

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.622 of 2012

Fauzia Said Khan & another
Versus
Shaiza Said Khan & others

Date	Order with signature of Judge
------	-------------------------------

For hearing of CMA 5412/12 (Application under order XXXIX Rule 1 & 2 CPC)

Date of hearing: 18.08.2022

Mr. Majid Jehangir for plaintiffs.
Mr. Shahid Jamal Butt for defendants No.1 and 2.

-.-.-

Muhammad Shafi Siddiqui, J.- Two plaintiffs being wife and son of deceased Muhammad Said Khan, have filed this suit for declaration, injunction and rectification with the following prayers:-

- A. *That the Hon'ble Court may be pleased to declare that the plaintiffs are shareholders of the defendant No.3 as hereunder mentioned:-*

S. No.	Name of shareholder	Shareholding
1.	Fauzia Said Khan	163,079
2.	Shahid Said Khan	145,187

- B. *That the Hon'ble Court may be pleased to declare that the authorized share capital and the paid up capital cannot be increased or issued in favour of any shareholder other than in accordance with the law, and specifically the Companies Ordinance, 1984;*

- C. *That the Hon'ble Court may be pleased to direct the defendant No.2 and 3 to rectify the register of shareholders of the defendant No.2 to reflect as follows:-*

S. No.	Name of shareholder	Shareholding
1.	Fauzia Said Khan	163,079
2.	Shahid Said Khan	145,187

- D. That the Hon'ble Court may be pleased to direct the defendant No.3 to investigate the affairs of the defendant No.2;*
- E. That the Hon'ble Court may be pleased to declare that the late Muhammad Said Khan remains a shareholder of 5,321,215;*
- F. That the Hon'ble Court may be pleased to direct the Nazir to inspect and make an inventory of all the properties of the defendant No.2 and any and all machinery, equipment and/or fixtures and fitting found/contained/attached thereon;*
- G. That the Hon'ble Court may be pleased to restrain the defendants No.1 and 2 from selling, transferring, disposing off or gifting in any manner, way, or form the property, undertakings and assets of the company other than in accordance with the law as per Annexure 'G' and even otherwise;*
(Copy of the list of assets (non-exclusive) is attached as Annexure 'G')
- H. That the Hon'ble Court may be pleased to award costs of the suit to the plaintiffs;*
- I. ...*

2. It is the case of the plaintiffs that shares of one of the companies i.e. defendant No.2, subscribed by the husband and father of plaintiffs No.1 and 2 respectively were transferred in favour of defendant No.2, as argued, depriving them (plaintiffs) from their lawful inheritance rights. In addition to it, the authorized share capital of defendant No.2 was increased from Rs.6 Million to Rs.7.5 Million and then to 15 Million in 2011. With this pleading plaintiffs along with suit also moved an application under order XXXIX Rule 1 & 2 CPC seeking restraining orders against the defendants from selling, transferring, disposing off or gifting in any manner, way or form the property, undertakings and assets of the company other than in accordance with law, as specified in Annexure-G to the plaint and even otherwise.

3. Defendant No.1 being contesting defendant and director of company/defendant No.2 and claiming herself to be majority shareholder has filed written statement and counter-affidavit to the

injunction application refuting all facts alleged in the memo of plaint and injunction application.

4. I have heard the learned counsel for parties and perused material available on record.

5. The suit is pending since 2012 and the interim order is operating since then. The interim order was granted on 30.05.2012 in following terms:-

“1) Urgency granted.

2&3) Learned counsel for the plaintiffs states that the plaintiffs have a substantial shareholding in the defendant No.2 which however is under the control and management of defendant No.1, who is the majority shareholder thereof. It is submitted that the defendant No.2 may be a dormant company but it has valuable assets and properties. The allegation in the plaint is that the defendant being in control of the defendant No.2 may misuse and abuse her position with regard to the affairs, assets and properties of the defendant No.2 on account of her control over its affairs. Learned counsel states that this is a derivative action by the minority shareholders (i.e. the plaintiffs) on behalf of the defendant No.2 by reason of the fact that the company is entirely under the control of defendant No.1.

Notice to defendants for 26.06.2012. Till the next date the defendant No.1 shall not deal with the immovable properties of the defendant No.2 by way of transfer or creating any third party interest therein but this order shall be without prejudice to any charge or other security, if at all any, existing as on the date of this order in favour of any financial institution which may have advanced finances to the defendant No.2.

The business of the defendant No.2 may be conducted in the ordinary course of business but the defendant No.1 is put on notice that should a question arise in this regard she may be, if the Court so deems appropriate, asked to satisfy the Court that any particular act or decision taken by her was in the ordinary course of business.”

6. Record reflects that plaintiff No.1 who declared herself as widow in the plaint was in fact divorced by the deceased. The correspondence in this regard is available along with counter-affidavit to the listed application being considered. It also includes a notice of Tallaq to the

Chairman Masalihati Council, Cantonment Board, Lahore Cant along with divorce letter.

7. Record also reflects that there were in fact four companies i.e. (i) United Carpets Limited, (ii) United Jute Mills Limited, (iii) International Floor Covering Limited and (iv) SAF Textile Mills Ltd. and accordingly in terms of shareholdings, all and in particular plaintiff No.2, executed Power of Attorney in respect of both the moveable and immovable assets/properties being enjoyed by him. The execution of said irrevocable General Power of Attorney in the year 1993 was neither denied nor challenged in the instant proceedings. On the strength of the said Irrevocable General Power of Attorney, the attorney acted at the relevant time without any challenge.

8. Record also reflects that a declaration with regard to shares of United Carpets Ltd. i.e. defendant No.2 was made in respect of 145,187 shares. The gift was in favour of Muhammad Said Khan Waqf, which was made in May 1974. This declaration of gift was made on 02.01.2002 and the present litigation has no challenge to it.

9. Similarly, the plaintiff No.1 who at the relevant time enjoyed 163,079 shares of M/s United Carpet Limited has made a declaration of gift in favour of defendant No.1 being her daughter Shaiza Said Khan and countersigned the transfer deed. Similarly, the record confirms execution of declaration of gift in respect of other companies such as M/s United Jute Mills of 22,500 shares along with transfer deed, M/s International Floor Covering Ltd. in respect of 12,000 shares along with transfer deed and declaration of gift of SAF Textile for 68,250 shares in favour of her son/plaintiff No.2 along with transfer deed and there is no challenge of such benefit being drawn.

10. The other legal heirs such as Sharmeen Said Khan also executed a declaration of gift in respect of 9,500 shares of M/s SAF Textile Mills Ltd.

in favour of plaintiff No.2 which is incorrectly reflected as son in the transcript. The other legal heirs Shaiza Said Khan, sister of plaintiff No.2, also executed declaration of gift in respect of 7,160,000 shares in respect of SAF Textile Mills Ltd. favouring plaintiff No.2 along with a declaration of gift of Muhammad Said Khan himself of 33,012,167 shares of SAF Textile Mills in favour of his son Shahid Seed Khan being plaintiff No.2 and another declaration of gift of Muhammad Said Khan of 24,717,080 in favour of plaintiff No.2 being a son and of 100,000 shares of SAF Textile in favour of Shahid Said Khan.

11. Shaiza also executed another declaration of gift in respect of 2,997,250 shares in respect of SAF Textile Mills in favour of Shahid Said Khan. Ayesha Said Khan being sister of plaintiff No.2 also executed a declaration of gift of 1500 shares of M/s SAF Textile Mills Ltd. While plaintiff No.2 availing such benefits in respect of SAF Textile Mills Limited, Muhammad Said Khan executed declaration of gift in favour of Shaiza Said Khan, defendant No.1 in respect of his shares of 5,121,215 of United Carpet Ltd. along with transfer deeds. The record of SECP was accordingly updated.

12. Record also reflects that Muhammad Said Khan expired on 18.04.2012 and during his life time on 29.08.2011 a meeting of the Board of Directors took place to consider the resolution for conversion of outstanding loan amount from directors namely Said Khan and Ms. Shaiza into equity of company by way of further issuance of shares to the respective directors under the first proviso of Section 86(1) of the Companies Ordinance, 1984, as prevailing at the relevant time. It was accordingly resolved vide Annexure Q/1 to the counter-affidavit and notice of such meetings of the Board of Directors were issued supported by the courier receipts followed by extract of ordinary general meeting of September 29, 2011.

13. The instant plaint is absolutely silent as far as above executions, declaration of gifts and Power of Attorney are concerned. The suit only seeks a declaration that plaintiff No.1 has a shareholding of 163,079 and plaintiff No.2 has shareholding of 145,187 in defendant No.2 which as per record has been transferred to Muhammad Said Khan Waqf on account of execution and declaration of gifts and is without any challenge.

14. As far as the shareholding of Muhammad Said Khan deceased is concerned, which were transferred during his life time, in the absence of any challenge to the declaration of gift executed by deceased himself during his life time along with signed transfer deeds, it is a futile attempt to grant any such injunction of the nature as argued, and not even prayed. No doubt the application itself has prayed for an order that the defendants be restrained from selling, transferring, disposing off or gifting in any manner, way or form the property, undertakings and assets of the company other than in accordance with law, which do not call for orders as prayed for on the strength of the shareholding of the company, which has not been disputed in the application.

15. In view of above facts and circumstances it appears that the plaintiffs have not approached the Court with clean hands and this being a discretionary and equitable relief in nature cannot be granted to the plaintiffs under the aforesaid facts and circumstances of the case. The Court while dealing with the application for grant of temporary injunction is under obligation to assess the relief claimed on the equitable pan and it appears that grant of injunction would amount to giving an undue advantage to the plaintiffs which may perpetuate injustice to the others at this stage. Even otherwise plaintiffs in the application have only claimed that defendants be restrained from selling, transferring, disposing off or gifting in any manner, way, or form

the property, undertakings and assets of the company other than in accordance with the law and thus I am inclined to observe that the company's assets shall be dealt with in accordance with law to which there is no cavil and the shares are not the assets of the company; these are assets of the individual directors of the company.

16. It also seems that the plaintiff No.2 specifically enjoying benefits of shares of other companies while disputing the transfer of shares in favour of his other siblings, by his father. These deeds favouring the plaintiffs and defendant No.1 were executed in the same period which executions otherwise are not challenged in the prayer. Hence, I do not see any force in the application whereby any restraining order could be passed against defendant No.1 or against defendant No.2 or any of its directors/ shareholders. Injunction application as such merits no consideration and is accordingly dismissed.

Dated: 26.08.2022

J U D G E