

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No. 492 of 2019**

Date	Order with signature of Judge
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**BEFORE**

**Mr. Justice Arshad Hussain Khan**

1. For hearing of CMA No. 17101/2019 [U/O 12 Rule 6 CPC]
2. For hearing of CMA No. 5110/2019 [U/S 151 CPC]

**20.08.2021.**

Ms. Seema Waseem, advocate for the plaintiff.  
None present for the defendants.

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**1 & 2** This order will dispose of Plaintiff's both listed application i.e. application [CMA No. 17101/2019], filed under order XII rule 6 CPC, seeking judgment on the admissions of defendant No.2 and the application [CMA No. 15110/2019], filed under Section 151 CPC seeking disposal of the matter.

2. Heard learned counsel and perused the material available on the record.

From the record, it appears that the present suit was filed by the plaintiff against the defendants for Revocation and Cancellation of General Power of Attorney, with the following prayers:-

“1. *Directing the defendant No.1 to appear before the concerned Registrar for Revocation of General Power of Attorney dated 23.10.2003 and in case of failure, the Nazir of this Court may be appeared on her behalf for revocation of the General Power of Attorney.*

2. *Award cost (s) of the suit to the plaintiff.”*

3. The Facts giving rise to filing of the present suit as narrated in the Plaint are that the plaintiff is the owner of residential Flat No. A-502, 5<sup>th</sup> Floor, Clifton Belle View Apartments, constructed on Plot No. FL-16, Block-5, KDA Scheme No.5, Clifton, Karachi, (Suit Property) having purchased it from one Mushtaq Ali Seth under a Registered Conveyance Deed dated 30.12.2011 (Annexure P-1 to the plaint). It has been stated that the predecessor-in-interest, namely Muhstaq Ali Seth had purchased the suit property from its previous owner namely Mrs. Mumtaz w/o Yousuf Muhammad under a registered Sale Deed

dated 30-12-2003 (Annexure P-2). It has further been stated that Mrs. Mumtaz (defendant No.1) had earlier mortgaged the suit property with National Bank of Pakistan, Model Branch, Kehkashan Clifton, Karachi, (defendant No.2), vide mortgage deed dated 23.10.2003 (Annexure P-3) and had also executed Irrevocable General Power of Attorney dated 23.10.2003 (Annexure P-4) in favour of defendant's bank. However, before sale of the suit property to Mr. Mushtaq Ali Seth, defendant No.1 paid off the entire loan amount to the Bank, resulting which the title documents of the suit property were handed over to defendant No.1 and defendant No.2 also issued letter of undertaking bearing No.MOD/BR/ADV/2003/6753 dated 12.12.2003 (Annexure P-5) stating therein that it has no claim against the suit property and thereafter the subject property was also redeemed (Annexure P-6). It has also been stated that when the plaintiff started negotiation of sale of the suit property to some prospective buyer, who upon approaching concerned Registrar for verification of the title documents was informed that although defendant No.1 had paid off loan against the mortgaged property and the property was redeemed as well but the General Power of Attorney dated 23.10.2003 executed in favour of defendant No.2 at the time of mortgage was inadvertently could not be revoked. Upon coming to know such fact, the plaintiff requested defendant No.2 to resolve the issue. In this regard, the plaintiff also served legal notices to defendants but to no avail. However, Defendant No.2 in response to the above notices addressed a letter No. NBP/1027/MANAGER/18:051 dated 08.02.2019 (Annexure P-13) to defendant No.1, (copies whereof endorsed to the plaintiff), wherein it has been categorically mentioned that since loan amount has been repaid as such bank has No Objection for revocation of the General Power of Attorney executed in its favour. However, upon the said letter when defendant No.1 failed to come forward to revoke the General Power of attorney, the plaintiff having no other remedy but to approach this Court for revocation of the General Power of Attorney, hence the present suit.

4. Upon notice of the present suit, defendant No.2 filed written statement wherein while admitting the stance of the plaintiff it has been categorically stated in paras 10 and 11 of the written statement that the Bank has No Objection, if the prayers of the suit is granted. For the sake of ready reference, aforesaid paras 10 and 11, are reproduced as follows:-

- “10. That the defendant No.2 has no objection as the due outstanding amount has been paid by the plaintiff and the answering defendant has no claim against the plaintiff.
11. That regarding the prayer clause defendant No.2 submits that there is no outstanding amount against the said property therefore has no objection if the same is granted.”

5. Defendant No.1 despite having service through all modes including publication failed to appear and contents the present suit resultantly, she was declared ex-parte by this Court, vide order dated 21.10.2019.

6. Defendant No.3 viz. Sub-Registrar-II, Clifton Town, Karachi upon receiving the notice of this application [CMA No. 17101/2019] filed its reply. Para-2 and 3, whereof for the sake of ready reference are reproduced as under:-

- “2. That, National Bank of Pakistan has redeemed the subject mortgaged property by way of registered Redemption Deed.
3. That, after registration of Redemption deed, the principal of General Power of Attorney Mrs. Mumtaz has to execute and appear for registration of Cancellation of the said General Power of Attorney but she failed. Therefore, the Power of Attorney can only be revoked by the executant and if executant is not available then the Hon’ble Court may cancel/revoke the said document.”

7. Now, before any further discussion, it would be advantageous to reproduce Order XII rule 6 CPC here under:-

#### **ORDER XII ADMISSIONS**

“Rule 6. Judgment on admission—Any party may, at any stage of suit, where admissions of fact have been made, either in the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.”

8. On the relevant issue, the Hon’ble Supreme Court of Pakistan in the case of *Macdonald Lyton & Company Pakistan Ltd. v. Uzin Export-Import Foreign Trade Co and others* [1996 SCMR 696] while dilating upon the provision of order XII rule 6, inter-alia, held that the essential of provision of order XII rule 6 CPC, provides summary and

speedy remedy in cases where admission was made by defendant in pleadings or outside the same. In order to attract provision of Order XII rule 6 CPC admission should be necessarily unequivocal, clear, unconditional and unambiguous. In another case, *Amir Bibi through Legal heirs v. Muhammad Khursheed and others* [2003 SCMR 1261], the Hon'ble Supreme Court of Pakistan, while dealing with the provision of Order XII rule 6 CPC, inter-alia, also held as under:-

*“In view of the provisions as contained in Order XII, rule 6 a Court is competent to dilate upon and decide the undisputed part of the case or whole of the case as per the circumstances of each case but such power is not unfettered and the admission on the basis whereof a decree is sought must be specific, clear, unambiguous, categoric and definite. It is bounden duty of the Court to examine the plaint and written statement with diligent application of mind to ascertain the nature of admission. It would, however, be discretionary for the Court to accept or reject such application.”*

9. On the touch stone of the above dictum laid down by the Hon'ble Supreme Court, the admission on the part of defendants appears to be clear, unequivocal, which renders the present suit non-contentious one and as such no evidence is required to be led for disposal of the same.

10. In the above circumstances and in view of the categorical and unequivocal admissions on the part of the defendants, there appears no legal impediment in allowing the application [CMA No. 17101/2019], which is accordingly allowed and the suit is decreed in terms of prayer clause-1 of the plaint.

In view of the above CMA15110/2019 also stands disposed of.

JUDGE