

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

**MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE JAMAL KHAN MANDOKHAIL**

Civil Petition No. 1550 of 2017

*(Against the order dated
27.02.2017 passed by the
Islamabad High Court,
Islamabad in Writ Petition No.
531 of 2017)*

Muhammad Saeed Khan

...Petitioner

Versus

Malik Muhammad Ashraf and others

...Respondents

For the Petitioner:

Mr. Farhat Nawaz Lodhi, ASC

For the Respondents:

N.R

Date of Hearing:

23.09.2021

ORDER

AMIN-UD-DIN KHAN, J.- Through this Petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, leave has been sought to appeal against the order dated 27.02.2017 passed by the learned Single Judge of the Islamabad High Court whereby Writ Petition No. 531 of 2017 filed by Respondent Malik Muhammad Ashraf was dismissed.

2. Today the matter is fixed for hearing. The learned ASC representing the Petitioner, through the AOR, has sent a written request for adjournment on the basis of ground No. 2 mentioned in his application which is reproduced as under:

*“That the learned Counsel the Petitioner namely
Mr. Farhat Nawaz Lodhi, ASC is unable to*

contact with the Petitioner for further instructions, furthermore, some additional documents are required to be placed on record, hence, for this purpose, need some time. Therefore, a humble request is being made for adjournment of the case on the said date."

We are afraid that it is hardly a ground for adjournment as the matter is pending before this Court for the last four years and was once even dismissed for non-prosecution on 16.02.2018 to be restored subsequently on 30.07.2018. Therefore, the prayer for adjournment was declined and the learned AOR was directed to proceed with the arguments. He, however, expressed his inability to argue the case and prayed that the matter be adjourned for a while and be heard after the tea break when the learned ASC will come and argue on behalf of the Petitioner. The matter was, thus, kept in wait for hearing the learned counsel for the Petitioner.

3. Heard the learned ASC for the Petitioner.

4. The question before this Court is whether the Petitioner who was a respondent, rather a proforma respondent, in the Writ Petition dismissed by the High Court could competently file this Petition before this Court. It is a settled principle of law that an aggrieved party can file an appeal or a petition for leave to appeal, whichever is maintainable, before this Court under Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973. Admittedly the Writ Petition was filed by Respondent Malik Muhammad Ashraf before the High Court whereby he challenged the order of the Director, Excise and Taxation Department (Appellate Authority), Motor Vehicle Registration Authority,

Islamabad dated 27.01.2017 as well as that of Excise and Taxation Officer/Motor Registering Authority, Islamabad dated 19.09.2016. The Petitioner was respondent No. 4 before the High Court. He never challenged the order of the Appellate Authority or order of Excise and Taxation Officer/Motor Registering Authority before the High Court. If he was aggrieved by the orders of the Appellate Authority or Excise and Taxation Officer/Motor Registering Authority, Islamabad he was required to challenge the same before the available forum or the High Court in Constitutional jurisdiction and thereafter if his petition was dismissed by the High Court he would have been entitled to challenge the said order before this Court. By no stretch of imagination, it can be said that he is aggrieved by the order of the High Court when the Writ Petition filed by the Respondent was dismissed by the High Court. It is a settled view of this Court that if any person is a formal party as respondent before the High Court against whom no relief is claimed and the Writ Petition before the High Court is allowed even then the said formal respondent has no right to challenge the order of the High Court before this Court if the order does not prejudicially or adversely affects that person. This view has already been expressed which is reported as Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others versus Mian Muhammad Shahbaz Sharif and others (PLD 2009 Supreme Court 237); paragraph No. 50 is relevant which is reproduced for ready reference:

"50. As regard the locus standi of the Federation of Pakistan to impugn the judgment of the Lahore High Court, it will be noted that the Federation was a pro forma party/respondent in the Petitions before the Lahore High Court. The perusal of the impugned

judgment manifestly reveals that neither any relief was granted against the Federation nor any direction was issued to them, so as to give rise to the cause of action to the Federation to file the instant Petition. It was candidly conceded by learned Deputy Attorney General that no direction or order was passed against the Federation. In the circumstances, neither the Federation was aggrieved party nor had any cause of action to provide them a locus standi to challenge the judgment of the Lahore High Court. Even learned Attorney General has not been able to cite any precedent to demonstrate that at any point of time, the Federation has ventured to step into an election dispute of a certain individual.

We have no slightest doubt in holding that the Federation, not being an aggrieved party, was not competent to maintain the Petition. Accordingly the Petition filed by the Federation is equally liable to be dismissed, which stands dismissed."

Another judgment of this Court reported as "Anjuman Tahafaz-e-Haqooq-e-Shahrian, Quaidabad versus Kh. Muhammad Iqbal and others" (1988 SCMR 1871) confirms that the Petitioner has no *locus standi*. In support of the above view taken by us we are further fortified by the judgment of this Court as well as those of the Indian Supreme Court reported as H.M. Saya & Co. versus Wazir Ali Industries Ltd. (PLD 1969 Supreme Court 65), Banarsi versus Ram Phyal (AIR 2003 Supreme Court 1989) and Nalakath Sainuddin versus Koorikadam Sulaiman (AIR 2002 Supreme Court 2562).

5. Learned counsel was unable to satisfy us with regard to maintainability of this Petition. We have further noted that along with this Petition the Writ Petitioner filed Civil Petition No. 1480 of 2017 before this Court, which was being heard along with this Petition, and the same was dismissed on merits with a cost of Rs.10,000/- vide order dated 16.02.2018 when the learned ASC

and the AOR of the instant Petition were absent and this Petition was dismissed for non-prosecution on the same day i.e. 16.02.2018 and thereafter it was restored vide order dated 30.07.2018. As the order passed by the learned High Court whereby the Writ Petition filed by Respondent Malik Muhammad Ashraf was dismissed and the order of dismissal of Writ Petition was affirmed by this Court vide order dated 16.02.2018 passed in C.P. No.1480 of 2017, this Petition filed by the Petitioner who was a respondent before the High Court is not maintainable, and the same stands dismissed with costs.

Judge

Judge

Islamabad, the
23rd September, 2021
(Syed Farhan Ali)

Judge

"APPROVED FOR REPORTING"