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CLIENT UPDATE

Latest court ruling on ratification by corporate plaintiffs.

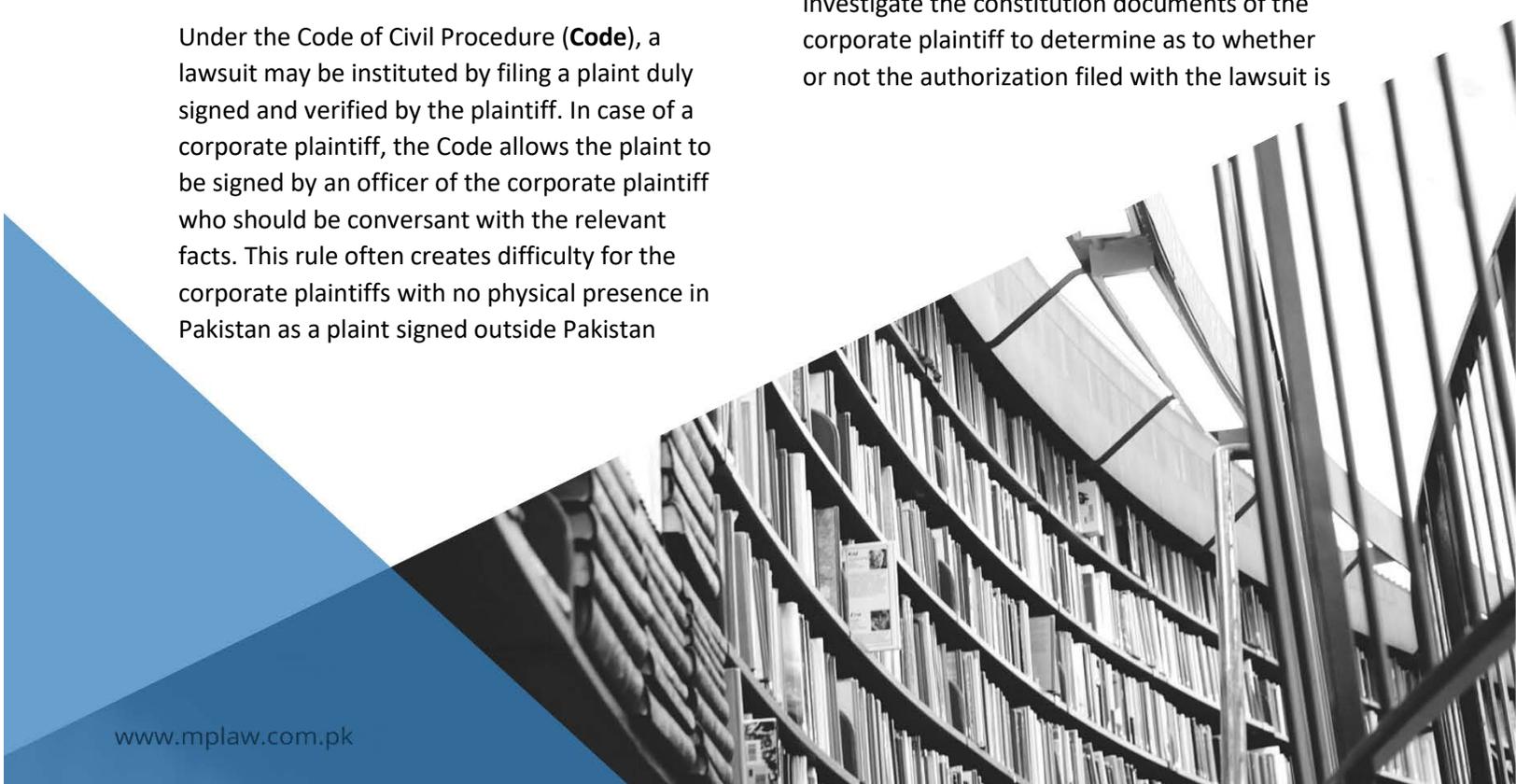
Supreme Court of Pakistan indicates that an ex-post facto ratification of a lawsuit instituted by a corporate plaintiff without proper authorization is permissible.

The rules for institution of lawsuits applicable to corporate plaintiffs are different from those applicable to individual plaintiffs. While an individual plaintiff may immediately commence legal proceedings in urgent cases by engaging a lawyer and signing the plaint, the position is different when it comes to a corporate plaintiff. Certain additional legal requirements become applicable in case of a corporate plaintiff.

Under the Code of Civil Procedure (**Code**), a lawsuit may be instituted by filing a plaint duly signed and verified by the plaintiff. In case of a corporate plaintiff, the Code allows the plaint to be signed by an officer of the corporate plaintiff who should be conversant with the relevant facts. This rule often creates difficulty for the corporate plaintiffs with no physical presence in Pakistan as a plaint signed outside Pakistan

requires notarization and attestation from the relevant Embassy.

There is yet another legal requirement in case of a corporate plaintiff. A lawsuit on behalf of a corporate plaintiff should be instituted after a proper authorization. The proof of such authorization should be submitted along with the lawsuit. The local courts generally investigate the constitution documents of the corporate plaintiff to determine as to whether or not the authorization filed with the lawsuit is



proper. However, in some cases, the courts would frame a preliminary issue and require the parties to produce evidence. Such recourse often results in an inordinate delay in the final adjudication of the dispute.

The constitution documents in most cases provide for exercise of all powers on behalf of a corporate plaintiff by a board of directors. Therefore, the courts insist that a lawsuit should be instituted after the proper authorization by the board of directors of the corporate plaintiff in the form of a written board resolution. In case of a foreign corporate plaintiff, the board resolution should be notarized and attested by the relevant Embassy.

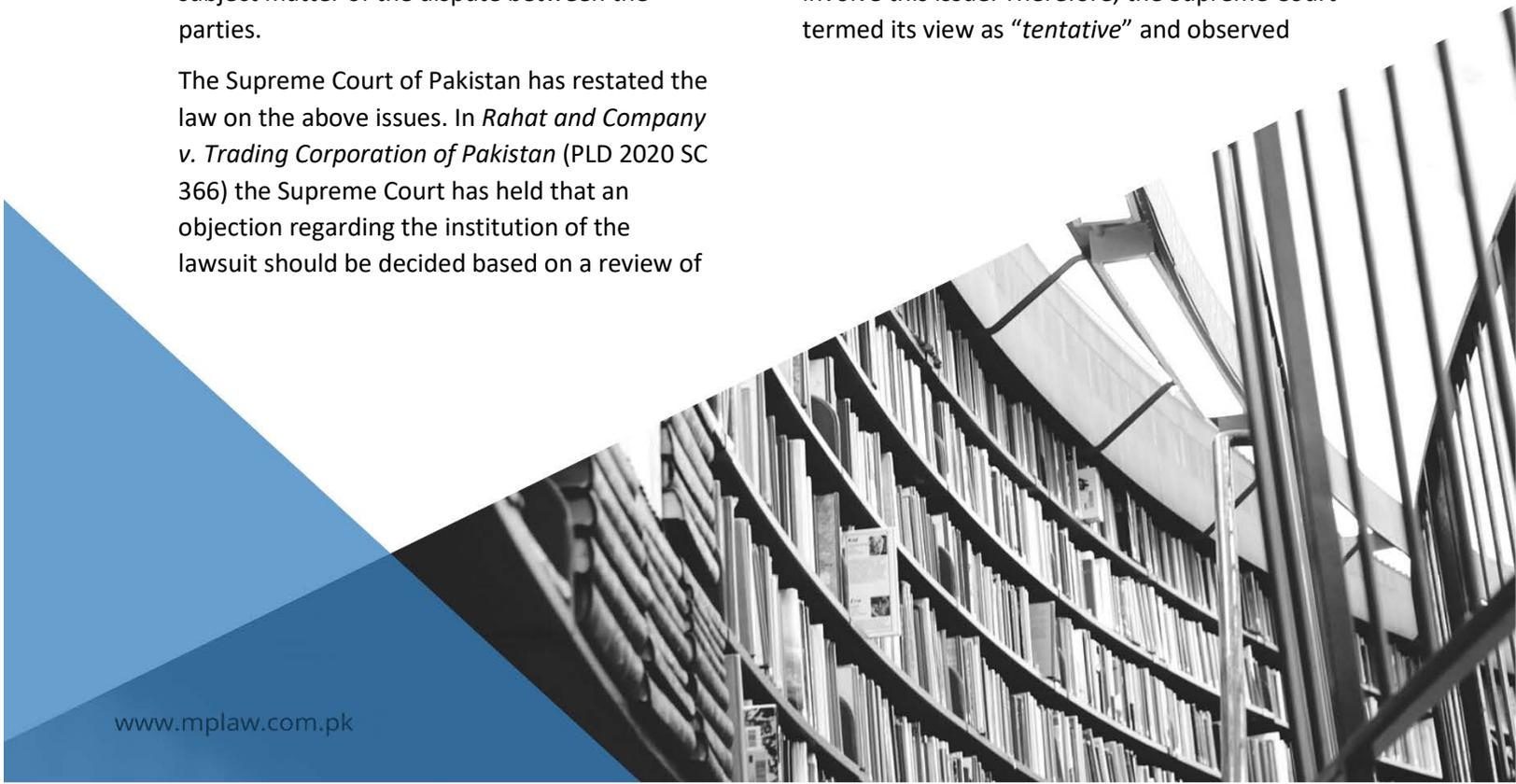
A court would dismiss a lawsuit instituted by a corporate plaintiff where it is proved that the lawsuit was instituted without proper authorization in accordance with the constitution documents of the corporate plaintiff. This causes injustice in many cases especially where the lawsuit was instituted in an emergent situation for preservation of the subject matter of the dispute between the parties.

The Supreme Court of Pakistan has restated the law on the above issues. In *Rahat and Company v. Trading Corporation of Pakistan* (PLD 2020 SC 366) the Supreme Court has held that an objection regarding the institution of the lawsuit should be decided based on a review of

constitution documents of the corporate plaintiff and that the court should refrain from ordering production of evidence on this issue. The Supreme Court observed that “... *such objections are, more often than not, frivolous and an abuse of the process of the court, intended only to delay, derail or frustrate consideration of the dispute on the merits.*”

Most importantly, the Supreme Court endorsed the principle laid down by the English Court of Appeal in *Presentaciones Musicales SA v. Secunda and another* [1994] 2 All ER 737 and the Indian Supreme Court in *United Bank of India v. Naresh Kumar and others* (AIR 1997 SC 3) to the effect that even if a lawsuit is held to be instituted without proper authorization, the lawsuit should not be dismissed and such defect should be allowed to be cured by subsequent ratification in accordance with the constitution documents of the corporate plaintiff. The Supreme Court held this view as “*correct*” and “*to be preferred over any view to the contrary*”.

The matter before the Supreme Court did not involve this issue. Therefore, the Supreme Court termed its view as “*tentative*” and observed



that a definitive pronouncement must await a case where the issue arises as such for determination. However, as a matter of Pakistani law, even the obiter dicta of the Supreme Court is binding on the subordinate courts.

Therefore, it is expected that the local courts would allow removal of any defect in the institution of a lawsuit on behalf of a corporate plaintiff instead of dismissing the lawsuit. This will in turn result in avoiding unnecessary delays and ensure timely adjudication of disputes.

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