makes it mandatory for the company to hold a meeting of Board of Directors to resolve who could be “**witness**” in a particular suit.

6. The findings of trial Court were based on the case law reported as **AIR 1991 DELHI 25** and the appellate Court has referred to the case law reported as *Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 Heirs) vs. Messrs Ghulam Nabi Corporation Ltd., Lahore (PLD 1971 SC 550)*. In both the cases the discussion and findings were on issue of institution/filing of suit in terms of the provision of **Order 29 Rule 1 CPC**. In none of the two citations, the suits were found to be incompetently filed because the “witness” who subsequently appeared on behalf of the company was not authorized through a Resolution of the Board of Directors to lead evidence on behalf of the company. Both the courts below discussed the capacity of the “**witness**” to appear in Court to record evidence on behalf of the company and both dismissed the suit and appeal on the ground that suit was not filed by the competent person as required under **Order XXIX Rule 1 CPC**. It may be mentioned here that in their written statement the Respondents have not challenged the maintainability of suit for want of mandatory requirement of **Order XXII Rule 1 CPC**. That is why even issue of maintainability of suit was not framed by the Courts below. In the absence of any statutory requirement for the limited company to hold a meeting of Board of Directors to decide by a Resolution that who and how many would be witnesses in a particular suit to appear on behalf of the company, the two Courts below error in law by stretching the requirement of **Order XXIX Rule 1 CPC** to the authorization for a “**witness**” for recording evidence on behalf of the company.

7. In view of the above, instant IInd Appeal is allowed and the matter is remanded to the trial Court with direction to decide the Civil Suit No.937/2008 afresh on merit on the basis of evidence which is already available on the record. The parties are not allowed to lead any further evidence. They should straight away argue the case before trial Court issue by issue and the suit should be disposed of by the trial Court within three months from today.

8. In view of above, pending applications have become infructuous.

JUDGE

*Ayaz Gul/PA**