

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 2948 of 2020

Alif Plastic Industry of Mehmood sons of Companies
Vs.
Brig. (Retd.) Khalid Hameed Chughtai and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<u>11.01.2023.</u>	Mr Muhammad Daniyal Advocate vice learned counsel for the Petitioner. Ch. Muhammad Zaheer Akhtar Advocate for the Respondent No. 1.

Through this Writ Petition the Petitioner has assailed the Order dated 03.03.2020 (**“Impugned Order”**) passed by the learned Judge, Consumer Court/Additional Sessions Judge, East-Islamabad whereby the application filed by the Petitioner under Order VII, Rule 11, C.P.C. was dismissed.

2. The learned counsel for the Petitioner submitted that although the Special Power of Attorney was executed by the Respondent No. 1/Complainant in favour of Ahmed Waqar Qamar, however, the complaint was filed by one named Ahmed Waqas Qamar. The learned counsel further submitted that the Special Power of Attorney was in any event issued for the purpose of filing complaint before the learned Consumer Court, Rawalpindi, whereas, the complaint filed before the learned Consumer Court, Rawalpindi was returned pursuant to an order passed by the Honourable Lahore High Court and thereafter the purported Attorney filed fresh complaint on the basis of the same Special Power of Attorney before

the learned Judge, Consumer Court, Islamabad, which according to the Petitioner was unauthorized. He argued that a power of attorney is to be strictly construed and no power other than what has been specifically delegated upon him may be exercised. In support of his contentions the learned counsel for the Petitioner has relied on *Rana Nisar Ahmad v. Sher Bahadur Khan and others* 2006 CLC 999, *Imam Din and 4 others v. Bashir Ahmed and 10 others* PLD 2005 S.C. 418, *Noor Alam through L.Rs. and another v. Muhammad Bashir and another* 2015 CLC 1675.

3. On the other hand, the learned counsel for the Respondent No. 1 has argued that the Special Power of Attorney empowers the Special Attorney to file any suit, petition, application in any court up to the Honourable Supreme Court by way of clause 9. He further submits that error in the name of the Attorney is merely typographical and that no such argument was made before the learned Consumer Court. He further submits that in any event the Respondent No. 1 is being represented by the same Attorney before this Court in the instant Writ Petition wherein Vakalatnama was signed by the Respondent No. 1 personally which is a ratification of the power exercised by the Attorney. In view of the above he submits that the Impugned Order was strictly in accordance with the relevant law and facts.

4. I have heard the learned counsel for the parties and have perused the record carefully.

5. There is no cavil to the proposition that a power of attorney is to be strictly construed

however on a tentative examination it appears that the Special Power of Attorney in this case contains a specific power to file new suit. Since the trial is ongoing I will refrain from making any further observations on merits so as not to prejudice either party. Suffice it to say that I find no illegality or infirmity in the Impugned Order. As the trial is ongoing, therefore, the Petitioner has an adequate remedy of leading evidence and submitting final arguments before the learned Consumer Court to show whether the Attorney had requisite power to institute the complaint on behalf of the Respondent No.1/Complainant or not and whether the complaint has been filed by the attorney so authorized. In such circumstances it cannot be concluded that the Petitioner has no other alternate remedy available which would make the instant Writ Petition maintainable.

6. In view of the above, the instant Writ Petition is **dismissed**. Needless to observe that all the observations made hereinabove are tentative in nature and shall not affect the merit of the case.

(SAMAN RAFAT IMTIAZ)
JUDGE