ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.69/2018
Muhammad M. Ayub, CEO, AMFCO Intel
Versus
Pakistan Engineering Council and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.10.2019	**M/s M. Saqib ur Rehman and Syed Hamood ur Rehman, Advocates for the petitioner.** **Ch. Kamil Hayat, Advocate for the respondent No.1.** **Malik Najam Khan, Advocate for the respondent No.2.** **Mr. Nasir Mehmood, Advocate for respondent No.3.** **Through the instant civil revision petition, the petitioner, impugns the judgment dated 14.02.2018, passed by the Court of the learned Additional District Judge, (West) Islamabad, whereby the petitioner's appeal against the order dated 07.12.2017 passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 07.12.2017, the learned Civil Court had dismissed the petitioner's application for grant of temporary injunction under Order XXXIX Rules 1 & 2 C.P.C. filed along with its suit for declaration and permanent injunction.** **2. The relevant facts are that M/s AMFCO International ("petitioner"), a partnership firm, entered into contract dated 11.05.2015 with respondent No. 3, (National Radio and Telecom Corporation) ("NRTC") for the development, integration, provisioning, commissioning and deployment of voter authentication system with associated paraphernalia for Pakistan Engineering Council's ("PEC") governing body elections-2015.** **3. Pursuant to the terms of the said contract, respondent No.2 (M/s EFU General Insurance Ltd.)**

furnished Mobilization Advance Guarantee **("Guarantee")** dated 08.05.2015 for an amount of Rs. 9,191,250/-. The said guarantee could be encashed if the petitioner committed default in the fulfilment of any of its obligations under contract dated 11.05.2015. The said guarantee was valid up to 05.11.2015.

4. As per the petitioner, on 14.06.2015, the day when PEC elections were to be held, the apparatus provided by the petitioner stopped working, due to "EVO Network down". As a result of this elections had to be postponed.

5. Subsequently, respondent No.3 made a demand on respondent No. 2 for encashment of the Guarantee. Aggrieved by this the petitioner, on 28.07.2015, instituted a suit for declaration and permanent injunction against respondents 1 to 5. In the said suit, it was pleaded that the non-fulfilment of contractual obligation on the petitioner's part was due to force majeure. The said suit was instituted through Director Operations of the petitioner on the basis an authority letter issued by CEO of the petitioner.

6. Alongwith the suit, the petitioner filed an application under Order XXXIX Rules 1 & 2 for an interim injunction to restrain respondents No.2 & 3 from encashing the Guarantee. The respondents contested the suit through separate written statements.

7. The learned Civil Court, vide order dated 07.12.2017, dismissed the application for interim injunction. The petitioner's appeal against the said order was dismissed by the learned appellate Court vide judgment dated 14.02.2018. The learned appellate Court held that the appeal was not maintainable on the ground that the appellant-

firm's registration certificate had not been annexed with the appeal. The said order has been impugned in the instant petition.

8. After narrating the facts leading to filing of the instant petition, learned counsel for the petitioner submitted that the learned appellate Court non-suited the petitioner on technical grounds; that the petitioner is a registered partnership, and its registration certificate has been brought on the record of this Court; that no authority letter was required by the CEO for filing the appeal; that there is no default on the part of the petitioner in fulfilment of obligations under contract dated 11.05.2015; that under clause 27 of the contract, the events beyond the control of the petitioner are not covered under warranty/guarantee; that all the three ingredients for grant of status quo were available; that the petitioner would suffer irreparable loss if the interim injunction is not allowed; and that learned appellate Court dismissed the appeal on technical defects in filing of appeal without touching merits of case and without application of judicial mind. Learned counsel for the petitioner prayed for the judgment dated 14.02.2018 and the order dated 07.12.2017 to be set-aside.

9. On the other hand, learned counsel for the respondents submitted that since the registration certificate of the firm was not attached with the appeal, the learned appellate Court was correct in holding that the appeal was not maintainable under Section 69 of the Partnership Act, 1932; that the amount of guarantee is quantifiable in fiscal terms, therefore, essential ingredient of irreparable loss for grant of interim injunction is missing in the case; that the notice dated 27.10.2015 for

encashment of guarantee has been rightly issued; and that during the pendency of the appeal, the appellate Court had not issued an injunction in the petitioner's favour. Learned counsel for the respondent prayed for the revision petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance.

11. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs No. 2 to 7 above and need not be recapitulated.

12. The sole question that needs to be determined is whether the appeal against the order dated 07.12.2017 passed by the learned Civil Court was maintainable.

13. Record shows that the contract dated 11.05.2015 was executed between the NRTC and the firm (M/s AMFCO International). The suit was filed by the firm. In the said suit, it was not pleaded whether the petitioner was a registered firm. The documents brought on record of this Court do not show that registration certificate was mentioned in the list of reliance submitted along with the plaint.

14. Learned counsel for the petitioner did not deny that the petitioner/firm's registration certificate was not filed along with the appeal. Although learned counsel for the petitioner submitted that the copy of registration certificate was shown during arguments to the learned appellate Court but this submission cannot be accepted since it is against the record.

15. Section 69 of the Partnership Act, 1932 in express terms provides that no suit to enforce a contractual right of a firm can be instituted by an

unregistered partnership firm. The Hon'ble Supreme Court in case titled as "Ch. Nazir Ahmed Vs. Ali Ahmed" (PLD 2016 SC 214), held as follows:-

> ***"From the unambiguous language of the section the intent and purpose of the legislature is loud and clear, that is to make the adverse effects of non-registration so broad-based and comprehensive so as to make the provisions virtually compulsive. This seems to have been mandated with an unmistaken object to exert pressure which is to be brought to bear on the partners to have the firm and themselves registered. The section provides for the effect of non-registration of firms, in that subsection (1) relates to suits by partners against firms or the partners and subsection (2) relates to suits by firms against third person, as fatal, while subsections (3) and (4) lay down exceptions to the (lethal) effects of the non-registration of firms. On account of the penal consequences provided by subsections (1) and (2) of section 69 there cannot be two opinions that the registration of the firm, though has been left optional for the partners and that the facility of registration has been provided without compulsion (see Section 58 of the Act), for the purposes of suits falling within its purview the provisions of section 69 are absolutely mandatory."***

In the said judgment it was further held that

> "***In other words subsections (1) and (2) of section 69 place a complete bar on every proceeding initiated vide a suit by an unregistered firm and its partners.***"

16. The principle that can be deduced from the above interpretation of Section 69(2) is that registration of firm is a condition precedent and mandatory requirement to institute a suit for enforcement of a firm's contractual rights against the third parties. It is thus for the plaintiff to produce registration certificate along with the plaint or appeal as the case may be, in order to fulfil requirement of Section 69 of the Partnership Act, 1932. In this regard reference can be made to judgment of the Hon'ble Lahore High Court in case of "Creative Electronics and Automation Vs.

Commissioner, Lahore" (2013 CLC 1547), wherein it has been held as follows:-

> ***"In terms of section 69, no suit can be instituted in any Court on behalf of a partner unless the firm is registered and the persons suing is shown as a partner in the Register of Firms. Similarly, no suit to enforce a contractual right can be instituted by an unregistered firm."***

17. The petitioner could not have filed the appeal without proving that it was a registered firm and since it is an express requirement of the statute, it cannot be termed as a technical requirement. Sans the registration certificate accompanying the memo of appeal, the learned appellate Court was justified in holding the appeal to be not maintainable.

18. In exercise of revisional jurisdiction, this Court can only interfere in the appellate order when there is an error in the exercise of jurisdiction and/or where the appellate court had acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case, the petitioner having failed to file the registration certificate with the appeal, the learned appellate Court cannot be said to have committed a jurisdictional error in holding the appeal not to be maintainable.

19. In view of above, this revision petition, being devoid of merits, is accordingly dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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