ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Revision No. 73 of 2022
Mst. Attiya Tina Ashraf
Versus
Saleem Mehmood

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.12.2022	Kh. M. Farooq Mehta, Mr. Mudassir Khalid Abbasi & Malik Awais Haider, Advocates for petitioner. Mr. Arif Ch & Mr. Shafqat Ullah Waris, Advocates for respondents. Mian Zain Qureshi, State Counsel. Mr. Khalid Mehmood, ASI.

ARBAB MUHAMMAD TAHIR J: Through the instant revision petition in terms of Section 439 read with Section 561-A of the Code of Criminal Procedure, 1898, petitioner namely *Mst. Attiya Tina Ashraf* impugns order dated 07.09.2022, passed by the learned Addl. Sessions Judge, Islamabad-West, whereby in '**complaint**' under section 3 and 4 of the Illegal Dispossession Act, 2005 ('**Act of 2005**'), filed by the respondent No.1 namely *Saleem Mehmood,* application under Section 540 Cr.P.C, filed by the petitioner for summoning of the Director/Consular Section, Ministry of Foreign Affairs was rejected in following terms:-

> "Record transpires that the present private complaint under Illegal Dispossession Act was filed on 20.05.2020, by Saleem Mehmood, through his brother/attorney Naseem Mehmood. Admittedly, Saleem Mehmood is living abroad and the attorney Naseem Mehmood is his real brother. The same objections were raised by accused side regarding validity of the power of attorney but the order dated 15.01.2022, is clearly reflecting that this Court observed that the power of attorney is still intact. The said order dated 15.01.2022, was never assailed. The same objection is now raised when the parties were directed to produce evidence. Record further reveals that the referred attorney Naseem Mehmood filed revision petitions etc., before the Hon'ble High Court, where the

> matter was contested and no such objection was ever entertained by the Hon'ble High Court. it is also to clearly mentioned that for which purpose the said Director is required to appear as witness when the same can be proved through documents. Mere request made by the accused to said Director can be brought on record through the relevant documents and there is no need to summon the said witness. The application in hand is rejected."

2- The subject matter of the case is 'House No. 9, Street No. 87, Sector G-6/3 Islamabad'. In the complaint under the Act of 2005 filed by the respondent No. 1, initially application under section 7 of the Act of 2005, filed by the respondent No. 1 was dismissed vide order dated 23.02.2022. The respondent No.1 assailed the said order through **Crl. Revision No. 27/2022** wherein the matter was remanded to the learned trial court for decision afresh. In-post remand proceedings, the application was allowed. This time, the petitioner assailed the second order through **Crl. Revision No.75 of 2022**, since decided vide order of even date in following terms:-

> "14- In view of above, the impugned order is not legally sustainable. It is accordingly set-aside and resultantly application under section 7 of the Act of 2005, filed by the respondent No.1 is dismissed. However, it is made clear that the observations made hereinabove shall have no impact upon merits of the case, to be decided on the basis of evidence of the parties. The complaint under the Act of 2005 filed by respondent No.1 pertains to the year 2020, though the charge has been framed but as apprised, no material progress in the case has since been made, therefore, the learned Trial Court is directed to make every endeavor to decide the main case at the earliest by keep it on fast track preferably within a period of one month from the receipt of this Order. It is expected that the learned counsel for the parties shall extend full cooperation for achieving the task and to give an end to endless litigation between the ex-spouses.
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> 15- The instant revision is **allowed** in above terms with no orders as to costs."

3. Heard, record perused.

4. The petitioner is questioning the authority of the respondent namely *Saleem Mehmood* as General Attorney of his real brother *Naseem Mehmood*. As per the stance of the petitioner, the Principal has since revoked the Power of Attorney in favour of respondent and has placed on record a document through **C.M No. 546/2022** while as per the stance of the respondent, the Principal has authenticated the document through Affidavit dated 04.11.2022, made part of record through **CM No. 531/2022** in Crl. Revision 75/2022.

5. As revels through the impugned order, the reason prevailed with the trial Court had been, inter alia, to the effect that it had already rendered decision about the validity of the Power Of Attorney vide order dated 15.01.2022 which was never assailed by the petitioner. The bare perusal of the order dated 15.01.2022 indicates that it was not the determination of the question at all, nor it can be termed so. Suffice it to say, that the decision upon the issue of General Power of Attorney is yet to be made.

6. It is settled principle that a party who asserts a fact has to prove the same by producing evidence while the process of Court cannot be used as a device to create evidence or to counter stance of the other side. It is the petitioner who is objecting upon the General Power of Attorney of the respondent who, on the other hand, is vigorously refuting the same and also has taken the stance that the Principal has testified the execution of General Power of Attorney in favour of the respondent through an affidavit. In such state of affairs, proper course would be to submit their respective versions before the learned trial Court on the aspect who shall decide the same afresh on its own merits without being influenced by its earlier order dated 15.01.2022.

7. It is necessary to mention that vide order of even date passed in the connected Crl. Revision No. 75/2022, the learned trial Court has been directed to decide the case within a period of one month from the receipt of the order therefore, instead to pass orders in piecemeal and to

decide the matter once for all, the learned trial Court shall decide the issue of validity of the General Power of Attorney or otherwise, along with the main case within the specified period. However, there exist no justification to upset the order dated 07.09.2022, which is accordingly upheld.

8. The instant revision petition is **disposed of** in the above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court_____12.2022

JUDGE

//Kamran//*