

IN THE HIGH COURT OF SINDH AT KARACHI

(Civil Advisory Jurisdiction)

J.M. No. 61/2013

Petitioners : Mr. Saleem A. Sattar and Mr. Sabir Ali
through Mr. Muhammad Aslam Butt,
Advocate

Respondents : 1. M/s. Alpha Insurance Company Ltd.,
(unrepresented)

2. Federal Board of Revenue, Inland Revenue
Services, Large Taxpayers Unit
Through Mr. Jawaid Farooqui, Advocate.

3. J. S. Bank Limited (unrepresented)

Date of hearing : 15.01.2015

JUDGMENT

The petitioners through this Judicial Miscellaneous petition have sought the following relief:-

“direct the Respondents to allow the Trustees of Alpha Insurance Company Limited Staff Provident Fund to run the affairs of the Trust in accordance with the Rules and reconstructed Provident Fund Trust Deed annexed hereto as Annexure “B” and “M” respectively”.

“Any other Opinion/direction in the given facts and circumstances of the case”.

2. Briefly stated the facts leading to this petition are that the Petitioners are Trustees of the Alpha Insurance Company Ltd Staff Provident Fund (hereafter Alpha Fund) established by the Respondent No. 01 namely Alpha Insurance Company Ltd., (The company) in the year 1956 by virtue of a Trust Deed executed by and between the petitioners and Respondent No. 01. The Alpha Fund was recognized under **Section 58-b** of the Income Tax Act, VII of 1922

(since repealed) by the then Commissioner for Income Tax South Zone, vide letter No. Jud-2(213)/56 dated 20.06.1956.

3. The affairs of Alpha Fund are being conducted by the Trustees in accordance with the Alpha Fund Rules duly approved by the Trustees of the Alpha Fund since January, 1956. But unfortunately during the shifting of the Head Office of the Company to its present place of business the original Trust Deed of the Alpha Fund was lost and despite all efforts of the Petitioners and Respondent No. 01 the original and even a photocopy thereof is not traceable.

4. As the Alpha Fund was maintaining an Account No.0000103365 Old No. 101014228 with the American Express Bank now JS Bank Ltd, the Petitioner on coming to know that the original Trust Deed is missing and a copy of it is not traceable requested Respondent No. 03 (the Bank) by letters dated 09.6.2009, 27.4.2010 and 25.8.2010 to provide a copy of Alpha Fund Trust from their record which was supposed to have been provided to the then American Express Bank Ltd at the time of opening of accounts. Respondent No. 03, by their letter dated 08.9.2010 has regretted to provide a copy on the ground that it was never submitted to the bank. Respondent No. 01 (the Company) also exchanged correspondence with the Chief Commissioner, Large Taxpayer Unit, Karachi in the matter of missing Provident Fund Trust Deed with an objective to obtain a duplicate copy of a Trust Deed but failed as Respondent No. 02 by letter dated 12.10.2012 informed that copy of the Trust Deed of the Provident Fund is not available with them.

5. In the above circumstances the Trustees of the Alpha Insurance Company Limited Staff Provident Fund Trust to make its contents nearly and close to the lost Trust Deed took up the matter

in the meeting of the Board of Trustees of Alpha Fund as well as in the meeting of the Board of Directors of Respondent No. 01 for approval of the required Trust Deed. The Board of Trustees of Alpha Fund through a circular resolution dated 08.10.2013 and the Board of Directors of Respondent No. 01 through a circular resolution dated 06.12.2013 have approved the draft of reconstructed Provident Fund Trust Deed. Now the petitioners have preferred the instant petition under **Section 34** of the Trust Act, 1882 for opinion of Court in view of the above facts and circumstances. Section 34 of the Trust is reproduced as under:-

“34. Right to apply to Court for opinion in management of trust-property.—Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal”.

6. Notices were issued to the respondents. The Respondents have been served, only Respondent No.02 has filed comments. Respondent No.1 is the parent office of the petitioners and respondent No.3 is their banker and therefore they have nothing to contest in this petition. Even Respondent No. 02 on principle has no objection to this petition. They have also conceded to the request to reconstruct the Trust Deed. However, the Court has raised the issue of jurisdiction of this Court since the petitioners in terms of **Section 34** of the Trust Act, 1882 were required to approach the “Principal Civil Court of Original Jurisdiction. Attention of learned counsel for the petitioners was drawn to the provisions of **Section 2(4)** of CPC and **Section 3(15)** of General Clause Act, 1897, which are reproduced below:-

2. **Definitions.** In this Act, unless there is anything repugnant in the subject or context:

(1).....

(2).....

(a).....

(b).....

(3).....

(4) “district” means the local limits of the jurisdiction of a principal Civil Court of Original (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

General Clauses Act.

3(15) “District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

7. Mr. Aslam Butt, learned counsel for the petitioner on the question of jurisdiction with reference to definition of Principal Civil Court of Original Jurisdiction given in the above quoted provisions of Civil Procedure Code, 1908 and General Clauses Act, 1897, has explained that in Karachi the High Court of Sindh has enjoyed the status of Principal Civil Court under peculiar circumstance. He has contended that Civil Jurisdiction of Principal Civil Court in Karachi was vested in the High Court of Sindh by Karachi Court Order, 1956. In this context he has relied on the case reported in **PLD 1970 Karachi 362** (Mst.Faizan..Vs..Pakistan through the Director General Pakistan Telegraph Department, Karachi) and the relevant portion from the judgment referred by the learned counsel at Page-365 and 366 (Para4, 5 and 6) is reproduced below:-

“.....since both these jurisdictions enjoyed by the other High Courts owe their creation wholly to the Letters Patent of the respective High Courts. In other words the original civil jurisdiction of the Karachi Bench is neither the 'ordinary' nor the 'extraordinary' original civil jurisdiction.

4. So if the Karachi Bench on its original side is not exercising an ordinary or extraordinary original civil jurisdiction then the disability contained in the second part of the definition of a

'District Judge' given in the General Clauses Act disappears and the question would then be whether the original side Judge of this Court is a Judge of a principal civil Court of original jurisdiction.

5. So far as the civil district of Karachi is concerned the District Judge cannot by any means be termed as the principal civil Court of original jurisdiction since his jurisdiction on the civil side is a restricted one and is confined to a maximum valuation of Rs.25,000. The word 'principal' is a term of comparative significance and implies that in relation to others in the hierarchy the body which it denotes should be the highest. The mere nomenclature, 'District Judge', is by itself of no significance whatsoever. It is wholly the jurisdiction and the powers that are exercisable by him which will be relevant in determining whether he is the principal civil Court of original jurisdiction of the district. A District Judge whose jurisdiction is confined to a maximum of Rs. 25,000 cannot to my mind, be termed as the principal civil Court of original jurisdiction.

6..... the Karachi Bench of the West Pakistan High Court was functioning or exercising the powers and performing the duties as the principal civil Court of original, jurisdiction in the civil district of Karachi. This view is consistent with the fact that the ordinary and extraordinary original civil jurisdiction of the High Courts, where enjoyed, owe their creation entirely to the Letters Patent of the respective High Courts. The present original civil jurisdiction enjoyed by the Karachi Bench of the West Pakistan High Courts has not been conferred on it by the High Court of West Pakistan Letters Patent but has been preserved and continued by Para 5 of the 'Establishment of West Pakistan High Court Order, 1955, read with section 8 of the Sind Courts' Act, 1926, as amended by the Karachi Courts Order No. 2 of 1956.

8. The distinguishing feature to hold High Court as Principal Civil Court of Original Jurisdiction of Karachi and not a district Judge is that except various districts in Karachi, the pecuniary jurisdiction of all the district courts in Sindh or for that matter all over Pakistan is unlimited pecuniary jurisdiction. Since the pecuniary jurisdiction of various district Courts in Karachi is limited, therefore, the status of Principal Civil Court of Original Jurisdiction cannot be conferred on the district Court. This issue was further simplified by a full bench of this Court in the case of Rimpa Sunbeam Co-operative Housing Society Ltd...Vs.. Karachi Metropolitan Corporation (**PLD 2006 Karachi 444**) when after examining all the relevant statutes it was

held that High Court jurisdiction in civil cases is simply a District Court jurisdiction exercised by High Court. The finding of full bench judgment is as follows:

“19. The upshot of the above 'discussion, therefore, is that the jurisdiction of this Court to entertain suits is basically neither the ordinary nor the extraordinary original civil jurisdiction of the High Court but simply a District Court jurisdiction, which was conferred and regulated by provincial statutes. The Karachi Courts Order, 1956, was also not a law made by the Parliament in exercise of powers under the concurrent Legislative list.”

9. Counsel for the Respondent No.2 is also in agreement with the contention of the learned counsel for the petitioner that this Court is Principal Civil Court of original jurisdiction of Karachi and therefore, this J.M. Petition in terms of Section 34 of Trust Act, 1897 is maintainable.

10. In view of the above discussion and the case law the respondents are directed to allow the petitioners (Alpha Insurance Company Staff Provident Fund) to run the affairs of the trust as they have already been running since 1956 uninterrupted and the petitioners are allowed to reconstruct the Provident Fund Trust Deed as approved by the petitioners and Respondent No.1 in their respective Board meetings. Consequently, the petition is allowed and as far as the cost of application is required, I am not inclined to impose any cost as there was no contest nor there could be and the petition stands summarily disposed of.

Karachi, dated
February 3rd 2015

J U D G E

