

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
C.P. No. D-3898 of 2013

[M/s Karimjee Ibrahimjee & sons v. City District Government Karachi and others]

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

**Date of hearing and Order: 07.05.2026**

Mr. Bilal Khilji advocate for the petitioner.

Mr. Khursheed Jawed advocate for KDA.

Chaudhary Arif advocate for KMC

Mr. Hakim Ali Shaikh Addl. A.G

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**ORDER**

**Adnan-ul-Karim Memon, J.** The petitioner has instituted the present Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking directions to set-aside the impugned order dated 7<sup>th</sup> May 2013, Judgment and Decree dated 29.09.2012 passed by the learned VIII Senior Civil Judge Karachi South in suit No. 607/1983.

2. The case of the petitioner is that petitioner/plaintiff, M/s. Karimjee Ibrahimjee & Sons, a registered partnership firm, instituted Suit No.607/1983 before the learned trial court, seeking declaration and injunction in respect of property bearing No.5, S.No.LEA-7, Lea Market, Karachi, claiming ownership and user rights over the adjoining roads since 1935. It was alleged that the respondents were unlawfully attempting to regularize and transfer portions of Herchand Rai Road and Pilgrim Road in violation of the Sindh Local Council (Land) Rules, 1972, which would adversely affect the petitioner's building, including its doors and windows opening onto the said roads. The suit was contested by the respondents through written statement denying the petitioner's assertions. After recording evidence of both sides, the learned trial Court vide judgment and decree dated 29.09.2012 dismissed the suit solely on the ground that the petitioner failed to establish that it was a registered partnership firm and that Mansoor Ali was duly authorized to institute the proceedings on behalf of the firm. No findings were returned on the remaining issues. Against the said judgment and decree, the petitioner preferred Civil Appeal No.229/2012 before the learned District Judge Karachi (South), contending that the respondents had not specifically denied the petitioner's status as a registered partnership firm in the written statement and no objection regarding authorization or registration had been properly raised during trial. It was further argued that the trial Court erred in dismissing the suit on technical grounds without deciding the controversy on merits. Reliance was placed upon various precedents to contend that where a plea is not specifically raised in pleadings, the Court cannot dismiss the suit on such

ground and that disputes should ordinarily be decided on merits rather than technicalities.

3. The learned counsel for the petitioner submitted that the petitioner has assailed the impugned judgments primarily on the ground that the learned trial Court failed to properly appreciate the pleadings and evidence available on record. It is contended that in the written statement filed by Respondent No.1, there was no specific denial to the assertion that the petitioner was a registered partnership firm, and under the settled principles of law, a vague or evasive denial cannot be treated as a specific denial. It is further submitted that during the cross-examination of the petitioner's witness, Mr. Mansoor Ali, no direct or specific suggestion was put to him disputing the status of the petitioner firm as a registered partnership concern. The petitioner's counsel further submits that the learned trial Court committed serious errors of law by misreading and failing to properly appreciate the evidence on record, which resulted in grave miscarriage of justice. It is argued that the Courts are under a legal obligation to decide matters on merits rather than dismissing proceedings on mere technicalities, particularly when the substantive controversy between the parties remained undecided. According to the petitioner's counsel, the impugned judgment is not sustainable in law, amounts to abuse of the process of the Court, and suffers from material illegality. It is also contended that since no specific plea regarding non-registration or lack of authority was properly raised in the pleadings, the Courts below could not have based dismissal of the suit on such grounds. On these premises, the petitioner's counsel has prayed that the impugned judgment dated 07.05.2013 passed by the learned District Judge Karachi (South), as well as the judgment and decree dated 29.09.2012 passed by the learned VIII Senior Civil Judge, Karachi (South) in Suit No.607/1983 (New No.2031/1996), be set aside and the matter be remanded to the learned trial Court for decision on merits after proper appreciation of the evidence and issues involved. He prayed to allow this petition.

4. Learned counsel for the respondents supported the impugned judgment and decree and prayed for dismissal of the petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The learned appellate Court, however, observed that the respondents had in fact denied the petitioner's claim of being a registered partnership firm and that during cross-examination specific questions were put to the petitioner's witness regarding the registration certificate and authority to institute the suit. The appellate Court further noted that despite ample opportunity, neither the registration certificate of the firm nor any authority letter authorizing Mansoor Ali to file the suit and depose on behalf of the other partners was produced.

Distinguishing the case law relied upon by the petitioner, the appellate Court held that the findings of the trial Court were based on proper appreciation of evidence and law, and consequently dismissed the appeal vide judgment dated 07.05.2013.

7. The controversy in the present matter revolves around the maintainability of the suit instituted by the petitioner firm and the authority of Mr. Mansoor Ali to institute and prosecute the proceedings on behalf of the alleged registered partnership firm.

8. It is an admitted position that the petitioner specifically pleaded in the plaint that it was a registered partnership firm. Once such assertion was questioned by the respondents in the written statement, the burden squarely shifted upon the petitioner to establish the same through cogent and admissible evidence. The record reflects that despite ample opportunities, neither the registration certificate of the partnership firm nor the partnership deed was produced before the learned trial Court. Similarly, no authority letter or resolution authorizing Mr. Mansoor Ali to institute the suit and depose on behalf of the other partners was brought on record. During cross-examination, the witness himself admitted that no such documents had been annexed either with the plaint or affidavit-in-evidence.

9. It is a settled principle of law that a partnership firm, though capable of suing through one of its partners, must establish its legal status and the authority of the person instituting proceedings on its behalf. Mere averment in the plaint is not sufficient proof unless supported by documentary evidence. The Supreme Court held that questions relating to registration and competence must be proved through evidence where specifically disputed.

10. The contention of the learned counsel for the petitioner that there was no specific denial in the written statement is also without substance. The record demonstrates that the respondents denied the contents of paragraph-1 of the plaint and further challenged the competence of the person instituting the suit. Moreover, during cross-examination specific questions were put to the petitioner's witness regarding the registration certificate and authority to file the suit. Therefore, it cannot be said that the petitioner was taken by surprise or that the issue was never agitated before the learned trial Court, that no finding can be recorded on a plea not raised in pleadings, is distinguishable in the facts and circumstances of the present case because the issue relating to competence and registration was very much in controversy between the parties.

11. It is no doubt true that Courts should ordinarily decide matters on merits rather than on technicalities; however, where the very competence of a party to institute proceedings is not established, the defect goes to the root of the matter

and cannot be treated as a mere technical irregularity. A person invoking the jurisdiction of the Court must first establish his legal character and authority to maintain the proceedings. In the absence of proof regarding registration of the firm and authorization of the person prosecuting the suit, the learned trial Court was justified in holding that the suit was not maintainable.

12. The findings recorded by the learned trial Court as well as the learned appellate Court are based upon proper appraisal of the pleadings and evidence available on record and do not suffer from any jurisdictional defect, illegality, misreading or non-reading of evidence warranting interference by this Court in exercise of constitutional jurisdiction under Article 199 of the Constitution. It is a settled proposition of law that concurrent findings of fact recorded by the Courts below are not to be lightly disturbed unless shown to be perverse, arbitrary or wholly unsupported by evidence, which is not the case here.

13. For the foregoing reasons, we do not find any merit in the present Constitutional Petition, which is accordingly dismissed along with pending applications, if any. However with no order as to costs.

JUDGE

JUDGE