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JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W.P.No.18686 of 2010

M/s. Aujla and Associates Vs. Addl. District Judge etc.

J U D G M E N T

Date of hearing	<u>30.04.2012</u>
Petitioner by.	Mr. Mushtaq Mehdi Akhtar, Advocate.
Respondent by.	Sh. Naveed Shahryar, Advocate

NASIR SAEED SHEIKH, J:The petitioner is a private limited company and through its Chief Executive Ghazanfar Iqbal Aujla instituted a suit on 13.12.2008 before the learned Civil Judge, Gujranwala for possession through exercise of right of pre-emption of the subject land purchased by respondent No. 3 through a registered sale deed dated 16.08.2008. It was contended in the plaint that through a resolution of the Board of Directors of the petitioner company dated 12.12.2008, the Chief Executive Ghazanfar Iqbal Aujla has been authorized to institute the suit. The Chief Executive further claimed in the plaint that the information of the sale transaction in question came to his knowledge on 12.12.2008 at 10:00 A.M. in the office of the company situated on 1st Floor Main Bazar, WAPDA Town, Gujranwala and he made a jumping demand and after performance of **Talb-e-Ishhad** by a written notice sent through registered postal service, the suit was ultimately instituted on 13.12.2008 before the learned Civil Judge. The respondent No. 3/defendant submitted written statement dated 12.03.2009 and raised a

number of preliminary as well as factual objections. One of the objections raised is that the suit has been instituted through an agent by the petitioner and after perusal of the file it transpired that the said agent/representative had no authority to make **Talb-e-Muwathibat** on behalf of the company and also the authority to perform **Talb-e-Ishhad**, therefore the suit instituted as such was not proceedable. The respondent No. 3 also moved an application dated 12.03.2009 under Order VII Rule 11 of CPC on the above-said ground for rejection of the plaint. It was thus, contended that the petitioner company was under an obligation to authorise its representative through a prior resolution to perform the necessary talbs and in the absence of any such documentary proof of prior authorization through a duly made resolution, the performance of two talbs even as claimed in the plaint were unauthorized and illegal. This application was resisted by the petitioner and it was claimed that the petitioner would produce the necessary evidence about the authorization when the issue is framed on that point by the Court and that this matter can only be resolved after recording of evidence and the provisions of Order VII Rule 11 of CPC could not be invoked by respondent No. 3 at this stage. The learned Civil Judge vide order dated 25.01.2010 dismissed the application moved by respondent No. 3 by holding that the objection raised can only be resolved after recording of evidence by the Court. The respondent No. 3 preferred a revision petition against the order dated 25.01.2010 which revision petition came up for hearing before the learned Additional District Judge and was allowed vide judgment dated 19.07.2010 and the plaint of the suit was rejected with costs. Through the instant writ petition the judgment dated 19.07.2010 of the learned Additional District Judge has been assailed. The writ

petition was admitted to regular hearing vide order dated 30.08.2010 by this Court. The respondent No. 3 has entered appearance. The arguments of the learned counsel for the parties have been heard and record annexed with the writ petition has been perused.

2. It is contended by the learned counsel for the petitioner that the petitioner is a private limited company and Ghazanfar Iqbal Aujla was its Chief Executive. The Company has memorandum of association as well as articles of association a copy of which has been placed on record of this case. It is contended by the learned counsel for the petitioner that as per Article 33 of the Articles of Association of the petitioner company the whole business and affairs of the company are managed and controlled by the Chief Executive subject to the control and supervision of Board of Directors. It is further contended by the learned counsel for the petitioner that on the basis of a disputed question having been raised by respondent No. 3 through an application under Order VII Rule 11 of CPC, the plaint could not have been rejected by the learned Additional District Judge as the objection raised qua assigning the authority to the Chief Executive to make the necessary talbs was to be settled and decided after recording of the evidence. Learned counsel contends that the provisions of Order VII Rule 11 of CPC were not attracted to the facts and circumstances of the case. It is further contended that for the purpose of instituting the suit the necessary resolution dated 12.12.2008 was produced by the petitioner company alongwith the plaint and that the learned Additional District Judge acted illegally in accepting the revision petition against the order dated 25.01.2010 of the learned Civil Judge who dismissed the application under Order VII Rule 11 of CPC by holding that the objection raised by respondent No. 3

could only be decided after framing the issues and recording the evidence.

3. Learned counsel for respondent No. 3 has contended that the authority of the Chief Executive to institute the suit was based upon the resolution dated 12.12.2008 and this resolution which has been placed on the record did not authorize the Chief Executive to perform the necessary talbs. Learned counsel contends that there is no material produced by the petitioner at the time of institution of the suit establishing a prior authorization to the Chief Executive to perform two talbs which are essential for the exercise of right of pre-emption, therefore, the learned Additional District Judge has rightly rejected the plaint by accepting the civil revision instituted by respondent No. 3 against the order dated 25.01.2010. The learned counsel relied upon the judgments reported as **Nawab Ali through General Attorney versus Javaid Iqbal Nabi and others** (PLD 2009 Lahore 49) and **Siraj-ud-Din Paracha and 12 others versus Mehboob Elahi and 3 others** (PLD 1997 Karachi 276) in support of his contentions.

4. I have considered the arguments of the learned counsel for the parties and have perused the record.

5. The respondent No. 3 has raised objection in the written statement about the absence of the authority of the Chief Executive of the petitioner to make the necessary talbs. The learned Civil Judge upon an application moved by respondent No. 3 for rejection of the plaint on the ground that the proof of the authority was not placed alongwith the plaint held that this is a question which can be resolved only after allowing the petitioner to produce its evidence. The law of pleadings in civil suits is incorporated in order VI Rule 2 of CPC which reads as follows:-

*“Pleading to state material facts and **not evidence**.—Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary, be divided into paragraphs, numbers consecutively. Dates, sums and numbers shall be expressed in figures”.*

Order VI Rule 2 of the CPC has further been interpreted by the superior Courts by holding that it is not necessary for a litigant to plead the nature of evidence by which the plea raised in the pleading is to be proved which exercise of production of evidence is to be undertaken at the proper stage in accordance with law. The reliance in this respect is placed upon **Mian Pir Muhammad and another versus Faqir Muhammad through L.Rs. and others** (PLD 2007 S.C. 302), **Abdul Qayyum versus Muhammad Rafique** (2001 SCMR 1651) and **Mst. Munira Rafique Anwar through Legal Representatives versus Khalid Javed Anwar and others** (PLD 2005 Lahore 662). For rejection of the plaint the contents of the plaint have to be accepted as true and it is only after undertaking that process, the plaint can be rejected if no cause of action is disclosed. The Chief Executive of the petitioner company has specifically alleged the performance of the two talbs by him in the plaint. The objection raised that the Chief Executive was not authorized to make the necessary talbs was raised in the written statement and then through an application under Order VII Rule 11 of CPC. The learned Civil Judge/trial Court rejected this application by making the following observations in the order dated 25.01.2010:-

“Instant suit is with respect to possession through pre-emption. Copy of the resolution dated 12.12.2008 is annexed to the plaint wherein the

authority to institute the suit and to do all acts and deeds for the prosecution of the suit has been provided to the Chief Executive who has instituted and has been prosecuting this suit. Whether this resolution was prior to making talbs and whether the Articles of association and the Memorandum provide the alleged authority the same shall be proved through recording of evidence so prima facie no ground of rejection of plaint is made out thus instant petition fails and is hereby dismissed. Now to come up for arguments over petition for grant of temporary injunction for 08.02.2010”.

The petitioner company cannot be non-suited simply on the ground that at the time of institution of the suit the authority to make the necessary talbs has not been placed on the record as this was a fact to be proved through production of evidence at the proper stage. The learned Additional District Judge acted illegally in exercising his revisional jurisdiction at an early stage to reject the plaint of the petitioner on the ground that the Chief Executive Ghazanfar Iqbal Aujla had no authority to fulfil the requirements of Talb-e-Muwathibat. This observation of the learned Additional District Judge in the impugned judgment dated 19.07.2010 is based upon surmises and conjectures which process cannot be approved to reject the plaint in a suit. The case law relied upon by the learned counsel for respondent No. 3 is distinguishable. The judgment reported as **Nawab Ali through General Attorney versus Javaid Iqwal Nabi and others** (PLD 2009 Lahore 49) was a decision after final adjudication of the matter in a pre-emption suit when the authorization for making talbs was not produced during the trial on behalf of the pre-emptor. This authority is not relevant for rejection of the plaint. The judgment reported as **Sirajuddin Paracha and 12 others versus Mhboob Elahi and 3 others** (PLD 1997

Karachi 276) relied upon by the learned counsel for respondent No. 3 is regarding the rejection of the plaint on the ground of absence of a resolution to institute the suit in the name of a company. The facts of the said case are also distinguishable as in the instant case the authority to institute the suit by the Chief Executive of the petitioner company has been placed on the record. The learned Civil Judge, therefore, in this matter lawfully dismissed the application under Order VII Rule 11 of the CPC moved by respondent No. 3 for rejection of the plaint. The learned Additional District Judge was not justified to set-aside the lawful order passed by the learned Civil Judge dated 25.01.2010.

6. In view of the above, the judgment dated 19.07.2010 passed by the learned Additional District Judge, Gujranwala is not sustainable in the eye of law and is set-aside and the order of the learned Civil Judge dated 25.01.2010 is restored. The parties are directed to appear before the learned Civil Judge, Gujranwala on 21.05.2010 for further proceedings. The writ petition is **allowed** with no orders as to costs.

**(NASIR SAEED SHEIKH)
JUDGE.**

Approved for Reporting