

IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No. 02 of 2016

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
JUSTICE MRS. ASHRAF JEHAN.

National Investment Trust Limited [NITL] & another

Vs.

Mrs. Sadaqat-e-Nisar & others

Appellants: through M/s. Muhammad Masood Khan & Amna Usmani, advocates

Respondents: through Mr. Shahanshah Hussain, advocate

Respondent No. 10: through Mr. Munawwar Malik, advocate

Date of Hearing: 05.04.2018.

Date of Order: 05.04.2018.

J U D G M E N T

AQEEL AHMED ABBASI, J:- Instant High Court Appeal has been filed against the order dated 22.12.2015 passed by the learned Single Judge of this Court on a contempt application i.e. CMA No. 950/2013 filed by the respondents in a disposed of petition being SMA No. 49/2009 with the following prayer:-

- a) *Set-aside the impugned Judgment dated 22.12.2015 passed by the learned Single Judge of this Hon'ble Court in SMA No. 49/2009;*
- b) *Suspend the operation of the impugned order pending disposal of this appeal.*
- c) *Grant costs of the above appeal to the appellant.*

d) Any other / further / better relief deemed appropriate by this Hon'ble Court under the circumstances of the case.

2. Briefly, the facts as stated in the instant High Court Appeal are that respondent No.1 filed a Succession Petition on 18.02.2009 being SMA No. 49/2009 in respect of movable assets left behind by deceased Mst. Zahoor Fatima (mother of respondent No.1). Initially, schedule of property annexed with the petition reflected 24245 NIT Units in the name of Mst. Zahoor Fatima (deceased) with the value of Rs.90,00,000/-, however, an amended schedule of property was filed, whereby, in addition to above NIT Units, 1155 PNSC Shares were also included in the schedule of properties left behind by the deceased Mst. Zahoor Fatima. All the relevant documents were attached alongwith with the petition, whereas, all the legal heirs filed their affidavits of no objection for the grant of succession certificate. Thereafter, in view of compliance of all codal formalities, including publication in the Newspaper and no objection received from any quarter, succession petition was granted by the learned Single Judge vide order dated 27.08.2009, with the directions to the Nazir of the Court to get the subject NIT Units [CIP Units] and shares encashed, and to distribute the proceeds amongst the legal heirs according to their respective shares. After grant of succession certificate in favour of respondent No.1, Nazir of the Court vide Report dated 12.01.2010 submitted a reference before the learned Single Judge, expressed his inability to encash the units and shares without taking physical possession of the same from the concerned party. Resultantly, the Nazir was permitted by the Court to collect duplicate NIT/CIP Units from the appellant No.1. However, inspte of above order by the Court, the appellant No.1 on 03.07.2013 transferred 24245 NIT Units to the

Nazir of the Court and filed an application for depositing cash dividend in respect of NIT Units, instead of submitting up-to-date CIP Units. Thereafter, vide order dated 17.05.2013 passed by the learned Single Judge, the appellant No.1 was directed to deposit up-to-date CIP Units in respect of the deceased in terms of order dated 10.11.2009, whereby, Nazir of the Court was directed to collect CIP Units from M/s. NIT Limited/appellant No.1. Accordingly, both the application(s) filed on behalf of the appellant being CMA Nos. 402/2010 and 1248/2010 to this effect were finally disposed of in above terms. Pursuant to above orders, the appellant No.1 instead of submitting CIP Units alongwith dividend/profit accrued thereon up-to-date, deposited the amount of dividend of NIT Units before the Nazir. Since, respondents were not satisfied with the amount, which did not include the profit accrued on such NIT Units under Cumulative Investment Plan [CIP], they filed CMA No.950/2013 under Section 3 & 4 of the Contempt of Court Act, 1976 with the prayer that the appellants may be directed to comply with the order(s) already passed by the learned Single Judge to the effect and to deposit the entire amount in respect of 24245 NIT Units alongwith up-to-date dividend/profit accrued thereon under Cumulative Investment Plan [CIP] shall be paid and distributed amongst the legal heirs of deceased Mst.Zahoor Fatima. On such application, learned Single Judge has been pleased to pass detailed order after hearing both the parties, which has been impugned by the appellants through instant High Court Appeal, with a request to set-aside the impugned order.

3. Learned counsel for the appellant has submitted that the impugned order passed by the learned Single Judge is erroneous in law and facts as according to learned counsel, through impugned

order, the appellants have been directed to deposit a disputed amount allegedly claimed by the respondents in respect of the investment made by the deceased towards purchase of NIT Units, which according to learned counsel, could not have been adjudicated in such proceedings i.e. succession petition. Per learned counsel, the dispute raised on behalf of respondents with regard to quantum of the amount in respect of NIT Units of deceased Mst. Zahoor Fatima and the dividend accrued thereon alongwith profits under Cumulative Investment Plan could have been decided by competent Court of Civil Jurisdiction after recording evidence. Without prejudice hereinabove submissions and legal objection, it has been further argued by the learned counsel for the appellants that the legal heirs of deceased Mst. Zahoor Fatima, are entitled only to an amount of dividend in respect of 24245 NIT Units and not for the amount of CIP Units, as according to learned counsel, respondents did not opt for Cumulative Investment Plan after the death of Mst. Zahoor Fatima, therefore, the NIT Units of the deceased were not reinvested. It has been further contended by the learned counsel for the appellants that as per revised scheme and guidelines for sale of NIT Units, after death of unit holder, only dividend continues to accrue and the units are not further reinvested in view of directives of Security and Exchange Commission of Pakistan (SECP). According to learned counsel for the appellants, the claim of the respondents in respect of CIP Units was not justified, which has been wrongly accepted by the learned Single Judge through impugned order. It has been prayed that the impugned order may be set-aside and it may be declared that respondents are not

entitled for the amount of CIP Units after death of deceased Mst. Zahoor Fatima.

4. Conversely, learned counsel for respondents has vehemently opposed the contention of learned counsel for the appellants and has also raised an objection as to maintainability of instant High Court Appeal, on the grounds that no appeal lies against an order passed on contempt application. It has been further contended by the learned counsel that the appellants did not file any appeal against the order passed by the learned Single Judge on 27.08.2009, when the succession petition filed by the respondents was granted and the Nazir was directed to encash and distribute the proceeds of 24245 NIT Units and 155 PNSC shares amongst the legal heirs according to their respective shares. Thereafter, according to learned counsel for respondents, vide order dated 10.11.2009, the learned Single Judge was further pleased to direct the Nazir to collect CIP Units from NIT and also to collect duplicate/original shares from PNSC with profits, however, appellants did not challenge such order relating to CIP Units. It has been further contended by the learned counsel for respondents that respondents filed an application under Section 151 CPC [CMA No.402/2010] before the learned Single Judge, wherein, it was clarified that the NIT Units held by deceased Mst. Zahoor Fatima were issued under the Cumulative Investment Plan, according to which, unit holder was required to execute a emendate in favour of the NIT Limited for reinvestment of the dividend accrued on such NIT Units, whereas, admittedly, such option was duly exercised by the deceased Mst. Zahoor Fatima, and the appellants were under instructions to reinvest the dividend accrued on such units under CIP. It has been further contended by the learned counsel for

respondent that neither the deceased Mst. Zahoor Fatima nor her legal heirs have ever opted out from such option i.e. CIP in respect of 24245 NIT Units of the deceased, therefore, the contention of the appellants in this regard is totally misconceived in facts and law. Per learned counsel, during all these years, the aforesaid NIT Units and the amount including the dividend and the profit accrued thereon remained in possession of the appellant No.1 i.e. NIT Limited, which was being utilized and invested by the appellants in terms of Cumulative Investment Plan, whereas, no instructions whatsoever, were ever issued either by the deceased Mst. Zahoor Fatima or by her legal heirs (respondents) requiring any change of plan with regard to reinvestment of the subject NIT Units. Per learned counsel, keeping in view hereinabove facts, the above CMA No.402/2010 was granted by the learned Single Judge vide order dated 17.05.2013 with the directions to the appellants to comply with the order passed by the learned Single Judge in letter and spirit, whereby, Nazir was directed to collect CIP Units from the NIT Limited. Per learned counsel, the orders dated 10.11.2009 and 17.05.2013 already passed by the learned Single Judge have never been challenged by the appellants, which have attained finality and the appellants cannot be permitted to raise such plea at a belated stage as it would frustrate the legal proceedings as well as the Court's orders already passed on the subject. However, according to learned counsel, since such orders were not being complied with by the appellants, the respondents were compelled to file an application under Section 3 & 4 of the Contempt of Court Act, 1976 requiring implementation of the Court's orders. Learned counsel for respondents has referred to the relevant passage of the impugned order passed by the learned Single Judge and submits that the

facts as stated by the learned Single Judge in the impugned order with particular reference to order already passed by the learned Single Judge in the instant matter could not be disputed by the learned counsel for the appellants, which shows that by filing instant High Court Appeal, the appellants have attempted to re-agitate an issue, which has already been settled by the learned Single Judge in the above referred orders, which have attained finality. While concluding his arguments, learned counsel for respondents has submitted that all the respondents are of advanced age, who have already remained deprived of their legitimate share in the property left behind by Mst. Zahoor Fatima, therefore, instant High Court Appeal may be dismissed, and respective shares of respondents may be directed to be distributed as per their respective shares without further loss of time.

5. We have heard the learned counsel for the parties, perused the record with their assistance and have also gone through the relevant orders passed by the learned Single Judge, including impugned order, relating to subject controversy. Since the facts and the chronology of events as given in the impugned order have not been disputed by the learned counsel for the parties, which are otherwise verifiable from the record, and the Court's orders already passed on the subject controversy, therefore, we may not dilate upon such facts and would decide legal points involved in the instant appeal, whereas, reference would be made to such facts only, which are necessary for a just conclusion and decision of instant appeal. Admittedly, succession petition, being SMA No. 49/2009 filed by respondent No.1 on 18.02.2009 in respect of movable assets left behind by deceased Mst. Zahoor Fatima [mother of respondent No.1] was granted vide order dated

27.08.2009 as per amended Schedule of Property, which included 24245 NIT Units with the value of Rs.90,00,000/- and 1155 PNS shares. It has also not been disputed that at the time of purchasing 24245 NIT Units, deceased Mst. Zahoor Fatima opted for Cumulative Investment Plan [CIP], according to which, National Investment Trust Limited [NITL] was instructed to reinvest the amount of dividend accrued on the units instead of paying the same to the unit holder. The appellants continued to act upon such option and the deceased Mst. Zahoor Fatima never claimed the amount of dividend units nor ever opted out of such option exercised by her at time of purchase of subject NIT Units during her lifetime. According to Cumulative Investment Plan, the units equivalent to the value of the dividend declared on 30th June of each year, is added in lieu of the annual dividend warrant, hence the dividend earned on such units is reinvested as per Cumulative Investment Plan [CIP] Units. After death of Mst. Zahoor Fatima on 21.05.1989, one of her legal heir vide letter dated 12.07.1989, informed the appellants/NITL about her sad demise, which fact was duly acknowledged by the appellants through Senior Vice President vide letter dated 21.07.1989 in the following terms:-

“NATIONAL INVESTMENT TRUST LIMITED
INVESTMENT SERVICE DEPARTMENT

21st July 1989

No. ISD/tr-2(321)/89/304

Mr. Mohammad Sulaiman Jameel,
S/o. Late Mst. Zahoor Fatima,
40-B, Mohammad Ali Housing Society,
K A R A C H I

TRANSAMINATION 23759 OF THE UNITS
LATE MST. ZAHOOR FATIMA
REGISTRATION NUMBER N - 001/07584

Dear Sir,

We are in receipt of your letter dated 12.07.1989 and regretted to note the sad demise of your mother Late Mst. Zahoor Fatima, expired on 21.05.1989. We offer condolence on your loss and for departed soul.

We append below the details of units standing in the name of the deceased and request you to obtain formal Succession Certificate from competent court under the Succession Act for the transmission in favour of the legal heirs.

<u>NAME OF THE</u>	<u>NO. OF UNITS</u>	<u>FACE</u>
<u>ISSUING OFFICE</u>	<u>REG. No.</u>	<u>FACE VALUE @ Rs.10/-</u>
NIT-LIMITED		23759
KARACHI OFFICE	N-1/7584	Rs. 237590.00

Kindly ensure that the above particulars with certificate are duly incorporated in the Succession Certificate and the used Transmission Form (NIT-C) is submitted to us alongwith an attested photo-copy of the Succession Certificate for further necessary action.

Meanwhile, we are advising the Issuing Office concerned recording necessary "Caution Mark" – Deceased Case" in respect of the above holdings.

Assuring you of your best co-operation and services,

Yours faithfully,

Sd/-

(S. Q. A. ZAIDI)

SENIOR VICE PRESIDENT"

6. From perusal of hereinabove letter issued on behalf of the appellant, it is observed that appellants did not require the respondents to avail fresh option in respect of subject NIT/CIP Units under Cumulative Investment Plan, nor have intimated to the respondents that in case, such option is not exercised by the respondents after the death of NIT/CIP Unit holder Mst. Zahoor Fatima, the appellants will not reinvest the dividend accrued on such NIT Units. Record further shows that the respondents neither required the appellant to transfer the NIT/CIP Units of deceased Mst. Zahoor Fatima in their names, nor have instructed the appellants regarding any change of option relating to Cumulative Investment Plan in respect of such NIT/CIP Units. Nothing has been produced or brought on record by the learned counsel for the appellants, which may otherwise suggest that after death of a unit holder, who opted for Cumulative Investment Plan at the time of

purchase of such NIT/CIP Units, such option ceases to have its effect, particularly, when the amount of dividend continues to accrue on such NIT Units even after the death of unit holder, till its realization. Reference made by the learned counsel for the appellant to some guidelines issued subsequently in respect of NIT/CIP units, also does not support the plea of the appellants, whereas, any subsequent guideline, which is prejudicial to the interest of unit holder or his/her legal heirs, would not otherwise apply retrospectively in respect of NIT/CIP Units purchased prior to issuance of such guidelines to the disadvantage of unit holder. It has been further noted that the dispute being agitated by the appellants through instant High Court Appeal has already been decided by the learned Single Judge vide orders dated 10.11.2009 and 17.05.2013, which have not been challenged by the appellants and have, therefore, attained finality. The amount belonging to the deceased Mst. Zahoor Fatima in the shape of NIT/CIP Units as referred to hereinabove is lying with the appellants and has always remained at their disposal under Cumulative Investment Plan through this period, whereas, the deceased Mst. Zahoor Fatima and/or her legal heirs neither opted out of CIP nor demanded the amount yearly dividend on such NIT/CIP Units. It is regretted to note that the appellants, instead of honoring their commitment as per terms and conditions applicable at the time of purchase of NIT/CIP Units and the option availed by the deceased Mst. Zahoor Fatima regarding Cumulative Investment Plan, have attempted to create a dispute either with malafide intention or to riggle out from a default on their part, whereby, they were under legal obligation to reinvest the yearly dividend as per CIP option till its realization. After expiry of a unit holder, the terms and conditions applicable to

such units could not be changed unilaterally by the appellants to the disadvantage of a unit holder, whereas, all the assets of a deceased automatically stand devolved in favour of his/her legal heirs as per Muslim Law of inheritance.

7. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the appellants have unnecessarily dragged the matter in the above proceedings, and have also failed to comply with the orders already passed by the learned Single Judge by raising misconceived and erroneous plea, whereas, the impugned order passed by the learned Single Judge in this regard does not suffer from any factual error or legal infirmity.

8. Accordingly, instant High Court Appeal being misconceived and devoid of any merits, was dismissed alongwith listed application(s) vide our short order dated 05.04.2018 and the above are the reasons of such short order.

JUDGE

JUDGE

A.S.