

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Petition No.1159 of 2019.

*(Against the judgment of the Peshawar High Court, Peshawar,
dated 11.02.2019, passed in Civil Revision No.376-P of 2017)*

SDO/AM, Hasht Nagri Sub Division, PESCO, Peshawar, etc.

.... **Petitioners**

Versus

Khawazan Zad

.... **Respondent**

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

For the Respondent: N.R.

Date of hearing: 06.12.2022

JUDGMENT

Syed Mansoor Ali Shah, J.- The questions of law before us, in the present case, are: (i) whether there is a difference between the authority to sign and verify a pleading (plaint or written statement) and the authority to institute or defend a suit by or against a corporation, under the Code of Civil Procedure 1908 ("CPC"); (ii) whether the provisions of the CPC relating to signing and verification of the pleadings (plaint and written statement) apply to the memorandums of appeal and revision petitions: and (iii) whether any defect in the authority of a person to sign and verify a pleading filed in, or to institute or defend, such a suit or in signing and filing a memorandum of appeal or revision petition can be cured at a later stage of the proceedings. These questions are often raised in suits instituted by or against corporate bodies (corporations) and in appeals arising from such suits.

2. The background facts of the instant case in which the said questions have arisen for our consideration are that the respondent instituted a suit for declaration and possession of the suit property (on which the petitioner No.5, Peshawar Electric Supply Company ("**PESCO**") has its Complaint Centre) against PESCO and its employees, SDO/AM etc., ("**petitioners**"). The petitioners contested the suit by filing a joint written statement. The respondent did not raise any

objection as to the authority of the person filing the said written statement on behalf of all the petitioners, including PESCO, and thus no issue in this regard was framed for trial by the trial court. At the conclusion of the trial, the trial court dismissed the suit of the respondent, holding that he had failed to prove his ownership of the suit property. The respondent's appeal, however, succeeded and the appellate court, by reversing the finding of the trial court, decreed the suit. The petitioners then filed a revision petition, which was dismissed by the High Court without touching upon the merits of the case, through the impugned judgment, on the ground that it had not been filed by a person duly authorised by a resolution of the Board of Directors of PESCO. Hence, the present petition has been filed by the petitioners for leave to appeal. The respondent has, however, not appeared despite due service of the notice. He is, therefore, proceeded against *ex-parte*.

3. We have heard the learned counsel for the petitioners in detail and examined the record of the case minutely.

Scope of Rules 1 of Orders III, IV, VIII and XXIX, CPC

4. As the questions under consideration mainly require the analysis of the provisions of Rules 1 of Orders III, IV, VIII and XXIX of the CPC, these provisions are reproduced here for ease of reference:

Order III, CPC (Recognized Agents and Pleadings)

1. **Appearances etc., may be in person, by recognized agent or by pleader.**

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf: Provided that any such appearance shall, if the Court so directs, be made by the party in person.

(Emphasis added)

Order IV, CPC (Institution of Suits)

1. **Suit to be commenced by plaintiff.**

(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Order VIII (Written Statement and Set-off)

1. **Written statement.**

The defendant shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence

Order XXIX, CPC (Suits By or Against Corporations)

1. **Subscription and verification of pleading.**

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.

A bare reading of Rule 1 of Order III, CPC shows that any appearance, application or act in or to a civil court, required or authorized by law to be made or done by a party in such court, except where otherwise expressly provided by any law for the time being in force, may be made or done in three ways: (i) by the party in person or (ii) by his recognized agent or (iii) by his pleader. The term "act" used in this Rule is of quite a comprehensive meaning, which includes all the necessary acts that are to be done in the course of the litigation so that the case may be properly placed before and proceeded with by the court, such as presenting the pleadings, making the miscellaneous applications, paying the process-fee, etc. Although the act of signing and verifying the pleadings (plaint and written statement)¹ comes within the scope of the term "act" as used in Rule 1 of Order III, but it cannot be dealt with under the said Rule as Rules 14 and 15 of Order VI, CPC is the law that contains provisions which expressly provides for otherwise.

5. Under Rule 14 of Order VI, every pleading is to be signed by the party **and** his pleader (if any); however, 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 as per Rule 15 of Order VI, every pleading is to 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. The acts of signing and verifying pleadings (plaint and written statement), therefore, cannot be done by a pleader in terms of Rule 1 of Order III, CPC. Rule 1 of Order XXIX, which contains special provisions as to signing and verifying pleadings in suits by or against a corporation, is like a proviso to Rules 14 and 15 of Order VI, CPC. It authorizes, in addition to the persons specified in Rules 14 and 15 of Order VI, the secretary or any director or other principal officer of the corporation who is able to depose to the facts of the case, to sign and verify any pleading on behalf of the corporation.

Difference between signing/verifying a plaint and presenting/instituting a suit

6. The notable point is that neither Rules 14 and 15 of Order VI nor Rule 1 of Order XXIX says anything about presenting the pleadings to the court after signing and verifying the same. Rather,

¹ Rule 1 of Order VI, CPC, which says: "Pleading" shall mean plaint or written statement.

these are Rule 1 of Order IV and Rule 1 of Order VIII which deal with the subject of presenting a plaint or a written statement to the court. Different rules on these two matters make it obvious that there is a difference between the signing and verifying a pleading (plaint or written statement) under Rules 14 and 15 of Order VI, or under Rule 1 of Order XXIX, and the presentation of that pleading to the court under Rule 1 of Order IV (plaint) and Rule 1 of Order VIII (written statement), CPC. The act of presenting a plaint to the court under Rule 1 of Order IV is called the institution of the suit,² and the act of presenting a written statement under Rule 1 of Order VIII constitutes the defence of the suit.³ These acts manifest the will of a litigant to pursue his claim or to defend the claim made against him, in a court of law. By presenting the plaint, a plaintiff sets the machinery of the court in motion for deciding upon his claim while the presentation of the written statement expresses the will of the defendant to defend that claim. The act of presentation of a plaint or a written statement can, therefore, be done only by the plaintiff and the defendant in person or by their recognized agents or by their duly appointed pleaders, in terms of Rule 1 of Order III.⁴ Rules 14 and 15 of Order VI, or Rule 1 of Order XXIX, which relates to signing and verifying the pleadings (plaint and written statement), cannot be referred to for the purpose of establishing the authority of a person to institute, or defend, the suit.

7. As the authority conferred by Rule 1 of Order XXIX, on the specified officers of the corporation to sign and verify any pleading on behalf of the corporation, does not include the authority to institute or defend the suit in their own names, a corporation (like PESCO in the present case) being a juristic person must sue or be sued in its own name. Therefore, the name of the corporation, not the name or designation of any of its officers or employees, is to be mentioned as a plaintiff or a defendant. The phrase "*service of summons/notice through its principal officer, so and so*" may be added with the name of the corporation, for service of summons/notice as per Rule 2 of Order XXIX, CPC.

² See also Section 26 of the CPC which says: "Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed."

³ G. M. Pfaff v. Sartaj Engineering Co. PLD 1970 Lah 184 (DB).

⁴ Nadella v. Yamanoori AIR 1957 AP 172 (FB) almost all important previous cases decided by different High Courts of the Sub-Continent were referred to and discussed in this case; See also Shair Ali v. Jagmohan Ram AIR 1931 All 333 (DB) as to filing of written statement.

Non-applicability of provisions of CPC relating to signing and verification of pleadings to memorandums of appeal and revision petitions

8. A memorandum of appeal can be signed, as per Rule 1 of Order XLI, by the appellant or his pleader; so can a revision petition be signed by the petitioner or his pleader as the revisional jurisdiction is a part of the general appellate jurisdiction of a superior court⁵ and the provisions of the CPC in regard to appeals are applicable *mutatis mutandis* to revision petitions.⁶ A memorandum of appeal or a revision petition can, therefore, be signed by a duly appointed pleader as per Rule 1 of Order XLI,⁷ and presented to the appellate or revisional court by him on behalf of the appellant or petitioner as per Rule 1 of Order III, CPC. Rules 14 and 15 of Order VI, as well as Rule 1 of Order XXIX, as to signing and verifying the pleadings (plaint and written statement) are, thus, not applicable to the memorandums of appeal and revision petitions.

Curing of any defect in the authority of a person to sign and verify a pleading, or a memorandum of appeal and revision petition, and to present the same to the court

9. Having examined the scope of the above-cited rules of procedure contained in the CPC, we must reiterate the principle, which is by now well settled, that 'the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights...Any system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent.'⁸ The courts, thus, always lean in favour of adjudicating the matters on merits rather than stifling the proceedings on procedural formalities. The rules of procedure are meant to facilitate the court proceedings for enforcing the rights of litigants, not to trap them in procedural technicalities for frustrating their rights. They are the tools to advance the cause of justice and cannot be used to cause the miscarriage of justice. The ultimate object of securing the ends of justice, therefore, outweighs the insistence on strict adherence to such rules. The same is the purpose of the rules of procedure discussed above. Any defect or omission in signing and verifying, or presenting, a

⁵ Shankar Ramchandra v. Krishnaji Dattatreya AIR 1970 SC 1.

⁶ Atta Muhammad v. Muhammad Bakhsh PLD 2004 Lah 300.

⁷ Saima v. Paramount Spinning Mills 2011 SCMR 1039.

⁸ Imtiaz Ahmad v. Ghulam Ali PLD 1963 SC 382 per Justice Kaikus. See also Manager, J&K State Property v. Khuda Yar PLD 1975 SC 678; Thal Engineering Industries v. Bank of Bahawalpur 1979 SCMR; Abdul Aziz v. Abdul Rahim PLD 1984 SC 164; Salima Begum v. Sardaran Bibi PLD 1995 SC 406; Mir Maza v. Azim PLD 1993 SC 332; Anwar Khan v. Riaz Ahmad PLD 2002 SC 491; Muhammad Bashir v. Province of Punjab 2003 SCMR 83.

pleading (plaint or written statement) or a memorandum of appeal or revision petition does not affect the merits of the case or the jurisdiction of the court and is therefore taken to be such an irregularity which can be cured at any stage of the proceedings.⁹ Likewise, any defect in the authority of a person to sign and verify a pleading filed in a suit by or against a corporation, or to institute or defend such a suit by presenting that pleading to the court, or in signing or filing of a memorandum of appeal or revision petition by a corporation, can also be cured at any stage of the proceedings.¹⁰

10. It is for this reason that Section 99, CPC provides *inter alia* that no decree is to be reversed nor is any case to be remanded in appeal on account of any error, defect or irregularity in any proceedings in the suit that has not affected the merits of the case or the jurisdiction of the court. Similarly, it is not every irregularity in the exercise of its jurisdiction by a lower court that calls for interference in revisional jurisdiction under Section 115(1)(c), CPC but only the material irregularity, and the material irregularity is that which affects the merits of the case or the jurisdiction of the court.¹¹

11. In the present case, we have noted that the power of attorney (*wakalat nama*) filed in the present petition is only for petitioner No. 5, PESCO, and not for other petitioners, i.e., the employees of the PESCO, SDO/AM, XEN/DM, etc. The present case relates to the ownership and possession of the suit property on which petitioner No.5, PESCO has its Complaint Centre. The employees of PESCO have no claim as to any right, title or interest in the suit property. They are, thus, neither necessary nor proper party in the case and have wrongly been impleaded. The misjoinder of parties is, however, such an error that does not affect the merits of the case or the jurisdiction of the court as provided in Section 99, CPC, and is a procedural error which can be cured by striking out the names of such parties under Rule 10 of Order I, CPC at any stage of the proceedings of the case, including the appellate or revisional stage.¹² We, therefore,

⁹ Ismail v. Razia Begum 1981 SCMR 687; Anwar Khan v. Riaz Ahmad PLD 2002 SC 491; Nadella v. Yamanoori AIR 1957 AP 172 (FB).

¹⁰ Basit Rice Mills v. Shaheen Insurance Company 2021 SCMR 1413; Rahat and Company v. Trading Corporation of Pakistan PLD 2020 SC 366; U.B.I. v. Naresh Kumar AIR 1997 SC 3; Musicales v. Secunda [1994] 2 All ER 737.

¹¹ Venkatagiri Ayyangar v. Hindu Religious Endowments Board PLD 1949 PC 26; Muhammad Swaleh v. M/s United Grain & Fodder Agencies PLD 1964 SC 97.

¹² Allah Ditta v. Muhammad Ali PLD 1972 SC 59 (5-MB); Ghulam Ahmad v. Akbar Hussain PLD 2002 SC 615; Central Govt. v. Suleman Khan PLD 1992 SC 590.

strike out the names of petitioners No.1 to 4¹³ not only from the present petition but also in the proceedings throughout (suit, appeal and revision), for correction of the record of the case.

12. As regards the dismissal of the revision petition by the impugned judgment, we find that the High Court has knocked out the petitioner, PESCO, without touching upon the merits of the case, on a procedural technicality of not filing the resolution of the Board of Directors of PESCO, authorizing any of its officers to file the revision petition and to appoint a pleader for this purpose, and that too without providing any opportunity to present such a resolution. It is pertinent to mention here that the petitioner, PESCO, has submitted in this Court a resolution of its Board of Directors, dated 10.12.2015, whereby the General Manager (Finance)/Finance Director and Addl. DG (Legal)/Director Legal have been authorized to institute and defend cases in courts on behalf of PESCO, and the present petition has been filed by a pleader (AOR) duly appointed by the Director Legal of PESCO. The High Court, if had any doubt about the authority of the pleader to file the revision petition, should have asked him to produce the resolution of the Board of Directors or Articles of Association, to show the authority of the officer appointing him as a pleader for PESCO to file the revision petition, and should have provided a reasonable opportunity for it. The impugned judgment passed without providing such an opportunity is not legally sustainable. The petition is, therefore, converted into an appeal and the same is allowed. The impugned judgment is set aside; the revision petition shall be deemed to be pending before the High Court, which shall be decided by the High Court on merits in accordance with law. The petitioner, PESCO, shall produce a copy of the said resolution of its Board of Directors before the High Court also, for placing the same on record of the revision petition.

Judge

Islamabad,
6th December, 2022.

Judge

Approved for reporting

¹³ Petitioner No. 4 is the repetition of the name of PESCO, wrongly sued through Chairman WAPDA, while as Petitioner No.5 PESCO is correctly impleaded through its Chief Executive for the service of notice as per Rule 2 of Order XXIX, CPC.

Sadaqat