

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

AFR

CIVIL PETITION NO.820 OF 2019

*(Against the judgment dated 25.01.2019
of the Peshawar High Court, Peshawar
passed in Civil Revision No.592-P/2018)*

**SDO, PESCO Daudzai Sub-Division Ring Road, Peshawar
etc.**

...Petitioner(s)

Versus

Wadan Sher

...Respondent(s)

For the Petitioner(s): Mr. Asad Jan, ASC
(through video link from Peshawar)

For the Respondent(s): Not represented (Ex-parte)

Date of Hearing: 25.08.2022

ORDER

IJAZ UL AHSAN, J: The Petitioners through this
Petition have challenged a judgment of the Peshawar High
Court, Peshawar dated 25.01.2018 passed in Civil Revision
No. 592-P/2018.

2. The brief facts giving rise to this *lis* are that the
Respondent filed a suit for declaration to the effect that a bill
sent by the Petitioners for the month of August 2012 for Rs.
240,217/- was incorrect. The suit was decreed vide judgment
and decree dated 24.11.2014. Dissatisfied, the Petitioners

filed an appeal which was dismissed vide judgment dated 10.07.2018. Aggrieved, the Petitioners filed a Civil Revision which met the same fate and was dismissed *in limine* vide order dated 25.01.2019. The Petitioners have now approached this Court and are seeking leave to appeal.

3. The learned ASC appearing on behalf of the Petitioners has argued that the learned High Court erred in law in holding that the Petitioner was required to get authorization to file the Civil Revision from PESCO for the reason that the Petitioner No. 01 was sued in his personal capacity and was therefore, not representing PESCO but was defending himself as a separate legal person. The learned ASC has further argued that the question of law relevant in this case has already been decided by this Court to the effect that where an official has been sued in his personal capacity, there is no requirement of a Board resolution of the company of which he is an official. He points out that the petitioners are SDO PESCO, XEN PESCO and R.O. Office. None of whom is the company of which they are employees and as such in order to contest the suit, no resolution of the Board of the company was required.

4. Despite service, no one appeared on behalf of the Respondent. He was accordingly placed ex-parte.

5. We have heard the learned Counsel for the parties and perused the record. The basic question which needs to be answered is whether a board resolution permitting the Petitioner to file a civil revision petition was required in order for the Petitioners to appear before the lower *fora*. The answer to this question is in the negative. It is noteworthy that the Petitioner was sued in his personal capacity and was not representing PESCO. The plaint of the Respondent nowhere mentions that PESCO in its capacity as a public limited company was sued. The Respondent consciously chose to nominate the Appellants as defendants in the suit, in their respective personal capacities. This can be seen from the title of the plaint, which finds specific mention of the Appellants. The fact remains that from the contents of the plaint, it is evidence that the grievance and cause of action of the Respondent was against the Company and not against the Petitioners. As such the framing of the suit was less than perfect to say the least. This material aspect was ignored by the lower *fora* including the High Court.

6. If the Petitioners were appearing as persons nominated by and defending/representing the Company, they may have arguably required a board resolution. However, the record clearly shows that the Petitioners appeared before the lower *fora* in their respective personal capacities and not in the capacities of PESCO's representatives. As such, the learned

High Court erred in law as well as in fact to hold that the Petitioners lacked authority to appear and required a board resolution from PESCO.

7. It is pertinent to mention here that a Company has a separate and distinct legal identity. When a Company is sued or is initiating legal proceedings, there must be proper authorization which is ordinarily provided in the Memorandum and Articles of Association or a Resolution of the Board of Directors of a Company. To the contrary, if a member/shareholder/director/official of a Company is sued in his personal capacity, then, the need for a Board Resolution authorizing such person does not arise. This is because, the Company is itself a separate legal entity whereas, its members/officials/shareholders/directors, in their personal capacity, have a separate legal status. Reliance in this respect is placed on the case reported as **Uzma Construction Co. v. Navid H. Malik (2015 SCMR 642)**. This interpretation is in line with Order XXIX of the Code of Civil Procedure, 1908 which reads as follows: -

"1. In suits by or against a corporation, any pleading may 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.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation the summons may be served - a) on the secretary, or on any director, or other principal officer of the corporation, or b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no

registered office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit."

(Underlining is ours)

8. Order XXIX *ibid* applies when a suit is initiated against or on behalf of a corporation. In that instance, a Board Resolution is important for the reason that the relief being sought is against the corporation as a whole, which is separate from its directors/shareholders/members/officials. It has been settled through various judgments that even if a Board Resolution is not provided, the same is not an incurable defect on the basis of which a suit can be dismissed. In the present case, PESCO has not been sued. Rather, the Petitioners have been sued in their personal capacities. The written statement filed before the trial Court shows that the same has been filed by the Petitioners for themselves and not on behalf of the Company. As such, the argument that the Petitioner lacked authority is repelled since authority from the Company was not required in the instant matter. Reliance in this regard is placed on the case reported as **Chief Executive, PESCO Department, Government of Khyber Pakhtunkhwa, Peshawar v. Afnan Khan (2021 SCMR 2100)** in which this Court held as follows: -

"6. As regards the question of filing of resolution, we note that the very civil revision was not filed by the Company rather it was filed by the Chairman, WAPDA

and Chief Executive, PESCO and these are the two authorities who were also impleaded by the respondent as defendants in the suit. Once the respondent himself has chosen to make a specific designation in the organization/company as party to the suit and not the organization/company, the objection with regard to filing of the resolution by the Company could not be justifiably raised."

9. The learned High Court has held that the Petitioner required authorization to defend the suit. However, as already held above, since the Petitioners have been sued in their personal capacities, therefore, the learned High Court's conclusion to the effect that authorization was required is untenable. The Respondent chose to implead the Petitioners by mentioning their specific designations, thereby, referring to them in their personal capacities. This issue is particularly important since it determines the nature of the suit. If the suit was filed against PESCO, then, the applicable law and rules would operate differently. However, since the suit was filed against individuals in their personal capacities, the law would take a different course altogether.

10. The lower *fora*, as a matter of abundant caution, could have satisfied themselves by seeking production of Articles of Association of the Company if the suit was filed by PESCO in its capacity as a Public Limited Company or, if the suit was filed against PESCO in the said capacity. However, since the suit has been filed against its officials in their personal capacities, such scrutiny was neither required nor necessary for adjudication of the present *lis*. It has nowhere

been argued that someone else from within the Company was competent to defend the suit. Rather, a generic stance has been taken to the effect that a Board Resolution was necessary for the Appellants to defend the suit so that it could be ascertained that they were empowered by PESCO to do so. We cannot agree with this conclusion by the lower *fora* simply because the Appellants have nowhere taken any stance on behalf of the Company or defended the Company. Rather, the Appellants have defended themselves in their individual capacities. As such, they were not required to produce a Board Resolution when defending themselves in their personal capacity.

11. Even otherwise, this Court in its pronouncements such as **Rahat and Company v. Trading Corporation of Pakistan Statutory Corporation (2020 CLD 872 Supreme Court)** has held that even in the absence of a Board Resolution, pleadings can, either expressly or impliedly, be subsequently ratified. The Court can, therefore, come to the conclusion that the Corporation had ratified the act of signing the pleadings by its Officer(s). As such, it is discernable from the said pronouncement of this Court that the absence of a Board Resolution is not an incurable defect which would *ipso facto* render a plaint/suit defective. Rather, it is a curable defect and, in certain instances, is not even necessary if

subsequently, the plaint/suit is ratified by a person competent and empowered to do so.

12. The High Court has proceeded on incorrect premises and misapplied the law to the facts and circumstances of the case which warrants interference of this Court. Accordingly, the judgment of the High Court is held to be legally unsustainable.

13. For the reasons recorded above, this petition is converted into an appeal and allowed. The impugned judgment of the Peshawar High Court dated 25.01.2018 is set aside.

Islamabad, the

25th of August, 2022

Not Approved For Reporting

Haris Ishtiaq/*