

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
SMA No. 25 / 2017

Date	Order with signature of Judge
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- 1) For orders on CMA No. 1393/2017.
- 2) For orders on CMA No. 1394/2017.

06.12.2017.

Ms. Saira Shaikh Advocate for Petitioner.
Mr. Asghar Hussain along with Ms. Gulnar Bibi
Advocates for Objectors.
Mr. Aijaz Hussain Soomro Advocate for Defendant / Objector.
Mst. Romana Ansari Petitioner present in Court.
Muhammad Shoaib Ansari and Gulraiz Khan present in Court.

Both these applications have been filed on behalf of the Objectors through which they have prayed for setting aside of order dated 7.8.2017 and to join them as parties in these proceedings.

Learned Counsel for the Objectors contends that the deceased Nafees Jehan expired on 3.11.2015 at Karachi, leaving behind seven legal heirs which have been mentioned in Para 5 of the Petition and the present Objectors who are sons and daughters of the predeceased daughter **Rubina Ansari** of deceased Nafees Jehan. Per learned Counsel the order dated 7.8.2017 whereby, Succession Petition was granted has been obtained without properly assisting the Court and with concealment of facts, as it was always in the knowledge of the Petitioner and other legal heirs that the present Objectors are legal heirs of predeceased daughter Rubina Ansari and ought to have been joined in these proceedings. He further submits that the present Objectors had filed a Suit on 21.12.2016 bearing Suit No. 2684/2016 before this Court which was withdrawn vide order dated 18.5.2017 pursuant to directions and order dated 30.03.2017 passed in this SMA. He further submits that

applications under Order 1 Rule 10 CPC were also filed in this matter but on 7.8.2017 without assisting the Court as to the above fact, an order was obtained and this Succession Petition was granted. Learned Counsel has referred to Section 4 of the Muslim Family Law Ordinance, 1961 and has relied upon **Bashir Ahmed and 3 others V. Razia Bibi (2000 SCMR 1100)**.

On the other hand, learned Counsel for the Petitioner submits that the Objectors were being represented by one of the legal heir namely Shoaib Ansari who himself withdrew from the claim in this SMA and was present personally before the Court on 7.8.2017 and therefore, the said Objectors have no right to contest the grant of this Succession Petition. She submits that the Objectors are legal heirs of predeceased daughter of Nafees Jehan and as per Muhammadan Law of Sunni school of thought they are not entitled for any share and therefore, their applications be dismissed.

I have heard both the learned Counsel and perused the record. After hearing the learned Counsel on 15.11.2017 and 29.11.2017, I had directed presence of the Petitioner as well as Shoaib Ansari the purported attorney of the Objectors. Today, both have affected appearance and Shoaib Ansari submits that he has made no such statement for withdrawal of the share of the Objectors and had only made a statement that if they are entitled in law then they may be given their share. He further submits that the Suit filed by him was withdrawn on the condition that subsequently this Petition is being pursued and this would resolve the controversy amongst the legal heirs. I have also confronted the Petitioner as to non-disclosure of the legal heirs of predeceased daughter Rubina Ansari (her sister) to which she could not satisfactorily respond and had no answer to the question that when the Suit was withdrawn subsequently on 18.5.2017 after passing of order dated

30.03.2017, why the objectors were left out. Learned Counsel for the Petitioner at this juncture, submits that no concealment has been made whereas, this Petition was filed by an Advocate who was earlier representing the Petitioner and has referred to order dated 7.8.2017 to justify the stance of the Petitioner in this regard.

It appears that this Succession Petition was filed on 24.8.2016 and was pending under objection which was complied with belatedly somewhere in February 2017 and thereafter, the same was processed by the office on 16.3.2017. The office note in this regard very clearly discloses that an application under Order 1 Rule 10 CPC was filed by the Objectors and the matter was referred to the Court for the following purposes:-

- “1) For hearing of main Petition.
- 2) For orders on applications filed by the learned Counsel for Objectors.”

When this matter was placed before the Court on 30.03.2017 the following order was passed:-

“One of the legal heirs, Ms. Lubna Sohail is present in person alongwith original CNIC and affirms that she has given no-objection to the grant of Letter of Administration in favour of the Petitioner. Two witnesses namely Irfan Qayyum S/o Abdul Qayyum and Sohail Ahmed Khan s/o Tufail Ahmed Khan have appeared before this Court alongwith their original CNICs, affirmed the contents of the SMA and have sworn their affidavits in favour of the Petitioner. Accordingly, they are exempted from appearance.

A perusal of the file shows that nether affidavit of Muhammad Ayub Ansari in support of grant of Letter of Administration to the Petitioner is present, nor Power of Attorney granted in favour of Mr. Muhammad Shoaib Ansari is duly executed by the relevant Consulate/Embassy.

The Petitioner directed to comply with the followings:-

- i) To file no-objection of Mr. Muhammad Ayub Ansari or to file his Power of Attorney duly executed by the relevant Consulate/Embassy;

- ii) To file the Power of Attorney executed in favour of Mr. Muhammad Shoaib Ansari from Mr. Muhammad Ayub Ansari after being executed through the relevant Consulate/Embassy, because he lives abroad.
- iii) **To file Original Power of Attorney (reproduced on Page-41) granted in favour of Mr. Muhammad Shoaib Ansari by the legal heirs of Mst. Rubina Ansari.**
- iv) **Mr. Muhammad Shoaib Ansari to withdraw Suit No.2684/2016 by obtaining orders from this Court as to such withdrawal with no right to file afresh.**

All those present today are exempted from any future appearance unless so needed by this Court. Office to place this matter in the Court after compliance of the above directions.”

It appears that thereafter, two statements dated 27.5.2017 and 6.6.2017 were filed in response to the directions of the Court as above and a Power of Attorney executed by the Objectors in favour of Shoaib Ansari was placed on record as well as affidavit of no objection of Shoaib Ansari was also placed on record. The matter was then placed before the Court on 7.8.2017 when the following order was passed:-

- 1) For orders on CMA No.449/2017.
- 2) For orders on CMA No.450/2017.
- 3) For hearing of main petition.

07.08.2017.

Ms. Saira Shaikh, Advocate for the Petitioner.

Mr. Ahmed Buksh, Advocate for Intervener.

Both the counsel present confirms that the directions given to the petitioner and other legal heirs of deceased has been complied with and therefore, there is no impediment to the grant of Succession Petition. Petitioner and other legal heirs had appeared in this proceeding and they were examined by the Court, therefore, instant SMA is granted as per rules.”

Perusal of the aforesaid order reflects that firstly no orders have been passed on the two statements nor they have been considered. Secondly, the order itself reflects that none of the legal heirs were present before the Court including Mr. Shoaib Ansari who according to the Petitioners Counsel had purportedly given his no objection. It further

appears that even on the first date of hearing i.e. 30.03.2017 all legal heirs were not present and the exemption if any, for being present on the next date was only to the extent of those who were already present before the Court. Perusal of the statements as above further reflects that though a Power of Attorney of the Objectors has been placed on record but the affidavit of no objection of Mr. Shoaib Ansari is only to the extent on his behalf and on behalf of another Objector namely Muhammad Ayub Ansari who is already declared as a legal heir and his no objection was only to the extent that at the time of filing of this Petition he was not available before the Court or with the Petitioner. This affidavit of no objection has no concern with the case of the present Objectors who were left out purposely and intentionally by the Petitioner and even the Court was not assisted in respect of the order passed on 30.03.2017 and the directions given thereon including the withdrawal of Suit No. 2684/2016 which was in fact a Suit jointly filed by the present Objectors, Shoaib Ansari and Ayub Ansari. Only one inference can be drawn from the unconditional withdrawal of Suit by all these three Plaintiffs that they will be properly joined in the Succession Petition and would be granted their share. This in fact is further supported from the contents of order dated 30.3.2017, whereby certain directions were given. However, by obtaining order dated 7.8.2017 the Petitioner and her Counsel have failed to properly assist the Court and have obtained an order which ought not to have been obtained. It may be appreciated that in Succession matters normally the Court always takes the averments of the Petitioner as true and correct and makes an effort to come to the rescue of the legal heirs who are already under distress in getting the Succession Certificate and Letter of Administration for the properties of the deceased. In such circumstances, the Petitioner as well as the Counsel representing them ought to have been more careful and diligent enough to apprise the Court

all facts which in the instant matter is lacking. Such conduct on the part of the Petitioner and the Counsel representing her is not appreciated and ordinarily it is a fit case to pass adverse orders against both of them but considering the fact that this is a case of Succession, wherein, the interest of other legal heirs is also involved, I have restrained myself from going any further. However, they are warned to be careful in future.

Insofar as the objections regarding the entitlement of the Objectors as legal heirs of a predeceased daughter of the deceased is concerned, I may observe that this controversy is now settled through various orders and judgments of this Court as well as of the Hon'ble Supreme Court and, therefore, in view of the judgment passed by the Hon'ble Supreme Court in the case reported as ***Mst. Fazeelat Jan and others V. Sikandar through Legal Heirs and others (PLD 2003 SC 475)***, wherein, it has been observed that the judgment passed by the Federal Shariat Court in the case of ***Allah Rakha V. Federation of Pakistan (PLD 2000 FSC 1)***, declaring Section 4 of the Muslim Family Law Ordinance, 1961, being repugnant to the injunctions of Islam upon challenge automatically stands suspended till disposal of the appeal as provided under Article 203D of the Constitution of the Islamic Republic of Pakistan, and till such time the benefit of Section 4 of the Ordinance *ibid*, will be available, the objection is overruled.

In view of hereinabove discussion both the listed applications are allowed and it is held that the objectors before the Court are also valid legal heirs of deceased Nafees Jahan and are entitled for their share in the estate left by her according to the share and entitlement prescribed for a predeceased daughter (their mother) in terms of Section 4 of the Muslim Family Law Ordinance, 2001. The order dated 7.8.2017 stands modified to that extent. The petitioner shall file amended petition and title showing the objectors as legal heirs. Since the order for issuance of

letter of Administration has already been passed, office is directed to issue the same only when such amended title and petition has been filed including the names of objectors herein.

Both applications stand dispose of as above.

J U D G E

ARSHAD/