

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1464 of 2024

Constitutional Petition No. S-184 of 2025

Petitioner : Through M/s Sohail Hameed & Wazir Hussain Khoso Advocates

Respondent No.3 : Through M/s Tajammul H. Lodhi & Nousheen Tajammul Advocates

Official Respondents : Through Mr. Ahmed Khan Khaskheli, Assistant Advocate General along with SSP Gulberg Javed Hashmi and DSP Legal-II, CPO, Sajid Gujjar

Applicant / Intervener : Through M/s Muhammad Arif Shaikh & Syed Javed Hashmi Advocates

Date of Hearing : 21.04.2026

ORDER

MUHAMMAD HASAN AKBER, J.: Two Civil Miscellaneous Applications [CMAs 6391/2025 and CMA 5618/2025] are being decided through this common Order, in these two petitions, which have been tagged together by an earlier Order in these petitions. The prayers in these applications are for recall of the attachment Order dated 09.04.2025.

2. Heard learned Advocates for the petitioner and both the applicants and perused the record with their able assistance. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in the latter part of this Order, for brevity's sake.

3. The chequered history of the dispute between the parties is that Constitution Petition No.S-1464/2024 has been initiated by the Petitioner [**wife**] against Respondent No.3/ her [**husband**] for taking over custody of one of their minor son, Mirza Azfar Jalees Baig, born on 23.08.2014, presently aged about 12 years, whereas two other children are already in the custody of the wife. According to the wife, such an act by the husband was in violation of a **Compromise Order dated 24.11.2023**, which was passed on an

application under Order XXIII rule 3 CPC. filed in Guardian and Ward Application No.3380 of 2022 filed by the husband before the learned Guardian Judge VIII Karachi East.

4. Earlier, the wife filed Family Suit No.3381 of 2022 for conjugal rights against her husband. She also filed another Family Suit No.3803/2022 for maintenance against her husband. The said two Family cases and the Guardian and Ward Application [all three proceedings] were subsequently transferred to the Court of learned Family Judge-VIII, Karachi East, wherein two Issues were framed.

5. On the day when evidence was to be recorded, both husband and wife filed an application under Order XXIII Rule 3 CPC, based whereon a Compromise Decree dated 24.11.2023 was prepared, terms whereof are reproduced below:

“.....On the above issues parties were directed to lead evidence but today both parties along with their councils appeared before this court and filed application for mutual compromise as per following terms and conditions:

- 1. That parties amicably agreed and decided in between them that the applicant shall arrange a separate accommodation nearby Jama Masjid Baitul Mukarram Gulshan-e-Iqbal, University Road, Karachi.**
- 2. That no there is nothing left in between the parties.**
- 3. That now after filing of this application, both parties prayed for withdrawal of above matter.**
- 4. That whereas after intervention of respective advocates from both side meeting was held in between the parties and by the grace ALMIGHTY ALLAH the parties reached the conclusion/settlement of their disputes in terms of compromise.**
- 5. That parties shall not initiate any proceedings before any competent forum/ hon'ble court in future in respect of any dispute except this hon'ble court.**
- 6. This application for cum settlement of disputes among these spouses have been settled between parties in the name of ALMIGHTY ALLAH.**
- 7. That both the parties shall not moved any further application and/or applications complain complaints before any police station competent forum and any other forum in respect of the disputes and having no legal effect and after dispose of compromise this application for compromise.**
- 8. That the parties will tried their level best to restrain themselves from given any false propaganda/scandalous/statements. Messages remarks and will out try to damage the verbal or written reputations of each other and shall not caused any mental torture or physical torture and agony and any loss of reputation among the general public at large and specially in civil society, in the family and relatives as well in common friends.**
- 9. That both parties are bound to obey the terms and conditions of**

this application for settlement/compromise, if to be found violated by party of parties, damages shall/will be paid to the other side on account of damages/breach of this settlement.

10. The parties shall/will not make any cock and bull story/stories/false and fabricated allegations upon each and other.

11. That both the parties are entered into settlement/compromise in respect of family disputes and they entered with their own free will with the hope that they shall be tried their level best to bring future of their minors as well as themselves.

12. That the differences arose between both the parties on or before today in above and said discussed issues disputes may be treated as a result, and parties assure that they may not allege things against each other, failing of which both parties shall bears cost of damages and is strongly condemned the act of violations from each other.

13. That both parties put their respective signatures, without any pressure, force, stress, caution with their own free will after reading and understanding the same and both bound to give respect to all the above said agreed terms and conditions of this application.

14. That the instant application has been drafted and filed under our specific instructions and both understand the same and then sign the same and filed before this honourable Court.

In above mentioned circumstances application under order 23 rule 3 CPC is allowed and above mentioned Guardian and Ward Application is disposed of by way compromised in terms of conditions mentioned above.

Announced in open court

Given under my hand and seal of this Court, this the 24th day of November, 2023.

Sd/- 24/11/2023
(SAFDAR ALI MAHESAR)
VIIIth GUARDIAN JUDGE KARACHI EAST”

6. For implementation of the Compromise Order, the husband initiated Execution Application No.08 of 2024 against the wife before the learned VIII Family Judge Karachi East, wherein Order dated 25.11.2024 was passed, directing both husband and wife to comply with the terms of the compromise, in the following manner:

“....Hence in view of compromise decree of 24.11.2024 both parties are directed to comply the compromise decree and applicant. Mst. Farha is directed to join respondent Mirza Zafarul Hasan Baig being her wedded wife so also respondent Mirza Zafarul Hasan Baig is directed to provide separate accommodation and maintenance to respondent and children in the light of compromise decree. Such compliance report be submitted before this Court accordingly. Application is disposed of accordingly.”

7. After the said Compromise Decree, a contempt application was also filed by the wife against the husband before the learned Guardian Court.

10. The wife then filed a Habeas Corpus Petition No.623 of 2024 before the learned Additional District Judge-III Karachi East, which was dismissed as not pressed.

8. Subsequently, another Habeas Corpus Petition No.375 of 2024 was initiated by the wife, which was also dismissed vide Order dated 12.12.2024.

9. For implementation of the same Compromise Order, another Habeas Corpus Petition No.655 of 2024 was also initiated by the husband against the wife with respect to the three children before the learned III Additional District Judge Karachi East, which was pending at the time of filing of this petition, and certain Orders were also passed therein.

10. On the other hand, the connected Constitution Petition No. S-184/2025 has also been filed by the wife against the husband assailing an interlocutory Order passed by the learned Guardian Court on 12.11.2024, whereby an application for appointment of a child psychiatrist to assess the mental health of their minor son was allowed, which Order was concurrently upheld by the learned Additional District Judge-XII Karachi East, in Guardian and Ward Appeal No.393 of 2024 vide Order dated 13.01.2025.

11. As disclosed by learned counsels during the course of the arguments, despite the above chain of proceedings, the **marriage between the husband and wife is still subsisting**.

12. Once the above background of the proceedings and controversies between the husband and wife are recorded, I now turn to the controversy in the present two civil miscellaneous applications. On 09.04.2025¹ a Statement was filed by the wife in these petitions, claiming that the properties listed in the said Statement are owned by her husband. Based thereon, Order dated 09.04.2025 was passed in the following terms:

“.....Learned counsel for the petitioner submits a statement showing assets of Respondent No.3 and he refers to order dated 17.03.2025 wherein directions have been issued to NADRA as well as FIA for submitting travel history of the said respondent. No one is in attendance on part of NADRA as well as FIA, let show cause notices be issued to the concerned officials of NADRA as well as FIA as to why coercive powers should not be exercised to procure their attendance.”

To come up on 23.04.2025. **Till the said date, assets filed with the statement are to be attached as failure of respondent is present for compliance of the order** and warrants till to date stands un-executed. Let said warrants be repeated for the said date”.

[emphasis added]

13. The first application, CMA No. 6391 of 2025 has been filed by Mr. Ali Raza under section 151 CPC read with Article 199 of the Constitution, for the release of the vehicle Toyota Fortuner, Registration No. BK-8591, Model 2022, Engine No.1GD5179048 [henceforth referred to as '**BK-8591**']. The other application CMA No. 5618/2025 has been filed by Mr. Musawar Ali Khan under section 151 CPC. read with Order XXI rule 58 CPC., for release of the vehicle bearing Registration No. BEX-333, Make Audi A3, Model 2016, Engine No. CYV377525, Chassis No. 1055423 [henceforth referred to as '**BEX-333**']. Petitioner has filed counter-affidavits to these applications alleging connivance, collusion, fraud and fabrication by her husband/ Respondent No.3 and the applicants.

14. With respect to CMA No. 6391/2025 for vehicle **BK-8591**, the applicant claims *bona fide* purchase and ownership of the vehicle, which he purchased from Respondent No.3 in the year 2022. The Petitioner in her counter-affidavit against CMA No. 6391/2025 has alleged connivance, collusion, fraud and fabrication by her husband/ Respondent No.3 and the applicant for release of the subject vehicle. Applicant claims to have paid full sale consideration, and physical possession of the vehicle was handed over to him on the same date. Along with the application, various documents have been annexed which include the CNIC of the applicant, Sale/Purchase Receipt, Delivery Letter and Sale/Purchase Agreement, Transfer Letter, challan by Excise & Taxation Department Challan, Transfer Deed, Registration Card of Vehicle, Remarks on Custody and the Certificate of Registration in his name. These documents reflect that the subject vehicle was duly registered in the applicant's name by the concerned Excise & Taxation Office & Motor Registering Authority, Sindh, Karachi. The transfer was approved by the ETO on 12.03.2025, whereas the transferred record was scanned by the Scan Section of the Department on 17.03.2025. The biometric verification of the Seller/ Respondent

1. (which includes immovable property being office Acom Corporation, situated at Plot No. B-280, Block-10, Gulberg Town, Karachi and moveable properties being Car / Vehicle Audi Model 2016, Registration No. BEX-333 dated 15.02.2016, Pistol License No. 28111895754 dated 15.06.2022 and a vehicle Toyota Fortuner, Registration No. BK-8591, Model 2022, Engine No. 1GD5179048)

No.3 was duly conducted at the ETO office before the attachment Order. Due to the attachment Order, and that too without hearing him, Applicant claims infringement of his fundamental right to property, right to hearing, rights under various statutes, irreparable loss *inter alia* under Articles 4 and 10-A of the Constitution of Pakistan, 1973. These official acts of a statutory authority carry due weight and cannot be ignored merely on bare verbal allegations of fabrication made in the counter-affidavit.

15. With respect to CMA No.5618/2025 for vehicle **BEX-333**, the applicant claims to have purchased the same on 14.10.2024 from one Wamiq Ghafoor, who had himself purchased the said vehicle from Respondent No.3 on 10.04.2024, much earlier than the attachment Order and also earlier than the filing of these petitions. Applicant claims to have paid full sale consideration, and physical possession of the vehicle was handed over to him on the same date. Relevant documents, including CNIC of applicant, Sale/Purchase Receipt, Delivery Letter and Sale/Purchase Agreement. Delivery Letter dated 14.10.2024 has also been placed on record between the applicant and the said Wamiq Ghafoor, based on which the applicant is in possession and claims title of the vehicle, well before the attachment order was passed. Further claims that only due to the blockade by this Court vide Order dated 11.03.2025, the vehicle could not be transferred to the applicant by the Excise & Taxation Office. Reliance was placed on Section 4 of the Sale of Goods Act, 1930 by arguing that the title of moveable property passes upon delivery, whereas non-transfer of record for excise purposes is maintained only for fiscal purposes, which does not affect the title of the purchaser. Due to the attachment order, and that too without hearing him, Applicant claims infringement of his fundamental right to property, right to hearing and irreparable loss *inter alia* under Articles 4 and 10-A of the Constitution of Pakistan, 1973.

16. Considering the above record trail of controversies between husband and wife and all the other factors, it is clear that the present litigation is primarily a family dispute between wife and husband. The marriage is subsisting between them and has not been dissolved but only the terms of the compromise in the family case are to be implemented. The said vehicles also do not form part of the compromise Order between husband and wife. The present applicants are neither parties in the instant petitions, nor were they parties to the primary disputes between husband and wife, nor were they parties to the compromise. No money decree has been passed against the applicants

or the husband for which the said vehicles were attached. No decree, as against the subject vehicles, has been passed, nor has any civil claim against the subject vehicles by the petitioner even been alleged. The petitioner is also not claiming ownership rights on the subject vehicles. The dispute in these applications is not with respect to the title of the vehicles, nor was the Order dated 09.04.2025 passed with respect to the ownership claim of the subject vehicles, but the same was passed on account of alleged non-compliance of the Order of this Court by the husband, regarding non-production of the minor. The attachment order was passed merely on a Statement by the petitioner, without verification and without hearing the applicants. Ample documentary material has been placed on record by the applicants to establish their transactions of sale-purchase with respect to the vehicles. The dates in the said documents are prior to the passing of the attachment Order dated 09.04.2025. In response to such documents and except for verbal allegations, no document or material has been placed on record from the wife's side to establish that the documents filed by applicants are forged, fabricated, sham or collusive. Fundamental right to property under the Constitution, right to a fair hearing and rights under the laws of Contract and Sale of goods are involved. Considering all these aspects and without touching the merits of the main petition or the respective rights of the husband and wife, I am therefore of the view that substantial rights of the applicants/ are involved who are third parties, who are neither party nor privy to this family dispute, and they have ample documentary material to support their transactions, and that too, of the dates prior to passing of the attachment Order. Hence, they should not be withheld or penalised due to inter-family disputes between the wife and the husband. Consequently, both the **Civil Miscellaneous Applications No. 6391/2025 and CMA 5618/2025** are therefore allowed; and the Order dated 09.04.2025, only to the extent of the subject two vehicles [**BK-8591** and **BEX-333**] in the subject applications, is hereby recalled. It is further noted that these petitions, arising out of the family disputes between the wife and the husband, have been pending for the last two years, which is creating further multiplicity of litigation within the family. Hence, the parties are directed to come prepared on the next date for arguments on the main petitions.

Before parting with this order, the legal assistance provided by M/s Sohail Hameed & Wazir Hussain Khoso Advocates and M/s. Tajammul Lodhi and Mrs. Nousheen Tajammul, Advocates, is appreciated.

JUDGE