

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C.P No. D-5952 of 2020

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Gul Mast Khan & others.....Petitioners

Versus

Sahibzada Khan & othersRespondents

Mr. Asim Iqbal, Advocate for the Petitioners.

Mr. Atique Qureshi, Advocate for the Respondent No.2.

Mr. Sandeep Malani, Asstt. Advocate General, Sindh.

Date of hearing : 17.10.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioner seeks to impugn the Order dated 20.10.2012 made by the IInd Senior Civil Judge, Karachi Central in Civil Suit No.525 of 2009, whereby the proceedings in the Suit were stayed under the principle of *res sub-judice*, as enshrined in Section 10 of the Code of Civil Procedure, 1908 (the “Code”), in view of the pendency of Suit No.1128 of 2008 before this Court on the Original Side. We have been informed that said Suit remains pending.

At the outset, it falls to be considered that the Order has been assailed directly under Article 199 of the Constitution, that too belatedly, whereas the alternate remedy under the Code could and ought to have been availed within the period prescribed under law if the Petitioner had any real grievance in that regard.

Furthermore, a perusal of the Order reflects that it was made by consent. Learned counsel sought to surmount that obstacle by contending that the noting to that effect contained in the Order had been made in error, as such consent had not been forthcoming on the part of the Petitioner. However, if the Petitioner had any objection as to the correctness of what had been recorded in the Order, it was imperative that an appropriate application be made in a timely manner. Needless to say, the protracted silence of the Petitioner signifies acquiescence in the correctness of what was recorded in the Order, if not the propriety of the Order itself. As such, that question cannot be raised at this belated stage.

Moreover, the record reflects that an application for revival of Suit had earlier been made in the year 2008, which was dismissed vide an Order dated 03.05.2019, and that Order was never assailed. Even the filing of such an application had been suppressed at the time of filing the Petition, and only came to fore through the objections of Respondent No.2, which indicates that the Petitioner approached this Court with unclean hands.

It is for the foregoing reasons that we had found the Petition to be devoid of force and dismissed the same vide a short Order dictated in Court upon culmination of the hearing on 17.10.2022.

JUDGE

CHIEF JUSTICE