

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.66 of 2023

[Syed Liaquat Ali, through L.Rs. *versus* Syed Ishtiaq Ali, through L.Rs. and 5 others]

along with

Miscellaneous Appeal No.31 of 2026

[Firdous Cooperative Housing Society Limited *versus* Sultani Begum and 7 others]

Miscellaneous Appeal No.32 of 2026

[Firdous Cooperative Housing Society Limited *versus* Sultani Begum and 7 others]

and

Miscellaneous Appeal No.33 of 2026

[Firdous Cooperative Housing Society Limited *versus* Sultani Begum and 7 others]

Present:

Mr. Muhammad Faisal Kamal Alam, J.

Date of hearing : 27.04.2026.

Appellants [M.A.66/2023] : Syed Liaquat Ali, since deceased through Legal Heirs, through Mr. Shahanshah Hussain, Advocate along with Syed Arshad Ali, Advocate.

Respondents No.1 and 5 : Syed Ishtiaq Ali, since deceased through Legal Heirs and 4 others, through Mr. Muhammad Ikram Siddiqui, Advocate.

Respondent No.6 : *Nemo.*

Appellants [M.A.31 to 33/2026] : Firdous Cooperative Housing Society Limited, through Mr. Muhammad Ali Lakhani, Advocate.

Respondents No.1 to 8 : *Nemo.*

ORDER

Muhammad Faisal Kamal Alam, J.: Following question of law has been framed in these Appeals_

‘Whether Miscellaneous appeals are to be filed against the impugned decisions of the Special Courts established for hearing matters of Cooperative Societies under the Sindh Cooperative Societies Act, 2020 or Constitutional Petition will lie, because undisputedly in the main statute [ibid] no provision of appeal is provided but only in the Rules.’

2. The learned Single Bench of this Court in Miscellaneous Appeal No.138 of 2025, wherein the Order passed by the Special Court for Co-operative Societies [**Special Court**], was challenged, has come to the conclusion expressed in its Order dated 04.12.2025 [**the said Order**], that an appeal being a substantive right should be provided in the governing Statute, viz. Sindh Cooperative Societies Act, 2020 [the '**Act**'], which is not there, but it is provided in Sub-Rule (2) of Rule 53 of the Sindh Cooperative Societies Rules, 2020 [the "**Rules**"], while holding the latter Rule as *ultra vires* the Act and converting the Miscellaneous Appeal into the Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [the "**Constitution**"], to be fixed before the learned Constitutional Bench of this Court. After the said Order, various Misc. Appeals have been preferred against different decisions of the Special Court, including the present title Appeals, in which the above question of law requires to be answered.

3. The crux of the arguments of Mr. Shahanshah Hussain, Advocate, is that_

- i. The above Rule is not *ultra vires* and rather it supplements provision mentioned in the Act itself, including Sections 73, 105, 116, 117 and 118.
- ii. When the intention of legislature is discoverable from the Act and corresponding provision is mentioned in the Rule, then the same cannot be held as *ultra vires*.
- iii. Appeal has not been specifically barred under the Act and, therefore, it is aptly provided for in the above provision and Rule 53[a] of the Rules, because, a thing not specifically prohibited in law, is otherwise permissible.

In support of his arguments, he has cited the following case law_

1. **P L D 1989 Supreme Court 6**
[*Pakistan through Secretary, Ministry of Defence versus The General Public*] – **Ministry of Defence Case**;
2. **1949 [2] AER 155**
[*Seaford Court Estates, Ltd. v. Asher*].

3. **2025 S C M R 1229**

[*Muhammad Dawood versus Mst. Sakeena Farooque alias Aziza and others*] – **Dawood Case.**

4. Mr. Muhammad Ali Lakhani, Advocate, has supported the submission of Mr. Shahanshah Hussain, Advocate, with an addition, that scope of an Appeal and Constitution Petition is quite different, because, in Appeal even a reappraisal of the evidence can be done, but not in a writ jurisdiction, hence, depriving the Appellant and all those litigants, who want to challenge the Judgment given in Societies Suit by the Special Courts, would be deprived of an Appellate Forum. Has cited the following case law_

i. **1993 S C M R 907**

[*Mian Hakim Ullah and 2 others versus Additional District Judge/Tribunal, Nowshera and 4 others*];

ii. **2023 S C M R 774**

[*Province of Punjab through Secretary Agricultural Department, Lahore versus Saleem Ijaz and others*] – **Province of Punjab Case;**

iii. **P L D 2023 Lahore 572**

[*Muhammad Ali Ghori and another versus Government of the Punjab through Secretary, Ministry of Transport and Communication, Lahore and others*];

iv. **P L D 2013 Lahore 1**

[*Muhammad Husnain and another versus Additional Sessions Judge, Multan and 2 others*];

v. **AIR 1974 Supreme Court 960**

[*Gammon India Ltd. And Ors. versus Union of India (Uoi) And Ors.*];

vi. **[2016] UKSC 39**

[*R (on the application of the Public law Project) (Appellant) versus Lord Chancellor (Respondent)*]

5. Mr. Muhammad Ikram Siddiqui, Advocate for the private Respondent, has not seriously opposed the above contention on the law point as advanced by Mr. Shahanshah Hussain, Advocate.

6. Ministry of Defense Case [*supra*] is relevant for deciding the present legal question, and that is why it needs to be discussed in some detail, in particular, the factual background to underline the importance of providing an Appellate Forum in a Statute. The Honorable Shariat Appellate Bench of the Supreme Court [established under Article 203F (3)] of the Constitution

of the Islamic Republic of Pakistan, 1973 [the “**Constitution**”] heard the Appeal filed by Ministry of Defense against the Judgment dated 13.10.1983 passed by the Federal Shariat Court, whereby, some provisions of the Pakistan Army Act, 1952, Pakistan Air Force Act, 1953 and Pakistan Navy Ordinance, 1965, were found to be repugnant to the injunctions of Islam and, therefore, required to be amended, *inter alia*, for the reason that these Defence Service Laws [as the Apex Court termed it] did not provide for the appeal against the conviction by the Court Martials; rather barred it. However, in the intervening period, the Government implemented the Decision of the FSC, to the extent that the appeal is provided against punishment in Hudood cases. But to challenge the conviction under a Court-Martial, an aggrieved person, could present a petition to the Central Government or the Head of the Armed Force concerned, and these authorities may review the finding or the sentence. It is held, that this remedy cannot be equated with the remedy of appeal, the Hon’ble Supreme Court discussed the importance of appellate forum in the light of the Islamic History, the SUNNAH of the Holy Prophet [PBUH] and Khulafa-e-Rashideen and ruled “barring the right of appeal” is against the Injunctions of Islam.

7. Most recent view of the Honourable Supreme Court is expressed in Dawood Case [*supra*]. A Civil Petition for Leave to Appeal was filed before the Honourable Supreme Court from the Judgment and Decree passed by this Court in Miscellaneous Appeal No.83 of 2022, challenging the Decision given by the Special Court.

8. The Dawood Case Judgment has two parts; one exclusively dealing with the jurisdiction of the Special Courts established for hearing cases relating to Cooperative Societies and the appellate jurisdiction, and the second part relates to the merits of the **LIS** itself. It is also pertinent to mention that the Honourable Supreme Court has also observed that the Government of Sindh should make corrections in certain highlighted provisions of the Act itself, in order to avoid any complexity, but that observation, so also the second part of the Judgment, relating to the merits of the case, in respect of a gift of disputed property, are not that relevant for deciding the present controversy and thus, is not discussed.

The Honourable Supreme Court has considered the relevant provisions of the afore-referred **Act** and **Rules** and concluded that the Special Courts

established under Section 117 of the Act, has jurisdiction to try the civil suits and Decisions are appealable before the High Court in terms of the Statutory Rules.

The view expressed in the **said Order** [*ibid*, of this Court], is contrary to what is ruled in the Dawood Case [by the Apex Court]. Provision of an appellate forum in the Statutory Rules is specifically dealt in the Dawood Case in the following words_

“10. Why we have pointed out the niceties and distinguishing features of substantive law and procedural law is that, instead of providing right of appeal to the High Court in the Act, which is a substantive right, it is provided in the Rules.”

9. The present Rules are framed and promulgated under Section 118 of the Act, empowering the Government to make Rules. In Province of Punjab Case [*ibid*], the Honourable Supreme Court has considered the main Statute [the Agricultural Pesticides Ordinance, 1971] and the Rules [Punjab Agricultural Pesticide Rules, 2018]; when any rule is in conflict with the specific statutory provision, then obviously the latter shall prevail. But at the same time the Apex Court has directed for a cautious approach, before declaring a rule, *ultra vires* the Statute. It is held, that first the Rule of reading down is to be adopted by assuming that Legislature would never have intended to legislate an invalid law and applying the same principle to the subordinate legislation [Rules], a harmonious interpretation be done, so that the effect of the Rule under question and that of the Statutory provision, instead of showing conflict with each other, are harmonized.

10. The afore-referred Rule 53(2) of the Rules is not violative of any of the provisions of the main Act [*ibid*], *inter alia*, because a different or additional appellate forum is not provided in the main Act, which could have been given primacy over the Forum provided in the said Rules, by applying the Rule of reading down, or, if the defect is not curable, declaring the appellate forum in the said Rules, as *ultra vires*. But in the present case no such incurable or conflicting anomalies exist. Merely because an Appellate Forum is mentioned in the Rules and not the Act, does not make that Appellate Forum as redundant or *coram non iudice*, as held in the afore-discussed judicial pronouncements.

Secondly, significance of the Appellate Forum is already highlighted by the Honourable Supreme Court in the Ministry of Defence Case, and in

the given circumstances, if a contrary view is taken about the existence of an Appellate Forum in the Rules, then, with due deference, that is not in conformity of the Decisions of the Hon'ble Supreme Court.

Thirdly, there is substance in the arguments of Mr. Muhammad Ali Lakhani, Advocate, that taking away an appellate forum would cause hardship to the parties, because in the writ jurisdiction an order/ decision can be challenged on a limited scope, *whereas*, the appellate forum has jurisdiction to consider the legality of the impugned decision from different angles, including appraisal and re-appraisal of the evidence.

11. The conclusion of the above is, that the Appellate Forum provided in the said Rules [Sub-Rule (2) of Rule 53] is a duly constituted Forum, is available for the parties, who are aggrieved of the Decision of the Special Courts established under the Act. Consequently, all these Appeals are maintainable. Question of law is answered accordingly.

12. Office is directed to fix the same as per Roster, on **05.10.2026**. These Appeals will be decided in accordance with law, rules and merits.

Judge

Karachi.
Dated: 21.09.2026.

Riaz / P.S.