IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.220 of 2022
[Mst. Humaira Shakeel versus Khurram Shakeel Hashmi and others]

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Justice Ms. Sana Akram Minhas, J.

Date of hearings	:	24.11.2025 and 11.12.2025
Appellant	:	Mst. Humaira Shakeel [since Deceased], through Mr. Muhammad Aqil, Advocate.
Respondent No.1(a) to (c)	:	Khurram Shakeel Hashmi [since Deceased] through the legal heir-Mst. Saleha Khurram and others, through Mr. Ayaz Ali, Advocate.
Respondent No.2	:	Pakistan Defence Officer Authority (Nemo)

O R D E R

***Muhammad Faisal Kamal Alam, J.*:** This High Court Appeal is directed against the Order dated 15.06.2022 passed by a learned Single Judge of this Court in Suit No.955 of 2019, whereby, the Suit regarding House No.89/2, 7th Commercial Street, Phase-IV, Defence Housing Authority, Karachi, measuring 300 Square Yards **("the Suit Property")** was disposed of with a direction to the Defence Housing Authority to mutate the Suit Property in the joint names of (i) Humayun Shakeel, son of Deceased Shakeel Hashmi, (ii) Muhammad Ayan and (iii) Zunaira, the minor children of the Predeceased Son, (late) Khurram Shakeel son of Deceased Shakeel Hashmi, through their Mother and Guardian, Mst. Saleha Khurram (widow of the Predeceased Son), each, in their respective shares. Humayun Shakeel

Hashmi is represented by his Guardian-Pervaiz Hashmi (who is his real Paternal Uncle/Chacha). The Appellant, representing the interest of Humayun, impugned the said Order on grounds both of fact and of law, and seek to exclude the Grandchildren of Deceased Shakeel Hashmi **(Propositus)** from the succession to the Suit Property.

2. The material facts are simple and, importantly, not in controversy. The Original Owner of the Suit Property was the Propositus. He had two sons, namely, Khurram (deceased) and Humayun (present Appellant). Khurram predeceased his Father (Propositus), passing away in / or about 2008, leaving behind his Widow, Mst. Saleha, and two minor children, Ayan and Zunera. Subsequently, in 2011, the Propositus died, and his estate, including the Suit Property, became liable to devolution upon his Legal heirs. At that point in time, the surviving blood relations were his son Humayun (Appellant) and the children of his Predeceased son Khurram. Humayun is a person with mental disability; his person and property are under guardianship pursuant to an Order of the competent Family Court. These facts are acknowledged by both sides and form the common factual substratum.

3. The dispute arose when, following the death of the Propositus, the Appellant asserted that the Suit Property had been "reserved" by the Propositus exclusively for the benefit of the disabled son, that is, Appellant Humayun. On that premise they resisted any claim by the widow and children of deceased Khurram to a share in the Suit Property. The Respondents, on the other hand, took the position that, upon the death of the Propositus, succession opened in favour of all his legal heirs according to the Muslim Personal Law as supplemented by Section 4 of the *Muslim Family Laws Ordinance, 1961* **(MFLO, 1961)**. They contended that, by

virtue of that statutory provision, the minors Ayan and Zunera were entitled to inherit, the share which their father, Khurram, would have received had he been alive at the time of the death of his own Father (the Propositus).

4. The learned Single Judge, after noting that guardianship of Humayun had already been settled by a separate Order of the Family Court and that all relevant parties, including the minors through their Guardian, were before the Court, treated the controversy as essentially one of law rather than of disputed fact. Placing reliance, *inter alia*, on the Judgment of the Hon'ble Supreme Court in **Mst. Fazeelat Jan versus Sikandar [PLD 2003 SC 475],** the learned Judge held that the children of a predeceased son were, under Section 4 of the MFLO, 1961, entitled to the share that their Father would have received if alive, and that the Suit Property, therefore, fell to be mutated in the joint names of Humayun and the orphaned grandchildren, in their respective legal shares. In this backdrop, the Suit was disposed of with consequential directions to the Defence Housing Authority to effect mutation accordingly.

5. Main crux of the argument of learned Counsel for the Appellant, is that the above Children of the Pre-Deceased Son of the Propositus will not inherit anything, as decided by the learned Federal Shariat Court in its Decision reported in **PLD 2000 FSC 1** *[Allah Rakha versus Federation of Pakistan]*.

6. To augment his arguments, the Appellant's Counsel has placed reliance on the following Decisions_

1. **PLD 2003 SC 475**
   [Mst. Fazeelat Jan and others vs. Sikandar through his Legal Heirs and others]-**Fazeelat Jan Case**

2. **PLD 1980 Peshawar 47** [Shariat Bench]
[Mst. Farishta vs. the Federation of Pakistan through Ministry of Law, Islamabad]-**Farishta Case**

3. **PLD 2012 Supreme Court 217**
[Mst. Sarwar Jan and others vs. Mukhtar Ahmad and others]-***Sarwar Jan Case.***

4. **PLD 2000 Federal Shariat Court 1**
[Allah Rakha and others vs. Federation of Pakistan and others]-**Allah Rakha Case.**

5. **PLD 1993 Supreme Court 901**
[Mst. Kaneez Fatima vs. Wali Muhammad and another]-**Kaneez Fatima Case.**

7. Précis of the Case Law cited by the Applicant's Counsel is_

The Judgment in **Farishta Case *(ibid)*** was set-aside by the learned Shariat Appellate Bench of the Supreme Court in **Federation of Pakistan versus Mst. Farishta [PLD 1981 SC 120]**. As regards **Allah Rakha Case *(ibid)***, the said Judgment has been challenged before the learned Shariat Appellate Bench, and, by virtue of Article 203-D of the Constitution, its operation remains suspended. Consequently, neither of these citations impedes the enforceability of Section 4 of the MFLO, 1961, as it presently stands. The Judgment in **Mst. Sarwar Jan Case *(supra)*** does not question the validity of Section 4 of MFLO, 1961, itself. The Hon'ble Supreme Court, in that case, confined its determination to the issue of retrospectivity and held that the provision could not reopen successions that had already vested prior to the promulgation of MFLO in 1961. The ruling is therefore limited to its own facts and has no application where succession opened after the enforcement of the MFLO, 1961. Similarly, **Mst. Kaneez Fatima Case *(ibid),*** *inter alia,* explains constitutional interpretation and the jurisdictional limits of the learned Shariat Courts. It does not adjudicate upon, nor does it detract from, the operative force of Section 4 of the MFLO, 1961 in inheritance disputes. Most significantly, **Mst. Fazeelat Jan**

Case *(supra)* does not support the Appellant's contention. On the contrary, the Hon'ble Supreme Court expressly reaffirmed that, notwithstanding the adverse findings recorded by the learned Federal Shariat Court, Section 4 of MFLO, 1961 continues to govern inheritance matters owing to the pendency of appeals and the resultant suspension of those verdicts.

8. Learned Counsel for the Respondent No.1 has supported the impugned Order and has placed reliance on the Judgment of the Hon'ble Supreme Court reported *as* **Mst. Kalsoom Begum versus Peran Ditta and others [2022 SCMR 1352]**. In this Judgment, the appellant claimed her right of inheritance to the property left by her paternal grandfather, which was opposed by paternal uncle, *inter alia,* on the basis of a Gift Document, and a mutation entry was also effected. The Apex Court has specifically dealt with the stance about repeal of Section 4 ***(ibid)*** in view of Allah Rakha Judgment ***(supra),*** by ruling that since the Appeal against the Judgment is *sub judice,* therefore, in view of Article 203-D of the Constitution, the said decision in Allah Rakha Case has not come into effect, and consequently, Section 4 ***(ibid)*** continues to be the substantive law of Pakistan, till the decision of Allah Rakha Case is upheld in the appeal.

9. The Article 203-D of the Constitution is unambiguous, according to which, the stay shall operate if the Judgment of the learned Federal Shariat Court is *sub judice* before the learned Shariat Appellate Bench of the Apex Court. In this view of the matter, the case law cited by the Appellant's Counsel is distinguishable, both on facts and law and do not apply to the facts of the present ***Lis.*** More so, Section 4 of the MFLO, 1961, is still applicable, as ruled by the Hon'ble Supreme Court in the ***Kalsoom Begum Case (supra)***, relevant portion whereof is reproduced hereunder_

> ***"…As regards the contention that section 4 of the Ordinance is no longer the law of Pakistan, the referred to decision of the Federal Shariat Court in the case of Allah Rakha (which had struck down section 4 of the Ordinance) was challenged in an appeal filed under Article 203F of the Constitution before the Shariat Appellate Bench of this Court, and leave was granted. Since the appeal is pending adjudication the said decision of the Federal Shariat Court (impugned therein) has not come into effect, because the second part to the proviso to clause (2) of Article 203(D) of the Constitution stipulates:***
>
> ***'Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been preferred, before the disposal of such appeal.'***
>
> ***Consequently, section 4 of the Ordinance continues to be the subsistent law of Pakistan, and shall remain so till such time that the Shariat Appellate Bench of the Supreme Court either upholds the decision of the Federal Shariat Court in the Allah Rakha case or dismisses the said appeal."***

10. We have gone through the impugned Order, in which all the issues have been properly addressed. Although the Appellant's Guardian Mr. Pervaiz Hashmi, has recorded his No Objection in the impugned Order, but now has filed this Appeal by stating that the Appellant never conceded to the stance of the Respondents. Notwithstanding this self-contradictory stance, in view of the above discussion, no interference is required in the impugned Order, because Section 4 of the MFLO, 1961 still exists, and, therefore, the impugned Order is correct. Consequently, this Appeal is ***dismissed*** along with all pending application(s), if any.

The compliance Report should be filed by Defence Housing Authority through MIT-II of this Court, within five weeks.

This matter will be re-listed for the above purpose in the second week of January, 2026.

JUDGE

JUDGE

Karachi.
Dated: 23.12.2025.
M.Javaid.P.A