

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**SMA NO. 23 / 2012**

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Date	Order with signature of Judge
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- 1) For hearing of CMA No. 1431/2017.
- 2) For hearing of CMA No. 599/2015.
- 3) For hearing of CMA No. 240/2013.

**05.12.2017.**

Mr. Shaikh Muhammad Waseem Advocate for Petitioner along  
with Legal Heir Syeda Saira Wasti.  
Mr. Ayaz Ansari Advocate for Applicant / L.R. Syed Adnan Wasti.

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3) This is an application filed by one of the legal heirs (Syed Adnan Wasti), wherein, there are two submissions; one is to the effect that certain Bank Accounts were left out in the Petition and have subsequently come to knowledge. For that the Counsel is directed to file appropriate application and seek extension and amendment in the Succession Petition as may be permissible under the law.

The other ground is that the Petitioner after obtaining the Succession Certificate has misappropriated the four accounts so stated at Page 17 of this Memo of Petition. Learned Counsel for the applicant / legal heir submits that such fact has not been disputed, but rather admitted. Counsel for the petitioner was confronted on this to which the Court has been informed that the amount has been withdrawn and has been given to the sister of the Petitioner (her share as well share of the petitioner) because of her ailment and applicants amount was retained. He further submits that there is one immovable property which is also to be administered as per Letter of Administration; but due to non-cooperative attitude of the applicant, the same could not be transferred and sold out as per Letter of Administration, whereas, the applicant is enjoying the possession of the said property and is liable to pay the rent for such

period. He further submits that an application for selling out the property is also pending.

I have heard both the learned Counsel and perused the record. Insofar as the claim of the applicant so sated in the listed application is concerned, it has not been denied that after issuance of Succession Certificate the amounts lying in the Bank Accounts of the deceased mother and father to the extent of Rs. 10,869,766.69 has been credited to the Petitioner and he has distributed the same to the extent of his Sister and himself, but has withheld the share of the applicant / brother. The ground for this has been stated as non-cooperation of the applicant in getting the immoveable property transferred and sold and payment of rent as well. To this it may be observed, that the petitioner is trying to mix both the issues, whereas, Succession Certificate and Letter of Administration have been issued separately and are governed separately as well. Once Succession Certificate was issued and was utilised for credit of the money, it was incumbent upon the petitioner to pay the share of all legal heirs as the same was his obligation to the Court in the shape of personal bond on which the Succession Certificate was issued without asking for independent surety. This is a relation of trust between the petitioner and the Court. If for any reason the petitioner and his sister had any intention of withholding the share of the applicant, they could have come to the Court and made an application to that effect but under no circumstances they could be permitted to do so at their own without the consent of the Court and specially the applicant / brother. If this trust is not maintained then the Court in such matters will be fully justified in putting stringent conditions and restrictions in granting Succession Certificate without surety on personal bonds.

On the other hand the issuance of letter of administration in respect of immoveable property is an independent and separate issue and

cause as it is only to the extent of mutation of the property in question in the name of all the legal. As soon as the same is done the matter ends insofar as this Succession Petition is concerned. The petitioner appears to be under a misapprehension in this regard that recovery of alleged rent due against the applicant can be made by this Court in these proceedings. And perhaps on this ground alone the share of the applicant has been withheld as is reflected from the Counter Affidavit and the compliance report filed in response to directions as contained in the orders dated 28.2.2017 & 21.3.2017. It may further be observed / clarified that this is not a Suit for Administration but a Succession Petition which already stands granted by consent of all legal heirs, and therefore the dispute being raised on behalf of the petitioner, as already stated, is out of the ambit of these proceedings.

In the circumstances, and only as an indulgence, the Petitioner is directed to deposit the share of the Applicant in respect of the four accounts so mentioned at Page 17 of the Schedule of Property within two weeks' time from today, failing which coercive measures shall be taken against him for enforcement of personal bond. Listed Application stands disposed of.

ARSHAD/

**J U D G E**