

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D-6585 of 2022
Const. Petition No. D-6586 of 2022
(Abdul Sattar Versus Syed Asif Ali & others)

Dated	Order with signature of Judge
-------	-------------------------------

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Const. Petition No. D-6585 of 2022

1. For hearing of Misc. No. 27883 of 2022
2. For hearing of Main Case

Const. Petition No. D-6586 of 2022

1. For hearing of Misc. No. 27886 of 2022
2. For hearing of Main Case

Dated 17.01.2024

Mr. Muhammad Aslam, Advocate for the Petitioners
Mr. Abbadul Hasnain, Advocate for the Respondent No.1
Mirza Sarfaraz Ahmed, Advocate for the Respondent No.7

.....

Muhammad Shafi Siddiqui, J.- In both appeals, separate suits for performance were filed which were contested, however, during trial applications under Order XXXII Rule 15 C.P.C. read with Sections 29, 31, 33 of the Sindh Mental Health Act were filed for the appointment of guardian ad litem on the grounds mentioned therein. The applications were initially dismissed by the trial Court, however, the Revisional Court allowed it.

2. It is Petitioner's case that earlier in 2016, a similar application which was preferred under Section 151 C.P.C. was dismissed by the learned trial Court hence this application should not have been entertained.

3. Be that as it may, the Revisional Court after considering the arguments of the learned counsel remanded the matter with the "consent" of the counsels.

4. The Petitioner is aggrieved of such observations as far as “consent” is concerned. Had it been the independent order of the revisional Court, the remand order normally is not ordinarily objected either under the appellate or revisional jurisdiction, however, it is a matter of “consent” being recorded which in presence of objections available is not conceivable.

5. We therefore, deem it appropriate to score off such observation of “consent”, however, the “remand” on its own is maintained. All defences of Petitioner as far as maintainability of application on any count is concerned, is open and be considered after recording the evidence and shall be decided in consideration of all paramount questions of law and facts involved by the trial Court.

Both petitions along with listed applications stand disposed of in above terms.

JUDGE

JUDGE

Amjad PS