

1
ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
M.A No.84 of 20121

Dated: Order with signature of Judge(s)

1. For Hearing of CMA No. 6453 of 2021
2. For hearing of Main Case.

Date of Hearing : 30 May 2023.

Petitioner : Syed Zakir Hussain Shah through Mr. Naseer Ahmed Khan, Advocate.

Respondent No. 1 : Mst. Jabees Fatima through Mr. Sami Ahsan

Respondent No. 2 : Nemo

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. This Miscellaneous Appeal has been maintained by the Appellant under Section 299 and 344 of the Succession Act, 1925 seeking to set aside an order dated 13 November 2021 passed by the IInd Additional District & Sessions Judge Karachi (East) in Succession Miscellaneous Application No. 679 of 2014 in respect of the estate of Syeda Muntazir Fatima (hereinafter referred to as the "Deceased") whereby the IInd Additional District & Sessions Judge Karachi (East) was pleased to revoke and cancel Letters of Administration that had been issued by that Court in favour of the Appellant in respect of the estate of the Deceased.

2. The Appellant was the husband of the Deceased who passed away on 24 May 2013. The Appellant maintained Succession Miscellaneous Application No. 679 of 2014 before the IInd Additional District & Sessions Judge Karachi (East) and in which he had averred that the Deceased died issueless and that he was the only legal heir of the Deceased. Succession Miscellaneous Application No. 679 of 2014 was granted by the IInd Additional District & Sessions Judge Karachi (East) on 8 May 2015 and Letters of Administration and a Succession Certificate were issued in favour of the Appellant by the IInd Additional District & Sessions Judge Karachi (East).

3. The Respondent No. 1 is purportedly the sister of the Deceased and one of her legal heirs. On discovering that the Appellant had maintained Succession Miscellaneous Application No. 679 of 2014 and in which he had incorrectly declared that he was the sole legal heir of the Deceased, the Respondent No. 1 on 11 February 2020 maintained an Application under Section 263 and 264 of the Succession Act, 1925 praying for the recall and cancellation of the Letters of Administration that had been issued by the IIInd Additional District & Sessions Judge Karachi (East) to the Appellant pursuant to an order dated 8 May 2015 passed in Succession Miscellaneous Application No. 679 of 2014. The Respondent No. 1 alleged that the Deceased had 4 sisters and one brother and each of whom were entitled to their share in the estate of the Deceased in accordance with the entitlements as per their personal law. The Respondent No. 1 also moved an Application under Section 282 of the Succession Act 1925 read with Section 193 of the Pakistan Penal Code, 1860 seeking the prosecution of the Appellant for perjury under Section 476 read with Section 195 of the Code of Criminal Procedure, 1898.

4. The Application under Section 263 and 264 of the Succession Act, 1925 and the Application under Section 282 of the Succession Act 1925 read with Section 193 of the Pakistan Penal Code, 1860 seeking the prosecution of the Appellant for perjury under Section 476 read with Section 195 of the Code of Criminal Procedure, 1898 were both heard on 24 September 2021 and on which date apparently the Advocate for the Appellant consented to the Application under Section 263 and 264 of the Succession Act, 1925 and the Advocate for the Respondent concurrently did not press the Application under Section 282 of the Succession Act 1925 read with Section 193 of the Pakistan Penal Code, 1860 seeking the prosecution of the Appellant for perjury under Section 476 read with Section 195 of the Code of Criminal Procedure, 1898. It seems endorsements were made on both of these applications by the counsel for each of the parties to

this affect however on account of human error, the endorsement of the Advocate for the Appellant consenting to the Application under Section 263 and 264 of the Succession Act, 1925 was inadvertently recorded on the Application under Section 282 of the Succession Act 1925 read with Section 193 of the Pakistan Penal Code, 1860 seeking the prosecution of the Appellant for perjury under Section 476 read with Section 195 of the Code of Criminal Procedure, 1898 and the endorsement of the Advocate of the Respondent withdrawing the Application under Section 282 of the Succession Act 1925 read with Section 193 of the Pakistan Penal Code, 1860 seeking the prosecution of the Appellant for perjury under Section 476 read with Section 195 of the Code of Criminal Procedure, 1898 was recorded on the Application under Section 263 and 264 of the Succession Act, 1925 .

5. Noting the discrepancy, the Respondent No. 1 moved an Application under Section 151, 152, 153 of the Code of Civil Procedure, 1908 seeking an order that the endorsements that had been given on the applications may be read in their true intent and the error rectified. The application under Section 151, 152, 153 of the Code of Civil Procedure, 1908 was granted on 13 November 2021 and a separate order was passed on the same day on the Application under Section 263 and 264 of the Succession Act, 1925 and wherein it was recorded that the Counsel for the Appellant had “candidly endorsed his no objection to the grant of instant application as prayed.” The candid endorsement led to the IInd Additional District & Sessions Judge Karachi (East) recalling and cancelling the Letters of Administration issued by that court in favour of the Appellant and called for a report to be submitted in respect of the estate of the Deceased that had come into the hands of the Appellant and as to its distribution up to that date so that the estate could be devolved in accordance with the legal heirs entitlement under the Islamic Law of Sharia.

6. The Appellants have preferred this Appeal as against the order dated 13 November 2021 passed by the IInd Additional District & Sessions Judge

Karachi (East) in Succession Miscellaneous Application No. 679 of 2014. Mr. Naseer Ahmed Khan entered appearance on behalf of the Appellants and contended that the Appellant had never authorised his counsel to give his No Objection to the Application under Section 263 and 264 of the Succession Act, 1925 that was moved by the Respondent No. 1. He stated that the order dated 13 November 2021 passed on the Application under Section 263 and 264 of the Succession Act, 1925 having been acceded to the Counsel for the Appellant in excess of his authority may be recalled and the matter remanded with directions that Succession Miscellaneous Application No. 679 of 2014 should be converted into a suit for administration and be adjudicated on merits. He did not rely on any case law to support his contentions.

7. Mr. Sami Ahsan on behalf of the Respondent No. 1 contended that the Order dated 13 November 2021 passed by the IInd Additional District & Sessions Judge Karachi (East) in Succession Miscellaneous Application No. 679 of 2014 was a consent order and no appeal lay against a consent order and sought dismissal of this Appeal.

8. I have heard the Counsel for the Appellant and the Counsel for the Respondent No. 1 and have perused the record. On 13 November 2021, the Appellant was being represented by Mr. Dur Muhammad Shah, Advocate and who had given his No Objection, to the Application maintained by the Respondent No. 1, under Section 263 and 264 of the Succession Act, 1925. In the decision reported as **Haseeb Express (Private) Limited vs. Azerbaijan Hava Yollari State Concern Azerbaijan Air Lines**¹ it was held that:

“ ... it is well established law that a counsel has authority to take all action necessary for the proper conduct of his clients cause. This includes the power to withdraw interlocutory application and even a Suit. The counsel also has implied authority of his client to enter into a compromise and settle disputes unless such authority has been expressly excluded in the Vakalatnama.”

¹ 1998 CLC 1390

I have perused the Vakalatnama of Mr. Dur Muhamamd Shah and note that the terms of the Vakalatnama which regulated the obligations as between the Appellant and his Counsel in no manner curtailed the authority of Mr. Dur Muhammad Shah to give his "No Objection" to the grant of the Application under Section 263 and 264 of the Succession Act, 1925. That being the case and the endorsement of Mr. Dur Muhammad Shah being available on the Application under Section 263 and 264 of the Succession Act, 1925 (in accordance with the Order dated 13 November 2021 passed on the Application under Section 151, 152, 153 of the Code of Civil Procedure, 1908) the consent must be honoured and the argument raised by the Appellant that he had not authorised Mr. Dur Muhammad Shah to consent to the Application under Section 263 and 264 of the Succession Act, 1925 is rejected. It naturally follows, as correctly contented by Mr. Sami Ahsan, that no appeal can lie for a consent order and this Appeal must also consequentially fail.

9. For the foregoing reasons, there being no illegality of infirmity in the order dated 13 November 2021 passed by the IInd Additional District & Sessions Judge Karachi (East) in Succession Miscellaneous Application No. 679 of 2014 revoking and cancelling the Letters of Administration that had been issued in favour of the Appellant, this Appeal is clearly misconceived and is dismissed along with all listed applications with no order as to costs. Office is directed to return the Record and Proceedings of SMA No. 679 of 2014 to the court of the IInd Additional District & Sessions Judge Karachi (East) forthwith.

JUDGE

Karachi dated 29 August 2023