JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.305 of 2017
Ovex Technologies (Pvt.) Limited
Versus
PCM PK (Private) Limited and others

Date of Hearing:	**22.09.2017**
Petitioner by:	**Syed Ahmad Hassan Shah, Advocate,**
Respondents by:	**Mr. Khurram M. Hashmi, Advocate for respondent No.1.**

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Ovex Technologies (Private) Limited, impugns the order dated 29.07.2017, passed by the Court of the learned Civil Judge, Islamabad, whereby the petitioner's application under Order XVII, Rule 3 read with Order III, Rules 1 and 2, Order VI, Rules 14, 15 and 16, Order XXIX, Rule 1 read with Section 151 of the Code of the Civil Procedure, 1908 ("C.P.C.") was dismissed. In the said application, the petitioner had raised objections to the authority given by respondents/defendants No.1 to 5 to defend a civil suit instituted by the petitioner, and/or to file application.

2. The record shows that on 01.07.2014, a contract for services was executed between the petitioner and respondent No.2 (En Pointe Technologies Sales). This contract was continued in effect for a period of three years (i.e. until 30.06.2017), unless terminated earlier in accordance with the provisions of the said agreement. On 31.05.2017, respondent No.2 terminated the said agreement. Respondent No.2 in its letter dated 31.05.2017, alleged breached of the contract on the petitioner's part.

3. On 03.06.2017, the petitioner filed a suit for declaration, temporary and permanent injunction against respondent No.2 and six others before the Court of the learned Civil Judge, Islamabad. In the said suit, the petitioner prayed for *inter alia* a mandatory injunction requiring defendants No.2 to 5 in the said suit to continue the performance under the said agreement upto 30.06.2018 or pay US $64 million as compensation or damages to

the petitioner. Vide ad-interim order dated 03.06.2017, the learned civil Court suspended the operation of the said letter dated 31.05.2017. On 15.06.2017, memorandum of appearance was submitted by the learned counsel for defendants No.1 to 5. Apparently, on the said date, learned counsel for defendants No.1 to 5 raised objections to the territorial jurisdiction of the learned civil Court. On 18.07.2017, learned counsel for defendants No.1 to 5 submitted a power of attorney along with an application under Section 4 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, as well as an application for the vacation of the injunction under Order XXXIX, Rule 4 C.P.C. On 25.07.2017, learned counsel for defendants No.1 to 5 submitted the original powers of attorney of the said defendants. On the said date, the petitioner filed the application under Order XVII, Rule 3 etc of the C.P.C. On 26.07.2017, defendants No.1 to 5 submitted a reply to the said application. On 28.07.2017, arguments on the petitioner's application under Order XXVII, Rule 3 C.P.C. etc. were heard by the learned civil Court. On 29.07.2017, the learned civil Court dismissed the petitioner's application under Order XVII, Rule 3 etc of C.P.C. The said order dated 29.07.2017 has been impugned by the petitioner in the instant civil revision petition.

4. Learned counsel for the petitioner submitted that respondents No.2 and 3 are companies registered under the laws of the United States of America; that respondent No.4 is working for respondents No.1 to 3; that respondent No.5 is respondent No.3's president; that the *Vakalatnama* for respondents No.1 to 5 was signed by Mr. Ammad Manzur, who claims to have been authorized by a resolution dated 07.02.2017, passed by the Board of Directors of respondent No.1, and a power of attorney dated 26.06.2017 allegedly signed by respondents No.4 and 5 for themselves as well as on behalf of respondents No.2 and 3; that the said board resolution and the power of attorney were misconceived, defective, without lawful authority, and had not been authenticated, attested, and notarized in accordance with the law; that the said respondents

could not be permitted to defend the suit without proper authority; that despite sufficient time having been granted by the Court, the said respondents did not file proper authorizations in favour of Mr. Ammad Manzur to represent them in the civil suit; and that since the Board Resolution and powers of attorney have not been executed in accordance with the law, Mr. Ammad Manzur could not be considered as respondents No.1 to 5's agent with the authority to engage counsel and defend the said civil suit and/or to file applications. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned order dated 29.07.2017, to be set aside.

5. On the other hand, learned counsel for respondents No.1 to 5 submitted that the petitioner had filed the application under Order XVII, Rule 3 C.P.C. etc. only to protract and delay the proceedings in the civil suit; that the said application was frivolous and vexatious and filed with a nefarious design to perpetuate the operation of the ad-interim injunctive relief granted by the learned civil Court; that it is well settled that under the provisions of the Specific Relief Act, 1877, the services agreement between the petitioner and respondent No.2 have not been specifically enforced or performed; that under Section 56 of the said Act, no injunction can be granted with respect to such a contract; that the said contract contained an arbitration clause in accordance with which the disputes between the contractual parties were to be resolved; and that the suit instituted by the petitioner was liable to be stayed under the provisions of Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011.

6. Furthermore, learned counsel for respondents No.1 to 5 submitted that the original Board Resolution of respondent No.1 as well as the duly notarized and attested powers of attorney of respondents No.2 and 3 etc. have already been brought on the record of the learned trial Court; that the objections raised by the learned counsel for the petitioner to the said documents are hyper technical; that even if the said documents are not stamped, the same, at best is curable defect; that since the

powers of attorney in question are not with respect to any immoveable property, the same do not warrant registration. Learned counsel for respondents No.1 to 5 prayed for the civil revision petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant civil revision have been set out in sufficient detail in Paragraphs No.2 to 3 above, the same need not be recapitulated.

8. The essential dispute between the contesting parties is whether the Board Resolution and the powers of attorney authorizing Mr. Ammad Manzur to engage counsel and to defend the proceedings before the learned trial Court have been executed in accordance with the law.

9. Before the learned trial Court was filed a copy of resolution dated 07.02.2017 of the Board of Directors of respondent No.1 appointing Mr. Ammad Manzur, as respondent No.1's First Company Secretary authorizing him to *inter alia* institute and defend legal proceedings and to engage counsel. This resolution was signed and stamped by two Directors of respondent No.1. Respondents No.2 to 5 have executed a power of attorney dated 26.06.2017 nominating, constituting, and appointing Mr. Ammad Manzur, to defend on behalf of the said respondents the suit instituted by the petitioner. Mr. Ammad Manzur, has also been authorized to sign and verify pleadings etc. Mr. Ammad Manzur has also been authorized to engage counsel on behalf of the said respondents. Perusal of the said power of attorney dated 26.06.2017 shows that through respondent No.2's board resolution dated 26.06.2017, Mr. Simon Abuyounes was authorized to execute the said power of attorney. Similarly, through respondent No.3's board resolution dated 26.06.2017, Mr. Jay Miley was authorized to execute the said power of attorney. The said power of attorney has been signed by Mr. Simon Abuyounes and Mr. Jay Miley twice, once on their own behalf and once on behalf of respondents No.2 and 3 respectively. The board resolutions of respondents No.2 and 3

authorizing Mr. Simon Abuyounes and Mr. Jay Miley respectively to do all acts necessary with respect to the suit instituted by the petitioner were also brought on record before the learned trial Court. All these documents have been notarized by a Notary Public in the State of California, U.S.A. Subsequently, these documents were also attested by the first Secretary of the Embassy of Pakistan in Washington D.C. Learned counsel for respondents No.1 and 5 submitted that since the original authorization documents were all on the record of the learned trial Court, and after examining the same, the learned trial Court dismissed the petitioner's said application, the objection raised by the learned counsel for the petitioner on the said documents on the ground that they had not been stamped in accordance with the requirements of the Stamp Act, in my view, is a technical objection, because the said defect could always be cured. The mere fact that the said documents had not been stamped in accordance with the Stamp Act, 1899, does not render them invalid. Reference in this regard may be made to the law laid down in the case of Munir Ahmed Kahloon Vs. Rana Muhammad Yousaf PLD 2003 Lahore 172. As regards the contention of the learned counsel for the petitioner that the said documents should have been attested by the Ministry of Foreign Affairs, I do not find any such requirement in the law.

10. In view of the above, I do not find any jurisdictional infirmity in the impugned order dated 29.07.2017, passed by the learned civil Court, therefore, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sanaullah*

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