

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No. 1625 of 2016**

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**DATE:** **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

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1. For orders on maintainability of the suit in view of Court's order dt. 14.05.2018
2. For hearing of CMA No.5240/17
3. For hearing of CMA No.10471/16
4. For hearing of CMA No.7134/18

**15.08.2018.**

Mr. Mueen Qamar, Advocate for the Plaintiff.

Mr. Muhammad Nouman Jamali, Advocate for Defendants No.1, 3, 7, 8, 10, 11, 15, 23, 24 and 25.

Mr. Bhajandas Tejwani, Advocate for Defendant No.28.

Mr. Muhammad Aurangzaib, Advocate for Defendants No.4, 9, 17, 20, 21, 30 and 31.

Mr. Farhan Khaliq Anwer, Advocate for Def. No.5 and 22.

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1. Today the matter is fixed for maintainability of the suit in view of the observations made in the order dated 14.05.2018.

Mr. Mueen Qamar, learned counsel representing the Plaintiff, has argued that firstly, in compliance of Order XXX, Rule 1 of C.P.C., this suit was filed along with extract issued by the Registrar of the Firms showing the names of all the three partners; secondly, he has placed on record a Resolution dated 11.07.2016 along with the registered deed of partnership under his Statement today, which is taken on record; copy whereof has been provided to the learned counsel for the Defendants, to show that when the present suit was instituted, other partners did authorize one of the partners, namely, Suresh Kumar son of Ram Chand to file present proceeding. He next contended that in terms of Section 19 of the Partnership Act, 1932, the partner has implied authority to do certain acts

unless excluded and the exclusion is mentioned in Section 19 itself, which is also regulated by Section 22 of the Partnership Act, 1932. He has relied upon two judgments reported in P L D 1988 Supreme Court page-39 [*Messrs Combined Enterprises v. Water and Power Development Authority, Lahore*] and 2004 M L D page-1010 [*Zubair Ahmad and another v. Shahid Mirza and others*].

Mr. Muhammad Nouman Jamali, Advocate for the Defendants, has contended that after submission of Statement today, in which the names of all the partners are disclosed, he does not want to argue on the point of maintainability.

Mr. Bahajandas Tejwani, Senior Advocate, representing Defendant No.28, has argued that by merely producing the resolution today under the Statement of Counsel, cannot be considered a compliance of Rule 1 of Order XXX of C.P.C., which itself is mandatory and cannot be cured at this stage. He has further argued that the reported decisions are distinguishable as the same have not held the above provisions of C.P.C. to be not mandatory. Other two learned counsel M/s. Muhammad Aurangzaib and Farhan Khaliq Anwer, representing the various Defendants, have adopted the arguments of Mr. Bahajandas Tejwani, Advocate, with an addition that the property in question was even unauthorizedly transacted with the Plaintiff by Defendant No.1.

Arguments heard and record perused.

I have carefully gone through the judgment of the Honourable Supreme Court with the assistance of learned counsel for the Plaintiff. Honourable Apex Court has clearly held that there is no requirement for a partner to have an authority from other partners before initiating any action

by way of a suit. Same principle was followed by the learned Lahore High Court in the subsequent case (*ibid*).

The close examination of the provisions itself shows that no adverse consequence is mentioned in the provision of Order XXX, Rule 1 of C.P.C., if the compliance is not made. Similarly, no judgment has been cited today by the learned counsel for the Defendants to fortify the arguments that the Courts have interpreted this provision as mandatory with an adverse consequence. One of the exclusions mentioned under Section 19 of the Partnership Act, 1932, *inter alia*, in clauses (c) and (d) refers to relinquishing / compromise of a claim and / or withdrawal of suit or proceeding filed on behalf of the Firm by a partner, that is, a partner can neither relinquish a claim of the firm nor withdraw a suit or proceeding without the authorization or endorsement of the other partners of a Firm, but it is nowhere mentioned that the proceedings can also not be instituted (underlined to add emphasis) by one of the partners. If the arguments of the Defendants' side is accepted and for the arguments sake, this suit is dismissed or is held to be not maintainable on account of non-compliance (*as alleged*) of the provisions of Order XXX, Rule 1 of C.P.C., then it means that the Court is reading in the statute something which is not expressly provided. All the more, this strict interpretation cannot be laid down, because it is an established rule that such kind of consequence is to be expressly mentioned. In this context, the submission of learned counsel for the Plaintiff has substance that Court in such a situation cannot fill up the omission, intentionally omitted by the legislature. Principle of '*casus omissus*' is applicable here. Taking guideline from the aforementioned judgment of the Honourable Supreme Court, I am of the considered view that present proceeding as instituted is maintainable, which is further approved by all the partners as mentioned in

the extract of Resolution dated 11.07.2016 and the disclosure of all the names of the partners of the Plaintiff-Firm were there when the suit was filed as it was accompanied by the Certificate of the Registrar of Firms, which is fortified further by filing a Statement today.

2&3. Deferred.

4. This is an application filed by Defendant No.30, who is a senior citizen. Copy of Defendant's CNIC is appended with instant application, which shows that the date of birth of Defendant No.30, Habib G. Tharia, is 11.11.1946, and, therefore, he is around 73 years of age and benefit under Circular No.GAZ/XII.Z.14(HC)(I), dated 16<sup>th</sup> October, 2012, issued by the Honourable Chief Justice, is applicable to the present Defendant. Accordingly, instant application [C.M.A.No.7134 of 2018] is granted. Office is directed to change the file cover of instant matter to a red one and treat the same as a fast track cause.

Learned counsel for the Defendants have urged urgency in the matter that the stay is operating against them, therefore, by consent, Office is directed to fix this matter on **30.08.2018**. Interim orders passed earlier to continue till the next date of hearing.

Riaz/P.S\*

**Judge**