

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
HCA No.186 of 2019

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Order with Signature of Judge(s)

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Fresh Case.

1. For order on CMA No.1353/2019 (Urgent)
2. For order on CMA No.1354/2019 (U/S 5 Limitation Act)
3. For hearing of main case.
4. For order on CMA No.1355/2019 (Stay)

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**19.04.2019.**

Mr. Shahid Ali Qureshi, Advocate for the appellant.

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1. Urgency granted.
- 2-4. This High Court Appeal has been filed against the order passed by the learned Single Judge dated 07.02.2019.

Briefly stated, the facts of the case are that a Suit bearing No.1357 of 2003 was filed by the respondents in the instant High Court Appeal and plaintiff in the above referred Suit for partition and administration. It is the claim of the respondents (plaintiffs in the suit) that after the death of their father late Muhammad Hamid Siddiqui the property belonging to him have to be distributed amongst his legal heirs as per Sharia. However, when the matter proceeded before the learned Single Judge on 07.02.2019, with the consent of the parties, he passed an order by giving certain directions and only the decision as given vide para 6 of the order has now been impugned by filing the present High Court Appeal.

Mr. Shahid Ali Qureshi Advocate has appeared on behalf of the appellant and stated that the learned Single Judge was not justified in directing that an amount of Rs.15,00,000/- may be kept aside from the sale proceeds in order to justify the claim of the defendant, which aspect

of the decision is prejudicial to the appellant, who was defendant in the matter.

At the very outset, the learned counsel was asked to satisfy the Court with regard to the maintainability of this High Court Appeal, as admittedly the order was passed with the consent of the parties and it is a settled principle of law that the orders passed with consent of the parties could not be challenged. He was again asked if there is some alleged error in the order, he could have filed a review or an application under Section 151 CPC, as the case may be, before the learned Single Judge and how this High Court Appeal is maintainable, to which he replied that the order has been passed without considering few aspects going to the roots of the case.

The counsel has been heard and record has been perused.

On the very face of it, this High Court Appeal appears to be misconceived and not maintainable as firstly the order was passed by the learned Single Judge with the consent of the parties and consent orders are not challengeable and secondly if, according to the learned counsel, there is an error or mistake in the order passed by the learned Single Judge dated 07.02.2019 the only course now open to the appellant, who is defendant in the suit, is to file a review or an application under Section 151 CPC, as the case may be, before the learned Single Judge. No plausible explanation in respect of the above queries was available with the learned counsel. This High Court Appeal thus is found to be wholly misconceived and not maintainable and is, accordingly, dismissed in limine alongwith the listed applications.

Judge

Judge