

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. No. D-5714 of 2022

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

**DIRECTION.**

For orders as to maintainability of the Petition.

03.10.2022.

Syed Muhammad Yahya, Advocate for the Petitioner.

-----

**YOUSUF ALI SAYEED, J. -** The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution seeking to impugn the Order dated 01.09.2022 made by the learned Additional District & Sessions Judge-III, Karachi, East, on an Application under Section 383 of the Succession Act, 1925 (the “Act”) filed by the Respondents No.3 to 9 in SMA No.1135/2017, whereby the Succession Certificate earlier granted to the Petitioner in that matter vide an Order dated 17.09.2019 was revoked, with another Application concurrently filed by those Respondents under Section 12 (2) CPC being dismissed as having become infructuous.

Learned counsel for the Petitioner contended that the fora below had erred in entertaining and allowing the Application. He argued that since the grant had already been made by the learned District & Sessions Judge, Karachi, East, revocation could, if at all, only follow on an Appeal to this Court. In support of his contentions, learned counsel for the Petitioner placed reliance on certain judgments of the Lahore and Peshawar High Courts in the cases reported as Rukhsana Kausar and another v. Additional District & Sessions Judge, Khanewal and 11 others 2000 CLC 585, Sh. Muhammad Mushtaq & others v. Public-at-large & others PLD 1994 Lahore 373, Najbuddin & others v. Sharfuddin & others 1989 MLD 2203, Petitioners v. Mansoor Ahmed 2001 CLJ 45, as well as a judgment of the High Court of Nagpur in the case reported as Bisesar Sheodayal Soonar v. Jairam Bariyar Soonar AIR 1940 Nagpur 162.

Before embarking upon an examination of the cited case law, it would be expedient to turn to Sections 383 and 384 of the Act, which read as follows:-

**“383. Revocation of certificate.** *A certificate granted under this Part may be revoked for any of the following causes, namely:-*

- (a) *that the proceedings to obtain the certificate were defective in substance;*
- (b) *that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;*
- (c) *that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;*
- (d) *that the certificate has become useless and inoperative through circumstances;*
- (e) *that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.*

**384. Appeal.** *—(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.*

*(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908.*

*(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.”*

[underlining added for emphasis]

Having considered the submissions advanced by the learned counsel for the Petitioner in light of those statutory provisions, we are of the view that the proposition advanced on behalf of the Petitioner is misconceived as recourse under Section 383 is independent of an Appeal as may otherwise be filed under Section 384 against the grant or refusal of a certificate and the wording of those Sections reflects an interplay whereby

the Application for revocation would lie to the Court that made the grant and in the event of such application being accepted and the certificate revoked, an Appeal would then also lie in such event to the High Court. That of course, is very different from the contention of learned counsel that the act of revocation could itself only take place through an Appeal. The judgments relied upon in support of that contention are quite distinguishable and bear no applicability to the matter in hand inasmuch as they focus on the effect of Section 388 of the Act, which provides that where the Civil Court inferior to the Court of the District & Sessions Judge has made the grant, an Appeal from an Order of that Court would then lie to the District & Sessions Court rather than the High Court.

Under the given circumstances, we are of the view that the Petition is not maintainable, hence dismiss the same *in limine*, leaving the Petitioner at liberty to avail the appropriate remedy before the concerned forum in accordance with law.

JUDGE

CHIEF JUSTICE

MUBASHIR