

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr Justice Faisal Kamal Alam

Mr Justice Jawad Akbar Sarwana

Constitution Petition No. D – 1457 of 2025

Iqbal Hussain s/o Shahid Hussain

v.

Tasawar Hussain s/o Atta Hussain and Four (2) Others

Petitioner : Iqbal Hussain through Jam Shahid Iqbal, Advocate
(Ledger Advo-30845-LHR)

Respondent No.1 : Tasawar Hussain s/o Atta Hussain. Nemo.

Respondent No.2 : Riaz Muhammad s/o Haji Taj Muhammad. Nemo.

Respondent No.3 : The Deputy Registrar Cooperative Societies. Nemo.

Respondent No.4 : Saadabad Cooperative Housing Society Ltd. Nemo.

Respondent No.5 : Tajuddin Qazi s/o Qazi Shamsuddin. Nemo.

Date of Hearing : 16.04.2025

Date of Judgment : 24.04.2025

J U D G M E N T

Jawad Akbar Sarwana, J.: On 04.03.2025, the petitioner, Iqbal Hussain (“IH”), filed CP No.D-931/2025 (“the First Petition”) claiming that he is allegedly the real owner of Plot No.255-A, Block 4, Saadabad Cooperative Housing Society, Gulistan-e-Johar, Karachi, measuring 180 sq.yds. and the double-storied house constructed on the said plot (“the Suit Property”). The Respondents impleaded in the said Petition included, inter alia, Respondent No.5, Najam Uddin Qazi s/o Qazi Shamsuddin. This bench found neither any irregularity nor illegality in the impugned Orders dated 26.02.2025 passed by the VIIth Additional District & Sessions Judge East, Karachi in Civil Revision No.75/2024, and the Order dated 17.02.2024 passed by the Executing Court in Execution No.52/2010. There was no ground to interfere with the two impugned Orders.

Accordingly, the petitioner/IH's CP No.D-931/2025 was dismissed in limine on 25.03.2025.

2. Yet on 14.04.2025, the petitioner/IH filed this CP No.D-1457/2025 ("the Second Petition"). The Second Petition is almost identical to the earlier constitutional petition he filed in the High Court, i.e. CP No.D-931/2025 ("the First Petition"). Both First and Second Petitions involve the same property, impugned Orders and materially the same Respondents. The Second Petition filed after the dismissal of the First Petition does not disclose any information about the First Petition, including the dismissal of the First Petition.

3. Counsel for petitioner/IH has argued that the Second Petition differs from the First Petition, as Respondent No.5 differs. He contended that Respondent No.5 impleaded in CP No.D-931/2025 was Najam Uddin Qazi s/o Qazi Shamsuddin, whereas Respondent No.5 impleaded in CP No.D-1457/2025 is Tajuddin Qazi s/o Qazi Shamsuddin. Counsel further contended that the prayers in the Second Petition are broader and wider and number more than those in the First Petition. Hence Second Petition is maintainable.

4. Heard Counsel and perused the record available in the Petition.

5. We do not find any difference between the two petitions viz. Respondent No.5. The Respondent No.5 impleaded in the First Petition is the brother of the Respondent No.5 impleaded in the Second Petition. The two different brothers impleaded as Respondent No.5 across the two petitions share the same father, i.e. Qazi Shamsuddin. Further, they reside at the same address, i.e. Flat No.A-5, 1st Floor, Ishrat Plaza, Fatima Jinnah Colony. Moreover, the Judgment and Decree passed in Suit No.326/2003 has been passed against Najamuddin Qazi s/o Qazi Shamsuddin as Judgment-Debtor, not his brother, Tajuddin Qazi. The said Respondent No.5 (Tajuddin Qazi) is not impleaded as a party in the lower forums. Nothing is available in the petition's record (CP No.D-1457/2025), referring to Respondent No.5, Tajuddin Qazi. Therefore, Counsel for the petitioner/IH submission

attempting to justify the Second Petition on this score is wholly without substance, entirely irrelevant and dismissed.

6. We now turn to Counsel for the petitioner/IH's second submission that the prayer clauses in the first and second petitions differ. The submission has no legs to stand. The petitioner/IH in both petitions has invoked the Constitutional jurisdiction of the High Court under Article 199(1)(a)(ii) on the ground that the impugned Orders dated 26.02.2025 passed by the VIIIth Additional District & Sessions Judge East, Karachi and Order dated 17.02.2024 passed by the Executing Court are in Execution No.52/2010 are "without lawful" authority and "is of no legal effect". Both petitions challenge the same Orders and were dismissed by us on 25.03.2025 in CP No.D-931/2025. Petitioner/IH is now barred from challenging the same impugned Orders in subsequent petitions which this Court has already decided. Further, the Judgment and Decree dated 20.11.2010,¹ was challenged by the petitioner/IH and rejected vide the Executing Court's Order dated 04.05.2017 and Order dated 22.11.2023 passed by the Revisional Court in Revision No.58/2017. He did not contest the Revisional Court's Order dated 22.11.2023, which attained finality. The petitioner/IH cannot challenge it now in CP No.D-1457/2025. Even otherwise, this bench has discussed and decided the fate of the petitioner/IH's inaction viz. the two Orders in its Judgment dated 25.03.2025 passed in CP No.D-931/2025. Therefore, the petitioner/IH cannot raise any challenge to the Orders dated 04.05.2017 and 22.11.2023 in CP No.D-1457/2025 notwithstanding such challenge would be hit by laches and limitation. In view of the above, the prayer clauses in CP No.D-931/2025 and D-1475/2025 essentially remain the same. The petitioner/IH cannot be allowed to reagitate the same issues before the same forum (us/this bench) twice in two different petitions with one of the two petitions, i.e. the present (second) petition, before us, filed subsequently after the dismissal of the first petition by the same Court.

7. The conduct of the petitioner/IH and his Counsel appears malafide. The pleadings have been drafted and filed to mislead the Court, play mischief and

¹ There are some inconsistencies in the date of the Judgment/Decree, which is discussed in the Executing Court's Order dated 17.02.2024, available on page 57 of the petition.

abuse due process to stall the enforcement of the decree passed on 20.11.2010. The points raised in CP No.D-1457/2025 have all been decided by this bench in its Judgment dated 25.03.2025 announced in CP No.D-931/2025. The said Division Bench Judgment is binding on the petitioner/IH.

8. Accordingly, given the above, this petition is dismissed in limine with costs of Rupees Forty Thousand (PKRs.40,000) imposed jointly and severally on the Counsel for the petitioner/IH and the petitioner/IH.² Costs shall be deposited with the Nazir within 30 days from the date of announcement of this Judgment. In case of non-payment of costs, the Office is directed not to entertain any future action filed by the learned Counsel for the petitioner/IH and IH in the High Court of Sindh.

9. The Addl. Registrar (Writ) is directed to conduct an enquiry as to why the Objection Memo of this Constitution Petition prepared by the Office did not list as one of the Objections that (i) the said petitioner/IH had earlier filed CP No.D-931/2025, which was dismissed on 25.03.2025; (ii) that earlier filed CP No.D-931/2025 and CP No.D-1457/2025 involved the same petitioner, same respondents, same suit property and same impugned Orders: and, finally (iii) the petitioner/IH has not submitted an affidavit asserting that he has not agitated the same subject matter of this petition earlier.

10. Finally, the Office is directed to forward without delay a certified copy of the Judgment announced today in CP No.D-1457/2025 and the Judgment dated 25.03.2025 in CP No. D-931/2025 to the concerned Executing Court in Execution No.52/2010.

Judge

Judge

² Zakir Mehmood v. Secretary, Ministry of Defence (D.P.), Pakistan Secretariat, Rawalpindi, etc., 2023 SCMR 960 (CP No.2712/2020). Division Bench Judgment dated 23.12.2024 in HCA No.507/2024, Dawood Ahmed Salar v. Saud Ahmed Salar (unreported)(Muhammad Shafi Siddiqui, CJ, and Jawad Akbar Sarwana, J.), Division Bench Judgment in CP No.D-2646/2024, Shahid Hussain and Four (4) Others v. PEMRA & Three (3) Others (unreported)(Muhammad Shafi Siddiqui, CJ, and Jawad Akbar Sarwana, J.), and Division Bench Judgment in Muhammad Siddiq and another v. Mst. Ruqaya Khanum and others, PLD 2001 Karachi 60. Also see Suit No. Nil of 2020, Order dated 18.05.2020 in Damen Shipyards Gorinchem B.V. v. The Ministry of Maritime Affairs & Others (unreported)(Muhammad Junaid Ghaffar, J.) and Suit No.765 of 2024 in Order dated 31.07.2024 in Vista Apparel (Pvt.) Ltd. v. S.M. Traders (Pvt.) Ltd. & Others (unreported)(Muhammad Abdur Rahman J.)