

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-153 of 2021

Date: Order with signature of Judge

For Hearing of CMA No.1098 of 2021
For Hearing of Main Case

Petitioner : Faqeer Hussain & Company through Mr. Abdul Mutalib, Advocate

Respondent No.1: M.S Sir Haji Abdullah Haroon Trust Waqf 2 through Mr. Noor Ahmed Malik, Advocate

Date of hearing: 12.05.2023

ORDER

MOHAMMAD ABDUR RAHMAN,J: The Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against the Judgement dated 3 February 2021 passed by the IIIrd Additional District & Sessions Judge, Karachi (South) in FRA No. 275 of 2019 upholding the order dated 22 October 2019 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 21 of 2014.

2. The Respondent No. 1 is a Waqf the Mutawalis of which are *inter alia* managers of an immovable property bearing Office No.5/A situated at Plot NO.156, MRI Abdullah Haroon Road, Wakf Plot North Napier Road, Karachi (hereinafter referred to as "Said Tenement").

3. Rent Case No.21 of 2014 was filed by the Respondent No.1 as against the Petitioner alleging that the Petitioner was liable to be evicted for failing to pay rent to the Respondent No. 1 in accordance with clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and for subletting the Said Tenement in terms of sub-clause (a) of clause (iii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises, Ordinance, 1979. The application under Section 15 of the Sindh Rented Premises, Ordinance, 1979 was filed by one Amin Gul

before the Court of VIIIth Rent Controller, Karachi (South) acting as a rent collector of the Respondent No.1 under a General Power of Attorney dated 13 September 2003 which was issued by Respondent No.1 to said Amin Gul. The terms of the General Power of Attorney are reproduced as under:

“ ... GENERAL POWER OF ATTORNEY

BE IT KNOWN TO ALL THAT WE, (1) YOUSUF A. HAROON SON OF SIR HAJI ABDULLAH HAROON, & (2) ABDULLAH HUSSAIN HAROON SON OF SAID A.HAROON Muslims, Adults, Residing at Karachi, Trustees of Haji Sir Abdullah Haroon WAKFS NO.1&2, Karachi, having Office at Gulshan-e-Nusrat, Abdullah Haroon Road, Saddar, Karachi, do hereby nominate, constitute and appoint MR. AMIN GUL S/O, SHEHZAD GUL, Muslin, Adult Resident of 9/7, Al-Madina Basti, Beamount Road, Near Civil Lines Police station, Karachi, holder of NIC No.514-66 063951, to be our true and lawful attorney for the purposes of managing and looking after all the Immovable Properties of the said Haji Sir Abdullah Haroon WAKFS NO.1&2, situated in Karachi. We authorize our said Attorney to do the following acts, deeds and things under this power:

1. To collect rents from the Immovable Properties.
2. To issue receipts signed by our Attorney.
3. To file/defend cases against tenants for recovery of rent, and ejectment on any grounds against the tenants before the Hon'ble Court of Rent Controller, High Court and Supreme Court of Pakistan, or any other Court of competent jurisdiction.
4. To appear and represent us in the Hon'ble High Court of Sindh at Karachi, in Original/Appellate as well as in Constitutional Jurisdiction,
5. to Appear and carry out the Execution Proceedings ordered in all such legal proceedings.
6. To get legal notices issued and give necessary inspection to our Advocate (s) for the same.

7. To sign applications, complaints, vakalatnamas, swear affidavits and give evidence/cross examine in Court or before any other legal authority, viz, Rent Controller, Karachi, City District. Government Karachi (CDGK), Karachi Development Authority, Karachi Building Control Authority (S.B.CA) or any other departments/authorities etc.

8. To appear and act in all Government Offices, Semi-Government Office, Settlement Organizations, Registration Office, Mukhtiarkar's Office, Tehsildar's and City Deputy Collector's Office and in all Courts of Civil, Criminal and Revenue jurisdictions.

9. To appear before an Advocate engaged by us and give instructions to him subject to our approval and to sign vakalatnamias and such other statements directed to be signed by our Advocate.

10. To receive moneys from Court or deposit monies in Court for or for or on our behalf as and when ordered by the Court or any authority before whom our case is pending.

AND GNERERALLY to do all lawful acts necessary for the above mentioned purposes including filing of Compromise in cases.

AND FINALLY to do all such acts, deeds and things necessarily required to be done under this Power in our interests.

AND WE HEREBY AGREE that all acts, deeds and things - awfully done by the said Attorney shall be construed as acts; deeds and (things done by us and we undertake to ratify and confirm all and whatsoever the said Attorney shall lawfully do or cause to be done for us by virtue of these presents.

IN WITNESS WHEREOF We the Executants undersigned do hereby have set our hands hereunder; this day of September, 2003, in the presence of the witnesses."

(Emphasis is added)

4. The VIIIth Rent Controller, Karachi (South) in Rent Case No.21 of 2014 framed the following issues:

- “ .. (i) *Whether the applicant/attorney is not competent to file instant Rent Application?*
- (ii) *Whether the Opponent is not competent to defend the instant Rent Application?*
- (iii) *Whether the demised premise was sublet by the Opponent?*
- (iv) *Whether the Opponent has committed default in payment of monthly rent from September, 2002?*
- (v) *What should the order be?”*

5. The VIIIth Rent Controller, Karachi (South) by his order dated 22 October 2019 allowed Rent Case No. 21 of 2014 observing that:

- (i) as the Petitioner has not denied that Amin Gul was a rent collector of the Respondent No.1 in his Written Statement and as the definition of the expression “landlord” under the provisions of Sub-Section (f) of Section 2 of the Sindh Rented Premises Ordinance, 1979 included a rent collector, even if the Power of Attorney dated 13 September 2003 was ignored, Amin Gul could still maintain an application under Section 15 of the Sindh Rented Premises, Ordinance, 1979 as against the Petitioner in his capacity as rent collector;
- (ii) The Petitioner was not competent to defend the Rent Case No. 21 of 2014 as the Power of Attorney dated 28 August 2016, that had been issued by the Petitioner to one Irfan Raza, did not authorize Irfan Raza to defend Rent Case No. 21 of 2014;
- (iii) That the Petitioner had sublet the Said Tenement to a third party rendering him liable to being evicted under sub-clause (a) of clause (iii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises, Ordinance, 1979; and

- (iv) That the Petitioner had defaulted on his obligation to pay rent to the Respondent No. 1 rendering him liable to being evicted under clause (ii) of subsection (2) of Section 15 of the Sindh Rented Premises, Ordinance, 1979.

6. Being aggrieved and dissatisfied with the order passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 21 of 2014, the Petitioner maintained an appeal under Section 21 of the Sindh Rented Premises Ordinance 1979 bearing FRA No. 275 of 2019 before the IIIrd Additional District & Sessions Judge, Karachi (South) wherein the Petitioner contended that as the Power of Attorney that had been issued in favour of said Amin Gul, had been issued ***jointly*** by two individuals namely Yousuf A. Haroon and Abdullah Hussain Haroon and as admittedly Yousuf A. Haroon had passed away prior to the commencement of Rent Case No.21 of 2014; Rent Case No.21 of 2014 has not been competently been filed. He next averred that the Petitioner was competent to defend his case as the Power of Attorney that has been executed in favour of the Petitioner conferred the requisite power on the attorney to defend such proceedings. Apparently, he neither raised any arguments in respect of subletting nor had he raised arguments in respect of issue of default before the IIIrd Additional District & Sessions Judge, Karachi (South).

7. By a Judgement dated 3 February 2021 the IIIrd Additional District & Sessions Judge, Karachi (South) dismissed FRA No.275 of 2019 stating that:

- (i) as the Petitioner has not denied that Amin Gul was a rent collector of the Respondent No.1, it is irrelevant as to whether he has a Power of Attorney authorizing him to

institute Rent Case No. 21 of 2014 or not. Amin Gul being a rent collection, his status came with the definition of the expression "landlord" under the provisions of Sub-Section (f) of Section 2 of the Sindh Rented Premises Ordinance, 1979 and which would permit him to maintain an application under Section 15 of the Sindh Rented Premises Ordinance, 1979;

- (ii) That Power of Attorney was issued in favour of Petitioner was limited to execution proceedings in rent cases and has to be strictly construed and hence precluded the Petitioner from defending Rent Case No.21 of 2014.

8. Being aggrieved and dissatisfied with the order dated 3 February 2021 passed by the Illrd Additional District & Sessions Judge, Karachi (South) in FRA No.275 of 2019, the Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. He states that the Power of Attorney dated 13 September 2003 was issued **jointly** by two individuals named Yousuf A. Haroon and Abdullah Hussain Haroon and which has to be strictly construed. He pressed that as the Power of Attorney was issued jointly, if one of the Attorneys' died thereafter the Power of Attorney could not subsist and hence Rent Case No. 21 of 2014 must fail. **He did not plead any arguments in respect of the deficiency in the Power of Attorney that had been issued by the Petitioner to his attorney to defend Rent Case No. 21 of 2014 or regarding the merits of Rent Case No. 21 pertaining to the subletting of the Said Tenement or regarding the default on the part of the Petitioner to pay rent to the Respondent No. 1.**

9. Conversely, Counsel for the Respondent No. 1 contended that notwithstanding the demise of one of the Executants of the Power of Attorney i.e. Yousuf A. Haroon, the Power of Attorney would continue to

subsist. He relied upon the decision of this Court reported as **Javed Arshad Mirza vs. Trustees of Haji Sir Abdullah Haroon & others**¹

wherein on the basis of the same Power of Attorney it was held that:

“ ... 15. The submissions of Mr. Ghulam Abbas Peshori and Mr. Iftikhar Jawaid Qazi, Advocates, that the rent applications were not maintainable in law as it were not filed by duly authorized person, are devoid of any legal force as in several Constitutional petitions photostat copies of the general power of attorney dated 6th October, 1982, executed by the Trustees of respondent No.1 (i.e. Yousuf A. Haroon, Mehmood A. Haroon and Abdullah Al-Hussain Haroon) in favour of Faqir Muhammad s/o Mansoor Khan have been filed on the basis of which all the ejectment applications were filed by the said attorney. Contents of this power of attorney reveal that it is a general power of attorney, which authorize the attorney to file rent cases and ejectment applications on behalf of the Trust. The genuineness of this power of attorney and its contents are not in dispute and thus clearly prove the lawful authorization in favour of the attorney to initiate proceedings on behalf of respondent No.1. **Even in case some of executant of this power of attorney has expired during the pendency of the proceedings, authorization on behalf of the remaining executants, who still survive, will continue to remain in force.** The submission of Mr. Ghalari Abbas Peshori as to the non-providing of proper provision for induction of tenant (his client) in the newly constructed building in terms of sub-section (4) to section 15 of the Ordinance of 1979 has also no force as it is not a condition imposed by statute upon the landlord that for the purpose of raising new construction he has to keep in mind the provision for accommodating the existing tenant or to design the new construction of the building in a way so as to suit the requirements of the tenant(s).”

(Emphasis is added)

10. I have heard the arguments of the Counsel for the Petitioner and the Counsel for the Respondent No. 1 and have perused the record. The Petitioner challenges the capacity of the Respondent No. 1 to institute Rent Case No. 21 of 2014 on the basis of a Power of Attorney dated 13 September 2003, which the Petitioner contends was issued by the Executants of that Power of Attorney jointly and which on account of the demise of one of the executants has now lapsed. The Respondent No. 1

¹ PLD 2005 Karachi 684

is a Waqf and its Mutawalis, have under the terms of a Waqfnama dated 19 February 1943 , inter alia been conferred with the power to:

“ ... 11...

The Mutawalis shall have the power to employ staff and other qualified persons for collections of rents, looking after the Waqf properties, taking legal proceedings for the protection of the Waqf Properties, ejecting the tenants and the like...”

(Emphasis is added)

As such the capacity of the Mutawalis to both appoint a person for collecting rent from a property that was made subject to the Waqfnama dated 19 February 1943 and for institution of legal proceedings for evicting tenants occupying tenements therein is established.

11. It is apparent that pursuant to such an authority, the Respondent No. 1 had through two of its Mutawalis issued a Power of Attorney to one Amin Gul on 13 September 2003 to institute Rent Case No. 21 of 2014 before the VIIth Rent Controller Karachi (South). It is settled law that the terms of the Power of Attorney need to be construed strictly. The Supreme Court of Pakistan in **Moiz Abbas vs. Mrs. Latifa**² has held that:³

“ ... *It is settled law that the language of a power of attorney must be strictly construed. We are in no manner of doubt that there was no stipulation in the Power of Attorney that could be construed by any stretch of the language to confer a right of sale. In this regard it has been held by this Court in various pronouncements that even when a general POA has been executed “it is wrong to assume that ever “general” POA on account of the said description means and include the power to alienate/dispose of property of the principal. In order to achieve that object it must contain a clear separate clause devoted to the said subject.” It has been further held by this Court that the rule of strict construction applies to such an instrument and if a power to sell a property has been given even then the same needs to be exercised strictly in the manner specified in the POA. Reliance is placed on Imam Din vs. Bashir Ahmed (PLD 2005 SC 418).*

I have examined terms of the Power of Attorney and note that the two Mutawalis who had appointed the attorney have been referred to in the collective “We”, “Our” and “Us” and which to my mind on a strict literal

² 2019 SCMR 74

³ *Ibid* at pg 77

interpretation of that document clarifies that the appointment of the attorney was being made by both the Mutawalis **jointly**. If the powers enjoyed by the attorney derive from the Mutawalis jointly, then it would naturally follow that on the demise of either of them the Power of Attorney, not being a Power of Attorney coupled with an interest, would lapse and the authority of the attorney to act thereunder would cease. I am therefore clear that at the time of instituting Rent Case No. 21 of 2014, on account of the demise of one of the Mutawalis, the Attorney lacked the capacity to institute that Application. While coming to this conclusion, I have considered the judgement reported as **Javed Arshad Mirza vs. Trustees of Haji Sir Abdullah Haroon & others**⁴ and which was relied upon by the counsel for the Respondent No. 1 and with which, for the forgoing reasons, I am must respectfully disagree.

12. Having come to the conclusion that the attorney of the Respondent No. 1 at the time of instituting Rent Case No. 21 of 2014 lacked the capacity to do so it remains to be seen whether such a shortcoming is ratifiable. The Supreme Court of Pakistan in the decision reported as **S.D.O./A.M., Hasht Nagri Sub-Division, Pesco, Peshawar and Others vs. Khawazan Zad**⁵ has held that:

“ ... 9. Having examined the scope of the above-cited rules of procedure contained in the C.P.C., we must reiterate the principle, which is by now well settled, that 'the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights ... Any system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent.' The courts, thus, always lean in favour of adjudicating the matters on merits rather than stifling the proceedings on procedural formalities. The rules of procedure are meant to facilitate the court proceedings for enforcing the rights of litigants, not to trap them in procedural technicalities for frustrating their rights. They are the tools to advance the cause of justice and cannot be used to cause the miscarriage of justice. The ultimate object of securing the ends of justice, therefore, outweighs the insistence on strict adherence to such rules. The same is the purpose of the rules of procedure discussed above. Any defect or omission in signing and verifying, or presenting, a pleading (plaint or written statement) or a memorandum of appeal or revision petition does not affect the merits of the case or the jurisdiction of the court and is therefore taken to be such an irregularity which can be cured at any stage of the proceedings. **Likewise, any defect in the authority of a person to sign and verify a pleading filed in a suit**

⁴ PLD 2005 Karachi 684

⁵ 2023 SCMR 174

by or against a corporation, or to institute or defend such a suit by presenting that pleading to the court, or in signing or filing of a memorandum of appeal or revision petition by a corporation, can also be cured at any stage of the proceedings”

(Emphasis is added)

Similarly, in the decision reported as **Rahat And Company through Syed Naveed Hussain Shah vs. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Center through Secretary or Chief Executive Officer**⁶

“ ... 12. We turn now to the request of the learned amicus that the matter of ratification of a suit filed without competent authority (i.e., of a proper board resolution) also be considered. The learned amicus correctly admitted that the point does not, as such, arise here on the issue as presented in the appeal. His contention that it is mentioned in passing in the impugned judgment by the learned Division Bench (at para 11 thereof) is correct as far as it goes, but, with respect, does not go far enough. However, the learned amicus has referred to several decisions of the High Courts in this country where, according to him, there is a conflict of views. In some cases it is held that the defect cannot be ratified, while in others apparently an opposite conclusion is reached. On such basis it is submitted that an authoritative pronouncement from this Court is desirable.

13. In our view, since the matter does not as such arise in this appeal, a definitive pronouncement is not possible. That must await a case where the issue arises as such for determination. However, a tentative view may be expressed. As noted above, the learned amicus has referred to certain decisions from the English and Indian jurisdictions. **Without considering the decisions of the High Courts of our country in any detail (which analysis must be deferred to some other case where the point actually arises), we are tentatively of the view that the stance taken by the English Court of Appeal in Presentaciones Musicales SA v. Secunda and another[1994] 2 All ER 737 and the Indian Supreme Court in United Bank of India v. Naresh Kumar and others AIR 1997 SC 3, namely that any defect can be cured by subsequent ratification, is correct and is to be preferred over any view to the contrary. In the first cited case, the Court of Appeal held as follows (pg. 743):**

“It is well recognised law that where a solicitor starts proceedings in the name of a plaintiff - be it a company or an individual - without authority, the plaintiff may ratify the act of the solicitor and adopt the proceedings. In that event, in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification the defect in the proceedings as originally constituted is cured: see Danish Mercantile co Ltd. v Beaumont[1951] 1 All ER 925, [1951] Ch 680, since approved by the House of Lords. The reason is that by English law ratification relates back to the unauthorised act of the agent which is ratified: if the proceedings are English proceedings, the ratification which cures the original defect, which was a defect under English law, must be a ratification which is valid under English law.”

The view taken by the Indian Supreme Court in the above cited decision is as follows (pp. 5-6; emphasis supplied):

⁶ PLD 2020 SC 366

“10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

(Emphasis is added)

The decision of the Supreme Court of Pakistan in **Rahat And Company through Syed Naveed Hussain Shah vs. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Center through Secretary or Chief Executive Officer**⁷ is clearly obiter dicta and which despite it being so is still binding on this Court on account of the provisions of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.⁸

13. Reverting to the proceedings in this petition, it is not that the case that the current Mutawalis do not have the Authority under the Waqfnama 19 February 1943 to appoint a person to institute proceedings for the

⁷ PLD 2020 SC 366

⁸ See **Justice Khurshid Anwar Bhinder vs. Federation of Pakistan** PLD 2010 SC 483, **Dr Iqar Ahmad Khan vs. Dr Muhammad Ashraf** 2021 SCMR 1509

eviction of the Petitioner. This is clearly available in Clause 11 of the Waqfnama dated 19 February 1943 which is quoted above. It is therefore open to the Mutawalis to ratify the unauthorized act on the part of the Amin Gul in instituting Rent Case No. 21 of 2014. That being the case and the defect being curable the sole objection raised by the Petitioner must fail with the finding that it is open to the Mutawalis at any stage to ratify the unauthorized act on the part of the said Amin Gul in instituting Rent Case No. 21 of 2014 and which to my mind has already been impliedly achieved by defending both FRA No. 275 of 2019 before the IIIrd Additional District & Sessions Judge Karachi (South) and the proceedings in this Petition.

14. For the foregoing reasons, I am of the opinion that the Judgement dated 3 February 2021 passed by the IIIrd Additional District & Sessions Judge, Karachi (South) in FRA No. 275 of 2019 upholding the order dated 22 October 2019 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 21 of 2014 must be sustained. This Petition is therefore dismissed along with all listed applications, with no order as to costs and with directions to the office to return the Record and Proceedings to their relevant courts.

JUDGE

Karachi dated 10 August 2023