

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

C.R. No.118/2018

The Louise Berger Group, Inc. & another.

versus

Aurora (Pvt.) Ltd. & 2 others.

Petitioners by: Mr. Imran Iqbal and Mian Sami-ud-Din, Advocates
for petitioners.

Respondent No.1 by: Mr. Mohsin Kamal Awan, Advocate.

Date of Hearing: 25.10.2019.

MOHSIN AKHTAR KAYANI, J: Through this civil revision, the petitioners have impugned order dated 15.01.2018 of the learned Civil Judge, 1st Class (West), Islamabad, whereby application under Order VII, Rule 11 CPC filed by petitioners has been dismissed.

2. Brief facts referred in the instant petition are that the petitioners appointed M/s Aurora (Pvt.) Ltd. (*hereinafter referred to as "Respondent No.1"*) as a representative in Pakistan to follow up the requests in favour of the petitioners from their office for information about upcoming projects against 7% commission of the total proceeds/payments of the projects. Pursuant to services being rendered by Respondent No.1 to the petitioners on some projects, Respondent No.1 with due intimation to petitioners assigned the recovery to M/s Pacific Consultants (*hereinafter referred to as "M/s Pacific"*), thereafter, on 01.01.2013, issued an invoice to the petitioners in relation to services being rendered to it, however the petitioners denied the said claim, which resulted into filing of civil suit by Respondent No.1 against the petitioners for recovery of US \$293,422.00. The petitioners contested the suit and during pendency of the same, petitioners filed application Order VII, Rule 11 CPC for rejection of plaint filed by Respondent No.1, which was dismissed by the learned Civil Judge, 1st Class (West), Islamabad vide the impugned order dated 15.01.2018. Hence, the instant civil revision petition.

3. Learned counsel for petitioners contended that the learned trial Court has exercised its jurisdiction illegally and dismissed the application filed under Order VII, Rule 11 CPC of the petitioners by misreading and non-reading the material available on record together with the contentions/arguments advanced by the petitioners' side; that the suit filed by Respondent No.1 is evidently barred by time and the language of Order VII, Rule 11 CPC elucidates that recording of evidence is unnecessary if the plaint appears to be barred by law; that respondent No.1 has failed to attach any document showing enforceable contract between the petitioners and Respondent No.1; that the invoice on which the civil suit is based has been issued by M/s Pacific, which has no nexus with the petitioners and as such, M/s Pacific is not a plaintiff in the suit filed against the petitioners, but even then the application filed by the petitioners under Order VII, Rule 11 CPC has been dismissed vide the impugned order, which is liable to be set-aside.

4. Conversely, learned counsel for respondent No.1 contended that the suit was filed within prescribed time as the work of the projects had completed in the year 2010 while the invoice for the work was issued in the year 2013 and during the said time period Respondent No.1 was under continuous correspondence with the petitioners to resolve the issue pertaining to invoice; that the petitioners have no locus standi to file the instant petition; that the petitioners have failed to notify any error in the impugned order nor the impugned order suffers from any illegality, therefore, the instant civil revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that M/s Aurora (Pvt.) Ltd. /Respondent No.1 has filed a suit for recovery of US \$293,422.00 against the petitioners with the contention that Respondent No.1 is representative of the petitioners in Pakistan to follow up requests from their office for information about upcoming projects and to initiate some contacts with appropriate agencies in Pakistan to promote the interest of the petitioners vide letter dated 25.01.1994 as referred in Para-3 of the plaint.

7. As per claim of respondent No.1, the petitioners promised to reimburse the cost as well as services charges on commission basis for each and every project after negotiation, as referred in Para-4 of the plaint. On the basis of said relationship, respondent No.1 was assigned with three (03) projects i.e. (a) Benazir Bhutto International Airport Project, Islamabad, (b) Sindh Irrigation and Drainage Authority Project LBOD – Sind and (c) Highways Rehabilitation Project N-5, and as such the later two projects have been completed, while the former project was in progress.

8. The main bone of contention between the parties is referred in Para-7 to Para-10 of the plaint, which are reproduced as under:

7. *That it was agreed with the then Senior Vice President Asia Louis Berger (LBG) that regarding the above mentioned three projects, M/s Aurora (Pvt.) Limited will be entitled to a remuneration equivalent to 7% of the total proceeds/payments received by the defendants/Louis Berger Group Inc. This was due to intensive input of M/s Aurora to acquire and help in the execution of these projects.*
8. *That the plaintiff initiated a letter on 23.07.2012 regarding shifting from Aurora (Pvt.) Ltd. to Pacific Consultants which was agreed by the defendants vide letter dated 25th July 2012.*
9. *That the plaintiff submitted the invoices in January 2013.*
10. *That the plaintiff was extremely shocked to receive an e-mail from defendants' through Legal Department Mr. Trautner, Tobias Legal Director International Operation dated 26th October 2013, whereby the defendants intimated that they are not in a position to pay the invoices those had been submitted by the plaintiff without specifying any reasons."*

9. The petitioners while denying the above referred contentions of Respondent No.1 in their written statement had also filed an application under Order VII Rule 11 CPC on the grounds that the suit is not maintainable for being time barred, the suit has been filed by an unauthorized person having no cause of action and there is no record to prove the existence of relationship.

10. The learned Trial Court after hearing the parties rejected the application filed under Order VII Rule 11 CPC with the following observations:

- "5. *Perusal of the record shows that plaintiff has filed instant suit for recovery of US \$293,422/- against the defendants/applicants. Copy of letter dated 25.01.1994, invoices and notices on which plaintiff has based its claim are annexed with the case file whereas contentions raised by*

both the parties require recording of pro and contra evidence. I have thoroughly gone through the record, plaint and heard learned counsel for the parties at considerable length but presently I do not find any ground for rejection of present plaint in terms of order 7 Rule 11 CPC and contentions raised need to be proved after recording of pro and contra evidence. Hence, application in hand is dismissed being devoid of any merits."

11. I have gone through the record with the able assistance of learned counsel for the parties and considered each and every aspect of the case, and observed that the questions of limitation, cause of action and authorization to file the suit are the core questions, which need detailed answers.

12. The contents referred in the body of plaint clearly spell out that there was some relationship existed between the parties which flows from the letter dated 25.01.1994, issued by Gerald P. Shea, Vice President, Louis Berger International Inc. to Abbas Sarfraz Khan, Executive Director, The Premier Sugar Mills & Distillery Co. Ltd., whereby it reveals that M/s Aurora (Pvt.) Ltd./respondent No.1 had been appointed as a representative of the petitioners in Pakistan on the terms that the petitioners will reimburse for the services of respondent No.1 on commission basis, which will be negotiated by the petitioners for each and every project. Besides the said letter, no other instrument has been appended with the plaint to justify that what are the terms of any project in which respondent No.1 claims their service charges or commission as respondent No.1 neither appended any such document in terms of Order VII Rule 14(1) CPC, nor relied upon any such document in terms of Order VII Rule 14(2) CPC, which is the key requirement to provide such kind of details along with the plaint and as such, when the mandatory requirement of any document, on which the suit is based, has not been appended, then any subsequent document is not allowed to be placed on record as held in 1990 SCMR 964 (Muhammad Umar Mirza vs. Waris Iqbal). Although, no such effort has been made by respondent No.1 till date to justify such relationship, therefore, the subsequent relationship of the parties has to be seen on the basis of contents referred in the plaint.

13. An invoice dated 01.01.2013 on behalf of M/s Pacific Consultants Ltd./respondent No.1, referred to the petitioners, has been placed on record without referring to any other document in support of the said invoice as to how and when M/s Pacific Consultants Ltd. came into the picture or whether there was any relationship or an agreement existed between M/s Pacific Consultants Ltd. with the petitioners, even the basic documents to prove such relationship have not been appended in the suit, which should have been produced in form of an agreement for providing any services, explaining the scope of work, the other terms and conditions of the obligation and duties as well as the rate of those services, but all such minimum requirements have not been meted out on record through any mode or manner.

14. The said invoice of M/s Pacific Consultants Ltd. referred in Para-9 of the plaint has been connected with Para-8 of the plaint, whereby letter of M/s Aurora (Pvt.) Ltd. dated 23.07.2012 was referred, in which M/s Pacific Consultants came into picture, but surprisingly no such document of relationship has been brought on record to justify the assignment, if any, to M/s Pacific Consultants, therefore, it could not be assumed under the law that M/s Aurora (Pvt.) Ltd./respondent No.1 has assigned its claim to M/s Pacific Consultants Ltd. under any assignment, if so, the same has to be established on record. It is also trite law that actionable claim, if transferred by the one party to the second being a transferee, all rights and remedies rest in the transferee, who alone is entitled to enforce the remedy and the transferor is left with no interest, nor he would be entitled to file a suit in respect of actionable debt. Reliance is placed upon AIR (32) 1945 Bombay 11 (Santuram Hari vs. Trust of India Insurance Company, etc.). Hence, direct filing of the suit by M/s Aurora (Pvt.) Ltd./respondent No.1 is not considered to be valid, unless the terms of relationship have been referred in the plaint.

15. Besides the above referred aspect of the case, the other important limb of the case is the period of limitation, which starts from any specific date and the onus to prove such obligation is upon M/s Aurora (Pvt.) Ltd./respondent No.1 to establish that the

period of limitation started on a particular date, and as such respondent No.1 in Para-17 of the plaint referred that:

"...cause of action accrued to the plaintiff on refusal of the defendants to pay the above mentioned amount on account of service charges rendered by plaintiff".

The above referred contention of respondent No.1 is silent qua any period, date or time length through which a limitation could be calculated. Although, the suit was filed on 10.09.2014, whereas the question of limitation has to be seen in terms of Article 56 of the Limitation Act, 1908, which provides the period of limitation of three years for filing of the suit starting from the time when the work is done, if no time is fixed for payment, then the time has to be calculated from the averments made in the plaint and as such, the plaint is silent qua completion of any work and no such date has been referred, from which it could be assumed that any assignment or work assigned by the petitioners to M/s Aurora (Pvt.) Ltd./respondent No.1 was completed on a specific date, whereafter invoice of bill has been issued. However, when there was no date or time mentioned in the body of plaint to justify the cause of action, it could be simply considered as time barred in terms of Article 56 of the Limitation Act. Reliance is placed upon 1987 MLD 121 (Shah Zareen Khan vs. Farooq Mazhar). It is settled law that once full period of the limitation is expired, then there would be no revival of cause of action from the date of legal notice served on the defendants subsequently. Reliance is placed upon PLD 2006 Karachi 593 (M/s Imperial Builders vs. Prime (Pvt.) Ltd.) and PLD 1993 SC 147 (Province of Punjab vs. Muhammad Hussain).

16. Keeping in view the above referred case law together with the plaint and documents appended therewith, the question of limitation is not cleared from plaintiff's perspective as there was neither any contract through which limitation could be ascertained, nor the act of any offer and acceptance is apparent on record, even no communication or letter through which starting point of limitation could be ascertained is appended with the plaint, even otherwise, there is no document available on record showing the completion of work/assignment, on the basis of which the period of

limitation could be assumed to be started. In such eventuality, when there is a doubt regarding limitation period, the longest limitation period has to be considered in comparison to shorter period as held in 1982 SCMR 582 (Haji Qadir Bux vs. Province of Sindh, etc.). But, in this case, there is no dispute qua the question of limitation on the basis of two statutes, rather no limitation has been set out by the plaintiff in his plaint or through any appended document for starting point of limitation. Hence, this Court truly believes that period of limitation has to be considered in the light Article 56 of the Limitation Act, 1908, which provides the period of three years and as such, the said period has already been expired and the issuance of subsequent legal notice or letters by respondent No.1/plaintiff does not revive the limitation period, unless a letter or correspondence has been made by the petitioners.

17. In view of above situation, the following aspects are silent in the entire plaint as well as in the appended documents.

- (a) The document of relationship between respondent No.1 and the petitioners as what is the scope of work, terms and conditions and period of performance of the contract, whereby respondent No.1 was hired for a particular project against a particular services along with the rate of commission as claimed by respondent No.1.
- (b) M/s Pacific came into picture only by submission of an invoice appended with the plaint, which does not justify the relationship of M/s Pacific with respondent No.1.
- (c) Whether M/s Pacific has any direct relationship with petitioners on the basis of any document or representation by the petitioners?
- (d) Whether any representation, letter, e-mail or contract had been given or addressed by the petitioners in the name of M/s Pacific or in the name of M/s Aurora (Pvt.) Ltd./respondent No.1 to determine that the petitioners undertook to pay a certain amount against the services claimed by respondent No.1 or M/s Pacific?

- (e) Whether Respondent No.1 had performed any duty assigned by the petitioners in the projects referred in Para-5 of the plaint and what are those arrangements through which it has been claimed that three (03) projects namely Benazir Bhutto International Airport Project, Islamabad, Sindh Irrigation and Drainage Authority Project LBOD - Sind and Highways Rehabilitation Project N-5 have been completed or engaged with the petitioners with the help of respondent No.1 as claimed by them in Para-7 of the plaint, whereby it has been referred that, *"this was due to intensive input of respondent No.1 to acquire and help in execution of these projects."*

18. The answers to all these questions have not been given by respondent No.1 in any manner before this Court nor respondent No.1 was able to demonstrate those answers from the record, therefore, this Court comes to conclusion that all these questions had to be set out in the body of plaint through some cogent evidence or documents to *prima facie* establish the case of respondent No.1. However, the absence of such answers persuades this Court to hold that there was no such relationship in existence between the parties, which is the key factor and its onus is upon respondent No.1 to demonstrate those facts in terms of Order VII Rule 1(e) and to justify the cause of action, therefore, in such type of situation, whether it is necessary to proceed in the trial and record evidence, the answer to such proposition has to be considered in the light of principle settled by the apex Court in the following reported cases.

2016 SCMR 910 (Mushtaque Ali Shah vs. Bibi Gul Jan)

"22. As regards Mr. Awan's contention that the question of limitation being a mixed question of law and facts ought to have been decided after recording evidence, we may observe that it is only in cases where determination as to when the cause of action for the suit arose, is dependent upon a certain factor, situation, happening or occurrence, existence, extent and the nature whereof could only be ascertained after recording evidence, that the question of limitation needs to be determined after such evidence. However, where on the plain reading of the plaint, as in the present case, it can be clearly seen that the suit is patently barred by limitation, no evidence is required. In fact to plead that a plaint cannot be rejected, for the suit being barred by limitation/law, without recording evidence, is to plead against the mandate of law as contained in Order VII, Rule 11 of the

Code of Civil Procedure, which essentially requires the Court to reject the plaint which appears from its contents to be barred by limitation."

(Underlining is provided for emphasis)

2014 SCMR 513 (Noor Din vs. Additional District Judge, Lahore, etc.)

"The present suit was filed in the year 2012, more than forty years after the gift mutation. The object of the powers conferred upon the trial Court under Order VII, Rule 11, C.P.C. is that the Courts must put an end to the litigation at the very initial stage when on account of some legal impediments full fledged trial will be a futile exercise. In view of the above facts the suit of the plaintiffs/respondents challenging the gift mutation was on the face of the record barred by time and there was no need for recording of evidence. Consequently, this petition is converted into appeal and allowed. The impugned judgment and orders are set aside, the application of the petitioners under Order VII, Rule 11, C.P.C. is allowed and the suit filed by respondents Nos.3-18 is therefore dismissed as barred by time."

(Underlining is provided for emphasis)

PLD 2012 SC 247 (Haji Abdul Karim vs. M/s Florida Builders (Pvt.) Ltd.)

"12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.

Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide whether or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide

powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint."

(Underlining is provided for emphasis)

PLD 2008 SC 371 (Pakistan Agricultural Storage and Services Corporation Ltd. vs. Mian Abdul Latif)

"It may be noted here that object of Order VII, rule 11 C.P.C., is primarily to save the parties from rigours of frivolous litigation at the very inception of the proceedings and if the Court on the basis of averments made in the plaint and documents available comes to the precise conclusion that even if all the allegations made in the plaint are proved; the plaintiff would not be entitled to the relief claimed, then the Court would be justified to reject the plaint in exercise of powers available under Order VII, Rule 11 C.P.C. In this view, we are fortified by a judgment of this Court delivered in the case of S.M. Shafi Ahmad Zaidi through legal heirs v. Malik Hassan Ali Khan (Moin) through legal heirs 2002 SCMR 338, wherein it was held that while disposing of application under Order VII, Rule 11, C.P.C, besides averments made in the plaint, other material available on record, which on its own strength, is legally sufficient to completely refute the claim of the plaintiff, can also be looked into."

(Underlining is provided for emphasis)

2000 SCMR 1305 (Maulana Nur-ul-Haq vs. Ibrahim Khalil)

"6. The first point for determination is whether the plaint can be rejected under Order VII, rule 11(d), C.P.C if the suit is time-barred. The answer is in the affirmative. The contention raised by the learned counsel for the petitioner is too naive to prevail. The bar of limitation is traceable to the Limitation Act, therefore, it goes without saying that the expression 'barred by any law' includes the law of limitation. However, there is no need to discuss this point any further as it stands resolved by the judgment of this Court reported as Mumtaz Khan v. Nawab Khan and 5 others 2000 SCMR 33, wherein it has been held that clause (d) of Order VII, rule f 1, C.P.C. is applicable where the suit is time-barred, and Hakim Muhammad Buta and another v. Habib Ahmed and others (PLD 1985 SC 153) wherein it has been observed that if from the statement in the plaint the suit appears to be barred by limitation the plaint shall have to be rejected under Order VII, rule 11, C. P. C."

(Underlining is provided for emphasis)

19. The above referred principles of law clearly spell out that in situations where the period of limitation has not been explained, the statutory period has already been over, or the cause of action is not justified from the averments of plaint or appended

documents, the plaint should have been rejected in terms of Order VII Rule 11 CPC without recording of evidence in this regard.

20. The last objection raised by the petitioners is the filing of suit by an unauthorized person in defective manner, whereby the authorization for the purpose of filing of suit on behalf of the company i.e. M/s Aurora (Pvt.) Ltd./respondent No.1 has to be seen in the light of its Articles of Associations appended with this petition and the relevant extract of Clause 72(9) is as under:

“(9) To institute, conduct, defect, compound or abandon any legal proceedings by or against the company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Company.”

21. In support of the said document, respondent No.1 has also placed the resolution passed by the Board of Directors in the meeting held on 03.07.2014, which refers as under:

*“**RESOLVED** that the Company be and is hereby authorized to file writ petition before the Honorable Senior Civil Judge Islamabad, for Recovery of the outstanding bills and Mr. Khizarur Rashid Advocate, High Court is authorized to prepare, file and argue the case and all application connected thereto.”*

***FURTHER RESOLVED** that Mr. Hameedur Rehman Khan be and is be and hereby authorized to sign and verify plaints, written statements, petitions and affidavits on behalf of the Company and generally to do all such acts, things and matters as are necessary to conduct the above said case.”*

(Underlining is provided for emphasis)

22. The above referred two documents have been considered and it appears that M/s Aurora (Pvt.) Ltd. can institute any legal proceedings by or against any Company concerning the affairs of the company but the resolution passed by Board of Directors dated 03.07.2014 is only to the extent of filing of “*writ petition*”, therefore, the very basis of the suit filed by M/s Aurora (Pvt.) Ltd. is on wrong premises, however the question of authorization has been adjudicated upon in the light of opinion settled by the superior Courts in the following reported cases.

PLD 1991 Lahore 381 (Govt. of Pakistan vs. Premier Sugar Mills, etc.),

“It is well settled that when a company institutes a suit, it has to establish that the suit has been competently and authorisedly instituted on its behalf. The rigor of this principle is to the extent that even a person incharge of the affairs of

the company unless specifically authorized in this regard is not considered competent to initiate proceedings on behalf of the corporate entity. In *Iftikhar Khan of Mamdot v. Messrs Ghulam Nabi Corporation Ltd., Lahore* reported as PLD 1971 Supreme Court 550 it was held that a suit on behalf of Company by a person (Director Incharge of Company) is not competent unless he is so authorized by a resolution p-b Company's Board of Directors in a meeting of Directors duly convened. In the light of the above principle that the suit had not been competently filed the appeal before the Supreme Court was allowed and the objection as to the invalid institution of the suit was upheld.

(Underlining is provided for emphasis)

PLD 2004 Karachi 17 (Abdul Hameed Khan vs. Mrs. Saeeda Khalid Kamal Khan, etc.)

"12. Apart from above yet there is another infirmity to render the suit incompetent. Order C.P.C. requires that "every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim" From the said provision of law, it is manifest that the fact that a person who signed the plaint of the plaintiff was duly authorized to do so, was and such fact ought to have been pleaded in the plaint. It may be stated that all the facts which, though not necessary to establish the cause of action or defence, but which the party pleading is required to prove at the trial, are also material facts. In PLD 1947 PC 180 it was observed as under:--

"It is unfortunate that the facts on which the appellant relied as the foundation of his right were not set out in. the plaint... ..

"The rule that material facts should be pleaded is no mere technicality and an omission to observe it deprives pleadings of most of their value and may increase the difficulty of the Court's task of ascertaining the right of the parties."

In order to prove that the plaint was duly or properly signed as required under Order VI, rule 14, C.P.C., it was necessary that the plaintiff should have pleaded by clearly stating in the body of the plaint that the signatory namely Mrs. Yousuf Ara Begum was duly authorized to do so. Upon examination of the contents of the plaint, it is obviously clear that it has nowhere been pleaded in the plaint that said Mrs. Yousuf Ara Begum was authorized to sign and verify the plaint.

Besides, no evidence was led by the plaintiff to prove the fact that Mrs. Yousuf Ara Begum, who is claimed to have signed and verified the plaint and instituted the suit, was duly authorized person.

13. Learned counsel for the plaintiff in an attempt to show that Mrs. Yousuf Ara Begum was a duly constituted attorney drew my attention to the title of the plaint which contains the name of Mrs. Yousuf Ara Begum as attorney of the plaintiffs. I am afraid mere mention of name of the said Mrs. Yousuf Ara Begum as attorney of the plaintiff in the title of the plaint will not be adequate enough to prove that the suit was competently instituted for the obvious reason that the title of the suit can never be treated as part of the plaint as, for one thing, it is not covered by the verification appended at the foot of the plaint. This view was

taken in AIR 1974 Allahabad 413 and was followed in the case of Ch. Sultan Ahmad through Legal Heir and others v. Salima Begum and others (PLD 1994 Lahore 111)."

(Underlining is provided for emphasis)

2015 YLR 1105 Sindh (M/s Maniar Tours and Travels (Pvt.) Ltd. vs. M/s Hashwani Hotels, etc.)

"15. Under the law, therefore, the legal position is obvious. The authority given to an employee to institute the suit on behalf of the company shall be filed along with the plaint to establish his competency to act on behalf of the company. In absence whereof and particularly so when despite being warned through some objection by the other side, nothing is done to correct the wrong as is the situation attending in the present case. That be so, we are of the view that the defect left by the respondent No.1 at the time of institution of the suit being incurable, in view of the peculiar facts and legal position discussed above, is fatal to the proceedings initiated by it. Admittedly, the appellate Court cannot make right the wrongs, which are either irremediable in nature or get so due to indolence of the party against which such wrong is alleged by its opponent /contender. In this matter by not producing the resolution at the time of the institution of the suit, which is a legal requirement of the law, and then perpetually failing to do so, despite having been warned through the cross-examination of its witness, the respondent No.1 failed to fulfill a legal requirement, which goes to the roots of the case. The plea in relation to such legal flaw left unattended can be raised without any exception at any stage of the proceedings. Even in the appeals in hand, no such document containing the resolution showing authority of the person instituting the pleadings on behalf of the respondent No.1 has been produced. Under the circumstances, we are of the view that the suit of the respondent No.1 from the very beginning was not maintainable for want of the necessary authority/resolution. Consequently, HCA No.209 of 2005, filed by the appellant, is allowed and the impugned judgment and decree passed in Suit No.1224 of 1996 are set aside; and HCA No.215 of 2005, filed by respondent No.1, is dismissed with no order as to costs."

(Underlining is provided for emphasis)

23. In view of above discussion, the suit filed by M/s Aurora (Pvt.) Ltd./respondent No.1 is not competent as M/s Aurora (Pvt.) Ltd. has failed to establish any relationship through any admissible record, document or acknowledgment, where payment or relationship has been admitted by the petitioners, hence, no cause of action is available or visible on record, even otherwise, the plaint has been filed through an unauthorized manner without considering the law and the defect in the resolution could not be cured, nor the plaint has been filed within the prescribed time period for filing of the suit for recovery, therefore, the plaint is liable to be rejected in terms of Order VII Rule 11 CPC,

hence, the impugned order dated 15.01.2018, passed by the learned Civil Judge, 1st Class (West), Islamabad, having been based on illegal exercise of jurisdiction is hereby **SET ASIDE** and the suit filed by M/s Aurora (Pvt.) Ltd./respondent No.1 against the petitioners for recovery of US \$293,422.00 is **REJECTED**. Office is directed to draw the decree sheet.

(MOHSIN AKHTAR KAYANI)
JUDGE /

Announced in open Court on: **29.11.2019**.

JUDGE

Khalid Z.