

ORDER SHEET HIGH COURT OF SINDH AT KARACHI

Suit No. 1030 of 2024

Date	Order with signature of Judge(s)
------	----------------------------------

1. For hearing of CMA No.10187/2023.
2. For hearing of CMA No.10188/2023.
3. For hearing of CMA No.10340/2023.
4. For hearing of CMA No.14490/2023.
5. For hearing of CMA No.3056/2024.

10.10.2024

Mr. Ali Ahmed Turabi, advocate for the plaintiff.
Messers. Abdul Ahad Nadeem, advocate for the defendants No.1 & 2.
Mr. Rashid Mahar, advocate for defendant No.7.
Mr. K.A. Vaswani, Addl. A.G., Sindh.

1&4. This order determines CMA No.10187/2023 filed by the plaintiff under Order XXXIX Rules 1 & 2 CPC, 1908, seeking restraint, *inter alia*, upon securities in respect whereof a share is claimed. Learned counsel states that the plaintiff is entitled to 50 per cent share, therefore, the interim order of restraint upon the securities ought to be confirmed.

Learned counsel for the defendants 1 & 2 demonstrates from the record that the shares do not belong to the deceased and refers to documents available on pages 165 & 293 onwards of court file. Learned counsel for the defendant 7 (Central Depository Company) is present and submits that verification sought vide order dated 27.02.2024 has been placed on record, at page 345, and the assertion of title articulated by learned counsel for the defendants 1 & 2 is confirmed.

This issue was encapsulated by this Court in an earlier order dated 27.02.2024, which is reproduced herein below:

“27.02.2024

Mr. Ali Ahmed Turabi, advocate for the plaintiff.
Mr. Abdul Ahad advocate for defendants No.1 & 2 along with Mr. Ammar Suria, advocate.

Learned counsel for the defendants No.1 and 2 refer to the following documents issued by the defendant No.7 to the deceased:

1. Letter dated 08.11.2018 by the defendant No.7.
2. Notice to transfer of security through gifts dated 08.11.2019.
3. Notice of transfer of security through gifts dated 16.12.2019.
4. Copy of email dated 24.12.2019 from the defendant No.7 to the deceased.

It is contended that these four documents conclusively demonstrate that securities listed in the schedule thereto did not belong to the deceased at the time of her demise. Learned counsel for the plaintiff submits that the plaintiff has sworn on Oath in the counter affidavit that this statement is incorrect and that these documents are forged and fabricated. Office is directed to make copy of these documents available from page 145 onwards, annexed with CMA No.14990/2023 and send them to the defendant No.7 for verification. The defendant No.7 is directed to submit verification report within two weeks.

To come up on 19.03.2024. Interim orders passed earlier to continue till the next date.”

Plaintiff’s counsel has demonstrated no entitlement to the shares in respect whereof restraint has been sought. No share certificate, CDC account report and / or broker account report has been placed on file. On the contrary it is admitted that none exists, hence, the plea seeking such information. On the contrary the learned counsel for the defendant nos. 1&2 has demonstrated, from documentation, that irrespective of any claim of the plaintiff, the deceased herself had no title to the shares at the time of her demise. This fact has also been independently confirmed by CDC vide their report submitted in response to the order herein dated 27.02.2024. Therefore, no case has been made out to place any restraint upon securities subject matter herein.

It follows that no *prima facie* case for grant of the application has been demonstrated and on the contrary the independent CDC verification report demonstrates that the scale of balance of convenience and irreparable harm is manifestly tilted in favor of the defendants.

In view hereof CMA 10187/2023 is dismissed and CMA 14490/2023 is disposed of accordingly.

2,3&5. Adjourned.

Judge

M. Khan