

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
II-Appeal No. 97 of 2022.

-----  
DateOrder with signature of Judge  
-----

1. For hearing of CMA No. 7121 of 2022.
2. For hearing of main case.

-----

21<sup>st</sup> March 2023

Mr. Muhammad Irfan, advocate for the appellant.  
Mr. Shahid Mushtaq, advocate for respondent No.1.  
Mr. Kashif Hanif, advocate for PEMRA.

-----

Heard learned counsel for the appellant and respondents. Being relevant para No.14 of the impugned judgment dated 11.04.2022 is that:

“14. The issue No.1 was framed as to whether partnership firm was legally dissolved. Persual of record shows that appellant No.2 was examined himself before the trial court on behalf of the appellant No.1 also. During the course of his evidence he admits that they got renewed the license of business from the PEMRA by showing deceased Ghulam Murtaza as their third partner but it is admitted fact that said Ghulam Murtaza was not alive. However, appellant admits that they have asked to the PEMRA that legal heirs of the deceased may join the business thereafter they also wrote the letter to the PEMRA that legal heirs of deceased Ghulam Murtaza are not traceable. Means thereby technically partnership was not dissolved. It is pertinent to mention here that after the death of third partner namely Ghulam Murtaza and his legal heirs have not joined the partnership and not invested or share the loss or profit then the partnership presumed to be as dissolved after the death of said Ghulam Murtaza. **Moreover, during the course of cross examination appellants has admitted the “share of deceased Ghulam Murtaza became Rs.72,91,667/- till his death” therefore, when there is no investment on record on behalf of the respondent No.1/legal heirs of deceased partner namely Ghulam Murtaza then they are not entitle to get interference in the record to the appellants or affair in partnership however, in view of admission by the appellants, respondent No.1 is entitled to the extent of share of his husband till his death amounting to Rs.72,91,667/-**”

2. Before proceeding further, it would be pertinent to mention here the scope of the 2<sup>nd</sup> appeal which is *narrow* and it could be exercised *only* if the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure

provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits. Guidance is taken from the case of the *Gulzar Ahmad and others vs. Ammad Aslam and others (2022 SCMR 1433)* wherein the Hon'ble Apex Court has held that:

“7. Compliant with section 100, C.P.C., the second appeal only lies in the High Court on the grounds that the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits. Meaning thereby, it does not lie to question the findings on facts. In the case of *Madan Gopal v. Maran Bepari (PLD 1969 SC 617)*, this court held that if the finding of fact reached by the first appellate court is at variance with that of trial court, such a finding by the lower appellate court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first court which have been disfavored in the contrary finding. It was further held that interference would be justified if the decision of the lower courts is found to be contrary to law or some usage having the force of law has failed to determine some material issue of law. Whereas in another case reported as *Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1)*, the court held that in case of inconsistency between the trial court and the appellate court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary as has been held by this court in the judgments reported, as *Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617)* and *Muhammad Nawaz through LR. v. Haji Muhammad Baran Khan through LR. and others (2013 SCMR 1300)*.”

3. The above legal position, prima facie, makes it clear and obvious that to succeed in second appeal, the appellant must establish that the finding of fact arrived at by the first appellate court is not found to be substantiated by evidence on the record and is result of its failure in determining the material issue or that conclusions, so drawn, are contrary to settled principles of law.

4. Reverting back to the merits of the present appeal, when counsel for the appellants was confronted with regard to last 10 lines of the impugned judgment reproduced above, wherein appellant admitted share of deceased Ghulam Murtaza which became to “*Rs.729,1667/-*” till his death. This aspect is admitted position in evidence. Counsel for

appellant is not in a position to rebut the same. Accordingly present appeal being devoid of merits is dismissed.

J U D G E

Sajid