

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION No. 2032 OF 2019

(Against the judgment dated 22.02.2019
Peshawar High Court, Peshawar, in Civil
Revision No.774-P/2018)

M/s Sui Northern Gas Pipelines Limited (SNGPL) ...Petitioner

VERSUS

M/s Noor CNG Filling Station ...Respondents

For the Petitioner: Ch. Hafeez Ullah Yaqub, ASC

For Respondents: N.R.

Date of Hearing: 05.04.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment passed by the learned Single Judge of Peshawar High Court, Peshawar in Civil Revision No.774-P/2018 on 22.02.2019 whereby the Civil Revision was dismissed.

2. The ephemeral facts of the case are as under:-

The respondent filed a suit for Declaration, Mandatory and Permanent Injunction before the Civil Judge, Peshawar against the petitioner to resolve some gas utility billing issues as according to them, they were regularly paying the bills as per consumption but the petitioner found some anomalies in the gas meter and also alleged meter tampering. The suit was defended by the petitioner and reliance was also placed on Meter Inspection Report (MIR) whereby the respondent/plaintiff was found involved in the alleged pilferage and tampering of gas meter. After recording evidence, the suit was decreed and the appeal filed by the petitioner was also dismissed.

3. The learned counsel for the petitioner argued that the impugned judgment of the High Court is based on the niceties of Order XXIX, Rule 1 of the C.P.C. which pertains to proceedings by or against the Corporation through an authorized representative. The petitioner, through duly authorized representatives, preferred a

Civil Appeal in pursuance of the General Power of Attorney duly executed pursuant to the Resolution passed in the 468th Meeting of the Board of Directors held in 2016. He further contended that pleadings submitted on behalf of juristic persons can be signed by any person authorized to do so under the Articles of Association of the Company, or authorized by its Board of Directors through a resolution. The Board of Directors of the petitioner's Company resolved on 07.03.2016 that Mr. Amjad Latif will sign and approve the documents which normally require the Managing Director's approval and it was further resolved that any two Directors be hereby authorized to sign the General Power of Attorney on behalf of the Company. The Appellate Court nonsuited the petitioner only due to a lack of proper authorization and non-placement of a Board Resolution in Court. It was further averred that the suit was barred under the provisions of the Oil and Gas Regulatory Authority Ordinance 2002 ("OGRA Ordinance 2002").

4. Heard the arguments. In fact, the respondents instituted a suit for declaration on the premise that they are the owners of M/s Noor CNG Filling Station. The petitioner had installed a Sui Gas Meter for the CNG Station after fulfilling relevant legal requirements. Since the last Sui Gas bill was properly paid, the petitioner had no right to remove the meter without prior notice. A further declaration was entreated that the petitioner's act of imposing late payment surcharge was illegal as the respondent/plaintiff never committed any default. The learned Trial Court recorded the evidence and vide judgment dated 26.03.2014, decreed the suit as prayed. The petitioner/defendant filed an appeal against the said judgment and decree which was dismissed. Seemingly and ostensibly, the title of the said appeal demonstrates that the appellants were 1) General Manager, SNGPL Hayatabad, Phase-V Peshawar, 2) Managing Director SNGPL, Gas House, 3) General Manager Billing SNGPL, Hayatabad and 4) General Manager Metering SNGPL, Hayatabad but the memo of appeal was only signed by Mr. Raza Khan Safi, Advocate. The memo of appeal communicates that the appellants crafted the plea that the impugned judgment and decree is based on misreading and non-reading of evidence. It was further stated that

the plaintiff/consumer was involved in the pilferage of gas by tampering the meter. We have noted that no specific plea was raised in the Appellate Court that the suit for declaration was impliedly barred under the provisions of the OGRA Ordinance, 2002. On the contrary, the learned Appellate Court scanned the entire evidence and observed that the alleged tampered meter was never produced in the Court for the purpose of its examination; the department was required to follow the terms and conditions of agreement stipulated in Clause 7 (b) which evokes that the inspection of the meter be carried out in the presence of a representative of the consumer, together with affixation of signatures in the register maintained by the company as the token of inspection; neither the plaintiff was associated with the alleged inspection, nor any extracts from the register were tendered in evidence showing the affixation of signatures with the date, day and time of inspection; the meter was not sent to the laboratory within the specified time, nor was the plaintiff/consumer associated to the laboratory that is again the violation of prescribed rules of OGRA; not a single member of inspection team came forward to give the fact of inspection of meter; record is altogether silent about the name of the person reporting such pilferage and seal of meter according to report was also found intact. Finally, the learned Appellate Court maintained the judgment of the Trial Court after squinting and scanning the evidence. What's more, the Court also adverted to the nitty-gritties of Order XXIX, Rule 1, C.P.C. which was found to have been desecrated and violated by the petitioner.

5. Indeed the petitioner is a public limited company incorporated under the erstwhile Companies Ordinance, 1984, but the appeal was filed without any Board Resolution of the Company authorizing the alleged four executives to file an appeal against the judgment and decree of the Trial Court on behalf of the petitioner. The learned counsel for the petitioner very candidly confessed that no Board Resolution was produced along with the memo of appeal to demonstrate that they were authorized to file the appeal and even the memo of appeal was simply signed by the Advocate for the appellants who must have engaged this counsel for preferring an

appeal but, again, before engaging and authorizing an advocate for filing an appeal, there must be a clear authorization in the form of a Board Resolution or power of attorney to that effect. Neither any Board Resolution was produced, nor was any extract from the minute book of the Company produced to demonstrate any authorization through the Board of Directors of the Company, nor any indenture power of attorney to put on view any duly constituted attorney.

6. The petitioner being a juristic person first time came into picture by filing Civil Revision Application in the learned Peshawar High Court for challenging the judgment of the Appellate Court but in the Appellate Court, only four executives were mentioned as appellants in the memo of appeal without their signatures or affidavits and the memo of appeal was only signed by the advocate; the petitioner's company was itself not the appellant or party. The grounds raised by the petitioner in the High Court were almost the same as those raised in the memo of appeal before the Learned Additional District Judge, i.e. misreading and non-reading of evidence and that the bills were issued to the respondent/consumer according to the relevant law and policy, but no specific ground was ever taken in the written statement, memo of appeal or even in the Civil Revision application before the High Court with regard to the maintainability of the civil suit on the premise that the suit was impliedly barred under the provisions of the OGRA Ordinance 2002. The learned High Court has also taken a coinciding view and concurred with the Appellate Court findings that the appellants failed to sign the appeal, rather it was only signed by their Advocate without any party's affidavit, moreover, no Power of Attorney or resolution was produced. Both the learned Appellate Court and the learned High Court did not commit any illegality or irregularity while dismissing the appeal and revision filed by an unauthorized person.

7. The learned counsel for the petitioner invited our attention to the General Power of Attorney that was issued in favour of Mr. Amjad Latif, Managing Director and Chief Executive of the Company on 18.12.2017, which is much after the date of filing of

the appeal on 08.05.2014, hence it was neither here nor there to revisit the appeal stage proceedings. He also pointed out another General Power of Attorney dated 18.03.2016, whereby two Directors of the same company were allegedly authorized to execute the General Power of Attorney in favour of Mr. Amjad Latif which was also subsequent to the date of filing appeal and obviously could not be produced in the Appellate Court. A Board Resolution of the 468th Meeting of the Board of Directors of SNGPL held on 07.03.2016 is also available in the paper book whereby Mr. Amjad Latif, Deputy Managing Director (Operations) was assigned the charge of Managing Director of the said Company w.e.f. March 2016, till the appointment of a Managing Director by the Board of Directors of the Company. The learned counsel also invited our attention to the *Vakalatnama* signed by the General Manager SNGPL, Peshawar on 16.11.2018 in favour of Mr. Raza Khan Safi, Advocate who was engaged to file the Revision Application in the Peshawar High Court, but no Board Resolution was ever filed to show that the Company authorized anyone to file the first appeal which was dismissed for want of Board Resolution or authorization by the Company through any power of attorney in favour of the officers who filed the appeal against the impugned judgment and decree of the Trial Court. The learned counsel further argued that, under Section 11 of the OGRA Ordinance, 2002, a complaint could be filed before the Authority and in case of any adverse order, a right of appeal is also provided under Section 12 of the same Ordinance. He further argued that the civil suit was not maintainable in the Trial Court in view of the overriding effect provided under Section 43 of the OGRA Ordinance, 2002.

8. In the case of Messrs Muhammad Siddiq Muhammad Umar and another Vs. the Australasia Bank LTD. (PLD 1966 SC 684), this Court observed that it was apparent from the pleadings that the suit was instituted by a constituted attorney of a public limited company. He could only do so if he was duly authorised in that behalf and occupied one or other of the offices mentioned in Rule 1 of Order XXIX of the Civil Procedure Code. A copy of the power of attorney was produced to show that Muhammad Khan was empowered in that behalf but the question still remained to be

ascertained as to whether those who gave him that power were competent to do so as the authority was on behalf of a public limited company. For this purpose a reference to the Articles of Association of the company was certainly necessary to see whether the Directors were competent to delegate such power. It was not necessary to see whether the Directors had in fact approved the giving of such power of attorney to the person who presented the plaint. This was however proved by production of the resolution of the Board of Directors as a matter of abundant caution. In the case of The Central Bank of India, LTD., Lahore Vs. Messrs Taj-ud-Din Abdur Rauf and others (1992 SCMR 846), leave was granted by this Court to consider whether the suit instituted in this case by Mr. S.K. Shikari, the alleged attorney, was competently instituted and whether power of attorney in his favour in the facts and the circumstances of the case, as brought on the record, was legally sufficient to authorize him to do so, in the light of the principle laid down in Messrs. Muhammad Siddiq Muhammad Umar and another v. The Australasia Bank Ltd. PLD 1966 SC 684. While referring to the case of Australasia Bank, it was held that once it is proved that the power of attorney was executed and the relevant articles under which the Directors can delegate their respective powers to institute and prosecute suits on their behalf have been proved, it is not necessary to prove the resolution by which the directors have resolved to grant such a power of attorney to the attorney. In the case of Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 heirs) Vs. Messrs Ghulam Nabi Corporation LTD., Lahore (PLD 1971 SC 550), this Court also referred to the judgment in the case of H. M. Ebrahim Sait versus South India Industrials Ltd. (AIR 1938 Mad. 962) in which it was held that in law a meeting of directors is not duly convened unless due notice has been given to all the directors. It was further held that due notice of the meeting was not given to the deceased appellant and therefore, the resolution passed in the meeting of 28th September 1951, cannot be said to be a valid one. This Court also referred to Halsbury's Laws of England, Third Edition, Volume 6, at page 315, that "A meeting of directors is not duly convened unless due notice has been given to all the directors, and the

business put through at a meeting not duly convened is invalid. Whether or not there was a regular board meeting is immaterial for purposes of binding the company if all the shareholders consent to what is done. It is not necessary to give notice of an adjourned meeting. If no fixed notice is required, the notice must be fair and reasonable." We have also surveyed the case of Rahat and Company Vs. Trading Corporation of Pakistan (PLD 2020 SC 366) and noted that the High Court had non-suited the petitioners predominantly in view of the dictum laid down by this Court in the case of Khan Iftikhar Hussain Khan of Mamdot Vs. Messrs Ghulam Nabi Corporation Ltd. Lahore (PLD 1971 SC 550). Even in the case of Rahat and Company (supra), this Court held that once it is proved that power of attorney had been executed pursuant to the Articles of Association under which the Directors could delegate their respective powers to institute and prosecute the suit on their behalf, it was not necessary to prove the resolution by which the Directors had resolved to grant such a power of attorney to the attorney. In the present set of circumstances of the case, the petitioners failed to prove even the execution of any General Power of Attorney to warrant the benefit of the dictum laid down in the case of Rahat and Company in which the earlier two judgments of this Court on the same subject, including the case of Muhammad Sadiq Muhammad Umar (PLD 1966 SC 685), were approved and declared to be correct law. Even no efforts were shown to have been made for rectifying or remedying this defect at appeal stage. At this juncture, we would also like to refer to the case of China Annang Construction Corporation through Project Manager Vs. K.A. Construction Co. through Attorney (2001 SCMR 1877) in which, too, a basic question was before the Court whether the appeals before the High Court were filed by duly authorized person on behalf of the appellant's company. The memo of appeals before the High Court were signed by Mr. He Yi and the question arose whether he was duly authorized by the appellant-company to institute the said appeals.

9. The petitioner was non-suited in appeal as well as Revision Application due to lack of proper authorization and Board Resolution of the Company which is the moot point in the case. If

the appeal was not filed by a duly authorized person, that defect or disability could not be overlooked or ignored if not cured at an early stage. The logic and sagacity of raising this objection at an early stage leads to a pathway that, in case the plaint is rejected on this ground under Order VII, Rule 11, C.P.C., then obviously the plaintiff should not be precluded from presenting a fresh plaint in respect of the same cause of action but of course subject to the law of limitation provided for to set the law into motion. However, at this point in time, we have to be confined to the rigors and exactitudes of Order XXIX, Rule 1, C.P.C., which predominantly engrossed that in the suits by or against a corporation, any pleading must be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. On the word of Order VI, Rule 14, C.P.C, every pleading must be signed by the party and his pleader (if any) provided that where a party pleading is by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. While Rule 15 of Order VI, C.P.C. is germane to the verification of pleadings which clarifies that every pleading shall be verified on oath or solemn affirmation at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. In the same sequence, Order III, Rule 4, C.P.C. shed light on the notion of recognized agents and pleaders and put into words that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment. At this juncture, Order XLI, Rule 1, C.P.C. is also quite noteworthy which is somewhat interconnected with the provision of filing appeal against original decrees and depicts that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree

appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. The learned counsel for the petitioner very emphatically argued that the advocate/pleader was authorized to sign the appeal but for this also, neither the learned counsel for the petitioner could justify whether the person who engaged the counsel was authorized under any Board Resolution or Power of Attorney nor anything was placed before the Appellate Court or High Court to substantiate this argument. In a like semblance, the learned High Court in paragraph No. 7 of the impugned judgment held as under:-

“Perusal of the memo of appeal allegedly filed on behalf of the Company by the General Manager, SNGPL Hayatabad, Phase-V, Peshawar would show that neither it was signed by him on behalf of the appellant's company as its Attorney nor he has verified the same as Attorney of the Company. The memo of appeal is clearly showing that it has been signed and verified by the learned Advocate Mr. Raza Khan Safi alone which on the face of it shows that the same has not been filed by the General Manager of the Company as its attorney, meaning thereby, no appeal has been filed by the petitioner-Company. Furthermore, there was no resolution of the Board of Directors of the Company authorizing the General Manager to file the appeal before the learned Appellate Court against the judgment and decree passed against it by the learned Trial Court. By now it is well settled that an un-authorized person cannot institute a suit and file an appeal on behalf of Company which is registered under the obvious law of the companies, as it being a juristic person, performs its functions through Board of Directors whereas, in the instant case, there was no Board or resolution of the Company in the favour of General Manager. In the face of what I have observed herein above, the question of General Power of Attorney in the favour of General Manager has become meaningless. As the fact remains that neither General Manager has put his signature on the memo of appeal on behalf of the Company nor has verified the same as its attorney. The same is clearly showing that he has not filed appeal on behalf of the Company before the learned Appellate Court as its attorney or an authorized person for want of resolution of Board of Company. Even the Wakalatnama which allegedly has been filed by the learned counsel for his appearance on behalf of the present petitioner-Company before the learned Appellate Court, is not available on the file of present revision petition to ascertain as to who has constituted him a counsel for filing the appeal under reference”.

10. The question of implied bar has been raised in this Court for the first time and nothing was pleaded in the Trial Court, Appellate Court and the High Court. Under Section 9 of C.P.C., the Civil Courts have the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The ouster of civil court jurisdiction cannot be straightaway inferred or congregated in a routine, save as the conditions laid down are fulfilled. The presumption of lack of jurisdiction may not be gathered until the specific law enacted by the legislation debars Court from exercising its jurisdiction with

specific remedy within the hierarchy which may attain the finality of order or the controversy involved. Neither any application was moved under Order VII, Rule 11, C.P.C. for rejection of plaint if the suit was considered to be barred by law or hit by the alleged implied bar contained under Section 43 of the OGRA Ordinance, 2002, nor was any specific issue settled for this purpose nor was any plea taken in the lower fora that any adequate remedy was available under the OGRA Ordinance, 2002 where the matter could be decided without recording evidence of the disputed question of facts.

11. In any case, the rigors of Order XXIX, Rule 1, C.P.C. as a result of non-compliance will obviously come into the play which is not simply a procedural requirement but in essence a matter of dominant implication for juristic persons to set the law into motion including the requirement of appointing or engaging a recognized agent and pleader through a written document signed by such person or by his recognized agent or by some other person duly authorized thereunder or under a power of attorney to make such appointment which cannot be ignored lightly and due to this negligence and nonconformity to the express provision, the petitioner was rightly nonsuited. It is not the letter of law that the question of jurisdiction, if any, should be considered even in a case which was not filed by duly authorized person and or despite lack of proper authorization which made it *non est*. and more particularly, when no such plea of implied bar was taken in the three forums below and the petitioner remained heedless and callous.

12. In view of the above discussion, we do not find any illegality, perversity or jurisdictional defect in the impugned judgment. The Civil Petition is dismissed and leave is refused.

Judge

Islamabad.
5th April, 2022
Khalid
Approved for reporting.

Judge