

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE QAZI FAIZ ISA  
MR. JUSTICE SAJJAD ALI SHAH

**CIVIL APPEAL NO. 45—L OF 2018**

(Against the Judgement dated 10.04.2018  
passed by the Lahore High Court in Insurance  
Appeal No. 18/2017)

Rana Basit Rice Mills Private Limited.....Appellant

**VERSUS**

Shaheen Insurance Company

and another .....Respondents

For the Petitioner(s):           Mr. Liaqat Ali Butt, ASC

For the Respondent(s)       Ch. Amjad Pervaiz, ASC

Date of Hearing:                 12.12.2019

**JUDGEMENT**

**MUSHIR ALAM, J.—** The Appellant a limited liability company has assailed the judgment of Lahore High Court dated 10.04.2018.

2. Facts in brief are that the appellant Rana Basit Rice Mills Private Limited, through its Chief Executive, obtained from the Respondent Insurance Company a fire general policy to the tune of Rs. 150,002,000/- covering its stock of rice, paddy Machinery and building etc. as provided for in the Insurance Policy and detailed in paragraph 2 of the Insurance Petition against comprehensive insurable risk for a period 09.09.2011 to 09.08.2012 against the premium of Rs. 370,000/-

3. On fateful night between 13.06.12 and 14.06.12, a gust thunder storm caused losses to the appellants insurable interest covered under the insurance policy. Loss and damaged to the insurable interests were fully covered by the Insurance Policy. Appellant as required under the law and policy lodged the claim to the tune of Rupees 9,851,760/=.

4. The Respondent-Insurer to assess and evaluate the loss, appointed a surveyor who, after all requisite formalities, assessed and verified the loss to the tune of Rs. 49,57,083/-. The assessed claim was not paid within 90 days as mandated under section 118 of the Insurance

Ordinance, 2000. Consequently, the Appellant invoked the jurisdiction of the Insurance Tribunal Punjab, Lahore on 06.12.12 and claimed loss of Rs. 98,51,760/- from the Responder-Insurer.

5. Insurance claim was contested by the Respondent-Insurer. A preliminary objection as to maintainability of Insurance Petition was raised on the ground *inter alia* that the petition was not filed by the authorized person as no resolution of the Board of Director was available on record. Respondent filed an application under Order VII Rule 11 CPC<sup>1</sup> seeking rejection of Insurance Petition.

6. The Appellant, to meet the challenge posed by the Respondent, filed an application under Order VI Rule 17 read with Order VII Rule 18 and section 151 C.P.C, seeking amendment of the Petition to incorporate such fact and permission to place on record copy of Board Resolution authorizing the deponent of the Insurance Petition to file and contest the Insurance Petition for and on behalf of the Appellant.

7. Learned Insurance Tribunal adjudged both the applications collectively. Application filed by the Respondent Insurance company for the Rejection of the Insurance Petition did not found favour and the application for the amendment of Insurance petition and to place the Board Resolution on record, was allowed subject to cost, vide order dated 10.02.2014 in the following terms:

*"The perusal of the record reveals that the applicant is one of the owners of the firm which is a private one. He has brought on the record the resolution whereby the other partners have authorized him to pursue and file the case. Thus, it is an admitted fact that the case has been filed by one of the owners of the applicant firm and the error in question, is an irregularity. The applicant is an entity, it can sue and can be sued, therefore, the amendment sought for would neither change the complexion of the suit nor shall prejudice any party. The application for the insurance claim cannot be out-rightly dismissed on this ground since the applicant has filed this application to make the necessary rectification in this regard through the amendment sought for, in this application, therefore, in the interest of justice, this application for the amendment is accordingly accepted subject to payment of cost of Rs. 4000/-. This order be annexed with the main file.*

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<sup>1</sup> Page 59 of the Paper Book

8. No exception to the order passed by Insurance Tribunal as reproduced above, was taken by the Respondent Insurance company. The Petition progressed on its merits and the issues were framed on 11.09.14. Rana Abdul Basit, the Chief Executive of the Appellant Company appeared as **AW-1**, he produced the Board Resolution **Ex-A1**, beside claim documents, surveyor report assessing loss as exhibits No. Ex A-2 to Ex A-4. Examined Rana Muhammad Saleem as **AW-2** and Malik Muhammad Saleem as **AW-3**.
9. Respondent Insurer only examined Ahsan ul Haq, Assistant General Manager Claims as **RW-1**. Repeated opportunities were availed to produce further evidence, ultimately side was closed on 26.6.2016 but, no other witness in rebuttal was examined. Instead of making final arguments after availing more than five opportunities for final arguments, the Respondents then filed another application under Order XIV, Rule 5 CPC seeking to frame additional issue as to maintainability of Insurance Petition. The learned Tribunal dismissed the application vide order dated 2.11.2016 and fixed the case for final arguments.
10. Learned Insurance Tribunal, on examination of evidence produced allowed the petition filed by the current Applicant vide order dated 22.11.2016 and as against the claim of Rupees 9,851,760/= granted the insurance claim only to the extent of Rs. 49,57,083/- as assessed by the Insurance surveyor along with liquidated damages under s.118 of the Insurance Ordinance. The liquidated damages were to be paid for the during the period for which the failure to make payment continues, from the date of occurrence till the realization of the claim, and was to be calculated at monthly rests at the rate of 5% higher than the prevailing base rate. The Respondents were directed to bear the cost of the case and to make the payment of the insurance claim and liquidated damages within a period of 30 days.
11. Respondent-Insurer filed an appeal before the Lahore High Court, Lahore under S.124(2) of the Insurance Ordinance, 2000 essentially on the grounds *inter-alia* that the current Appellant could not have filed the insurance petition since a board resolution authorizing the attorney was admittedly not present on the date of filing of the

Insurance Petition. Learned Bench of the High Court swayed by the fact that no board resolution was filed when the Insurance Petition was filed by Rana Basit, the Chief Executive of the appellant Rice Mills, accepted the appeal vide order dated 10.04.18. Therefore, the current Appellants are before us under Article 185(2)(d) of the Constitution of Pakistan, 1973.

12. Arguments heard. Record perused with the assistance of learned counsels.
13. The pivotal issue before us that requires careful consideration is legal repercussions of where no Board Resolution is presented authorizing the deponent Rana Abdul Basit, the Chief Executive of the Appellant Company to file and contest the Insurance Petition. First case from our jurisdiction that considered identical issue, as is **Muhammad Siddiq Muhammad Umar and another v. Australasia Bank Ltd.**<sup>2</sup> The issue before this Court was '*whether the principal special officer/general attorney of the bank was competent to file the suit on behalf of the Plaintiff bank?*'. This Court after taking stock of the facts on record held that:

*"It was apparent from the pleadings that the suit was being instituted by a constituted attorney of a public limited company. He could only do so if he was duly authorized 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 had been produced which showed that Muhammad Khan had been 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, see whether the Directors were competent to delegate such power. It was not necessary to see whether the Directors had in fact approved of the giving of such power-of-attorney to the person who presented the plaint. This was, however, proved by the production of the resolution of the Board of Directors as a matter of abundant caution. The additional evidence was to that extent, therefore, in our opinion, rightly*

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<sup>2</sup> PLD 1966 SC 685

*admitted. This was all that was required. It was not necessary to call the Managing Director as the Court calling for the additional evidence itself realized subsequently. Even the production of the resolution could have been dispensed with, as it was not strictly necessary"*

*"Two points, of fundamental importance, require attention. Firstly, the Supreme Court held that an examination of the Articles of Association was necessary in order to ascertain whether the directors were empowered to delegate the power of instituting legal proceedings to someone else. Secondly, and perhaps even more importantly, the Supreme Court observed that it was not necessary to see whether, in fact, the board had actually done so. The production of the resolution passed in this regard was considered to have been only 'a matter of abundant caution', and it was expressly noted that it could have been dispensed with 'as it was not strictly necessary'."<sup>3</sup>*

(underlined for emphasis)

14. The issue of a power of attorney not validly constituted due to the lack of board resolution was also considered by this Court in **Central Bank of India Ltd. v. Taj ud Din Abdur Rauf**<sup>4</sup> wherein it was ruled that there is no specific requirement of law to prove a resolution passed by the Board of Directors.
15. The rationale provided in **Central Bank of India**<sup>5</sup> and **Australasia Bank Ltd**<sup>6</sup> was aptly summarized in the Sindh High Court decision of **Pak Turk v. Turkish Airlines Inc.**<sup>7</sup>, which received the nod of approval by this Court in the case of **Rahat and Company, through Syed Naveed Hussain Shah v. Trading Corporation of Pakistan Statutory Corporation**,<sup>8</sup> as:

*"Where articles of the Company confer power on a particular person or director to institute legal action and that person or director institutes the suit there can be no additional requirement of a resolution of the Board of directors for the simple reason that such*

<sup>3</sup> Ibid at 695

<sup>4</sup> 1992 SCMR 846

<sup>5</sup> 1992 SCMR 846

<sup>6</sup> PLD1966 SC 685

<sup>7</sup> 2015 CLC 1

<sup>8</sup> 2020 CLD 872= PLD 2020 SC 366

*power is to be exercisable by a real person. However, where the power to institute the suit is conferred upon an artificial person or body e.g. the Board of Directors or a Committee ... the requirement to produce and prove the resolution passed by that artificial person or body cannot be dispensed with since such a person can only take a decision as a body through a resolution passed in a duly convened meeting and not otherwise. The above principles would also become applicable in the case of delegation or sub-delegation of powers i.e. in case the delegator is a real person (when articles confer the powers to institute legal action on a real person) all that would be required would be to scrutinize the articles and then the power of attorney to see whether it has been properly executed and confers the power so claimed. There would be no requirement to produce or prove the resolution from the Board of Directors in this regard."*

16. Furthermore, such defect is not fatal to the institution to the suit by the attorney as it can be cured with ease under the principle provided by the English Court of Appeal decision in **Presentaciones Musicales SA v. Secunda and another**<sup>9</sup>, and accepted by this Court in **Rahat and Company**<sup>10</sup> which stated that as:

*"It is well recognized law that where a solicitor starts proceedings in the name of a plaintiff - be it a company or an individual - without authority, the plaintiff may ratify the act of the solicitor and adopt the proceedings. In that event, in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification the defect in the proceedings as originally constituted is cured: see Danish Mercantile co Ltd. v Beaumont,<sup>11</sup> since approved by the House of Lords. The reason is that by English law ratification relates back to the unauthorised act of the agent which is ratified: if the proceedings are English proceedings, the ratification which cures the original defect, which was a defect under English law, must be a ratification which is valid under English law."*

17. Another recent decision by this court in a **Al-Noor Sugar Mills Ltd. v. Federation of Pakistan and others**<sup>12</sup> has also upheld this rule where the Respondent raised the objection that a board resolution

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<sup>9</sup> [1994] 2 All ER 737

<sup>10</sup> PLD 2020 SC 366

<sup>11</sup> [1951] 1 All ER 925, [1951] Ch 680

<sup>12</sup> 2018 SCMR 1792

was not as filed when the appeal was filed but presented at a subsequent date. This Court dismissed the objection by reproducing the decisions stated above.

18. In light of the aforementioned debate, the lack of a board resolution authorizing the attorney does not invalidate the institution of the suit so long as the Articles of Association confer upon the person/persons to institute the suit in the company's behalf. Even otherwise such a defect can always be cured by placing on record a Board Resolution issued even at a subsequent date, which would put the matter to rest. Respondent did not challenge the finding of the Insurance Tribunal before the High Court on merit of the Insurance claim as determined by the learned Tribunal, nor before us. Respondent-insurer throughout laid emphasis on maintainability of the Insurance Petition filed without Board Resolution, which as noted above, was allowed to be placed on record. Respondent was not able to show any prejudice was caused to the Respondent. The claim allowed by the Insurance Tribunal was based on the loss determined by the surveyor of the Respondents. Under the given facts and circumstances of the case, the appeal is allowed. Impugned judgement dated 11.04.2018 passed by the Lahore High Court is set aside and that of the learned Insurance Tribunal dated 22.11.2016 is restored.

Judge

Judge

Judge

ANNOUNCED IN Chambers

At ISLAMABAD on 24.06.2021 Judge

*"Approved for reporting"*