

IN THE HIGH COURT OF SINDH, KARACHI

HCA. NO. 235 of 2017

**PRESENT:**

**MR. JUSTICE HASAN AZHAR RIZVI  
MR. JUSTICE ARSHAD HUSSAIN KHAN**

*Saeeduddin Qureshi*  
*through his Legal heirs* Vs. *Mrs. Bushra Qureshi & another*

Appellants: Saeeduddin Qureshi through LRs. Ishna Saeed &  
Mst. Imtiaz Bibi [Both in person]

Respondents: Mrs. Bushra Qureshi & Dr. Waqar Saeed  
Through, Khawaja Shamsul Islam, Advocate.

Date of hearing 10.05.2018

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** Through this High Court Appeal, the appellant while assailing order dated 30.03.2017 passed by the learned Single Judge of this Court in Execution No.13 of 2009, has prayed as follows:-

*“It is, therefore, prayed that this Honourable Court graciously be pleased to suspend the impugned order dated 30.04.2017 passed by learned Single Judge in Execution No.13/2009 till the disposal of the appeal and direct the Single Judge to decide afresh CMA No.02/2017, 335/2012 and 612/2012 filed by the appellants.”*

2. Facts leading to the filing of present appeal as averred therein are that three civil suits were filed before this court viz. (i) Suit No.916 of 2007, filed by Saeeduddin Qureshi (decree holder in execution and deceased father and husband of Ms. Ishna Saeed and Mst. Imtiaz Bibi- present appellant 1(a) and (b) respectively) against his first wife namely Mrs. Bushra Qureshi [now deceased] (Judgment Debtor in execution and respondent No.1 in present appeal), for declaration, possession and permanent injunction, (ii) Suit 54 of 2008 filed by Mrs. Bushra Qureshi against Saeeduddin Qureshi and one Sardar Muhammad Riaz for declaration, cancellation, injunction and damages And (iii) Suit No. 899 of 2007 filed by Sardar Riaz Khan against Saeeduddin Qureshi and Bushra Qureshi for specific

performance, declaration and injunction. All the said suits were in respect of two immovable properties; **(i)** Plot No.141, measuring 2000 square yards, situated at Khayaban-e-Hafiz, Phase VI, DHA, Karachi and **(ii)** Plot No.111-M/2, measuring 300 square yards, main Khalid Bin Waleed Road, PECHS, Karachi. Subsequently, parties of the said suits reached to a compromise through settlement agreement dated 28.04.2008. Consequently, in terms of the said settlement a compromise decree was passed in the said suits. Pursuant to the terms of settlement agreement the judgment debtor/respondent No.1 within a period of six month from the date of execution of settlement agreement had to pay Rs.60 million to the Decree Holders towards sale consideration of property out of which the decree holders had to pay Rs.5 million to Sardar Muhammad Riaz. However, the judgment debtor/respondent No.1 failed to pay the amount in stipulated period resultantly deceased Saeeduddin Qureshi filed Execution No.13/2009 to enforce the compromise decree and subsequently the DHA property was sold through auction proceedings for Rs.51.500 million out of which, amount of Rs.5million, in term of settlement agreement was paid to the Sardar Muhammad Riaz and remaining amount was lying with the Nazir. During pendency of the execution proceedings, Decree Holder- Saeeduddin Qureshi died. Thereafter, Miss. Isna Saeed and Mst. Imtiaz Bibi, present appellant 1 (a) and (b), filed application for impleading them as party which was allowed by order dated 01.03.2012. It is also averred that the Judgment Debtor, claiming to be first wife of decree holder, filed CMA No.160/2012 u/s 21 Rule 15 and 16 of C.P.C. and CMA No.155/2012 u/s 146 C.P.C. Subsequently, vide order dated 28.03.2012, CMA No.160/2012 was dismissed whereas CMA No.155/2012 was disposed of in favour of the Judgment Debtor. In the said order, this court while accepting the judgment debtor/respondent No.1 (Bushra Qureshi) as one of the widows (being issueless) of decree holder directed the Nazir of this Court to distribute the amount lying with him amongst the two widows and a daughter from the second wife of the Decree Holder in accordance with their shares as per Sharia. Subsequently, vide orders dated 18.08.2012 and 24.05.2012, the amount deposited with Nazir was distributed to both the widows and remaining amount was invested as share of Ishna/appellant No.1(a) who was minor at that

time. It is also averred that deceased Saeeduddin Qureshi, during his lifetime, filed Suit No.245/2009 seeking declaration against Dr. Waqar (present respondent No.2) that he is not his biological son the said suit is still pending. It is also averred that the advocate for respondent No.2 (Dr. Waqar/defendant No.1 in suit 245/2009) at the time of filing of vakalatnama, under the instruction of his client made a statement that defendant No.1 is not the son of the plaintiff (Saeeduddin Qureshi). It is also averred that the respondent filed application for recalling the order dated 01.03.2012 whereby application of Mst. Imtiaz Bibi and Ishna Saeed was allowed and claimed that the respondent is also legal heir and preferred application under Order 1 Rule 10 C.P.C. It is also averred that since decretal amount Rs.60 million, that was payable to the Decree Holder, was not satisfied through sale of DHA property, therefore proceedings for sale of second property to satisfy decretal amount was initiated by the decree holder which went up to Honourable Supreme Court wherein it was concluded that the property situated on Khalid Bin Waleed road, may be sold to satisfy the decretal debt. It is alleged that the learned single Judge of this Court, while passing impugned order did not consider the order of Honourable supreme Court and disposed of CMA No.335/2012 filed by the appellant, wherein it was prayed that remaining decretal amount Rs.13,500,000/- recovered through sale of Plot No.111-M/2, main Khalid Bin Waleed road, PECHS, Karachi. It is also alleged that the learned Single Judge without discussing the contents of the appellant's CMA No.335/2012 disposed of the said application. It is also averred that CMA No.02/2017 was filed by the appellant No.1(a) for withdrawal of her share invested with Nazir when she was minor, as she has attained the age of majority and has completed intermediate, but due to financial crises, last year she could not get admission in medical college. The said CMA was also disposed of through impugned order wherein direction was given to the Nazir of this court to release fifty percent share after deduction of already received amount to Ishna and fifty percent to Dr. Waqar of the deposited amount subject to furnishing solvent surety in the like amount with P.R. bond. It is alleged that the learned Single Judge while passing the impugned order has failed to consider the fact that up to the Honourable Supreme Court it has been established that the

appellant No.1(a) and (b) are legal heirs of the deceased/Decree Holder, and nowhere legitimacy of the appellants disputed, thus ordering release of amount to appellant 1(a) subject to furnishing solvent surety is without reading and considering the facts of the pleadings and spirit of law, the appellant thus being aggrieved by the order dated 30.03.2017, impugned the same in the present High Court Appeal.

3. Upon notice of the present appeal, respondent No.2 filed objections/parawise reply to the appeal, while refuting the allegations levelled by the appellant against the respondents, raised objections of the maintainability of the appeal.

4. At the time of arguments Appellants file a statement along with certain documents viz photographs, copy of Nikahnama and Form "B". The appellants did not engage any counsel in the matter despite several opportunities afforded by the court and instead they submitted that their appeal is their arguments. From the perusal of memo of appeal it appears that the appellants have challenged the impugned order on the grounds that; learned Single Judge has passed impugned order without considering pleadings filed in this Court and Apex Court whereby it came on record that appellant 1(a) (Ishna) is daughter of deceased Saeeduddin Qureshi and such fact is not disputed by any legal heir of deceased except so called son Dr.Waqar (respondent No.2); learned Single Judge has also failed to take into consideration that the respondent is not a biological son of the deceased Saeeduddin Qureshi as the deceased claimed in his Suit No.916/2007 wherein he stated that respondent is not his biological son but he is the nephew of his first wife and he is adopted son from her real sister; learned Single Judge has also failed to consider that in the Suit No.916/2007 the deceased claimed that her first wife Mst. Bushra Qureshi / Judgment Debtor was issueless and same fact was considered at the time of disposal of CMA No.155/2012 vide order dated 28.02.2012; learned Single Judge over sighted to note that in CMA No.155/2012 and CMA No.160/2012 Judgment Debtor did not say any single word or line in both the CMAs about any other legal heirs except her who is entitled for share in the decree amount. On the contrary, she repeatedly stated that apart from Mst. Imtiaz and Ishna

she is also legal heirs of deceased/Decree Holder; learned single judge also failed to take into consideration that respondent No.1 (Bushra Qureshi) in her suit of 2007 and again in CMAs of 2012 admitted that there was no issue from the wedlock till 1988, therefore, the decree holder deserted the Judgment Debtor and married with Imtiaz Bibi. Such facts clearly reflects that except two widows and daughter Ishna no other legal heirs of deceased as the respondent No.1/Judgment Debtor was issueless; learned single judge also failed to take into account the Family Registration Certificate [FRC] which clearly shows that only appellant 1(a) and (b) are the legal heirs of deceased Saeeduddin Qureshi; it is also contended that learned Single Judge while passing the impugned order has also not considered the Nazir's report dated 20.02.2016 filed in compliance of Court order wherein it has been mentioned that from the record it transpired that Mst. Bushra gifted said property to her adopted son Waqar Saeed.

5. Learned counsel for respondent No.2, during the course of his arguments, while supporting the impugned order has contended that the statement filed, at the time of arguments, cannot be taken into consideration, at this stage, as the said documents were never placed before the Executing Court, who has passed the order, impugned in the present proceedings. He contended that the order impugned in the present proceedings is well within the four corners of law and equity, hence does not warrant any interference by this court in the present appeal. Furthermore, appeal is misconceived and misleading in nature, hence the same is liable to be dismissed with costs. He further contended that the appellants obtained the order dated 28-3-2012 by concealing the facts, misrepresentation and fraud. And that the respondent No.2 is the real son of the late Saeeduddin Qureshi from his first wife namely Mrs. Bushra Qureshi and no such decree declaring that the respondent No.1 was issueless, was ever passed and even no such prayer was sought in the suit. It is also argued that since the matter was compromised between the parties, vide consolidated decree passed in three suits including Suit No.916/2007, neither any evidence was brought on record on the point of second marriage and birth of daughter from second wife, as well as existence of respondent No.2 being son of respondent No.1 Saeeduddin Qureshi nor the share

of the respondent No.2 out of estates/inheritance of late Saeeduddin Qureshi was ever considered and ordered for distribution according to law and Shariah. However, the aforesaid order dated 28-3-2012 and conclusion drawn by this Hon'ble Court holding respondent No.1 Mst. Bushra Qureshi "admittedly being issueless" has closed all the doors upon the respondent No.2 to prove his identity as son of Saeeduddin Qureshi and respondent No.1 as well as to claim share of inheritance out of the properties left by the late Saeeduddin Qureshi. The learned counsel also referred various photographs and documents, viz. birth certificate dated 16.8.1977, issued by People's Municipality Hyderabad, Form 'B' school leaving certificate dated 24.8.1994 issued by St. Michael's Convent School, Clifton, Karachi as well as the Domicile Certificate issued in 1995, Higher educational certificates, M.B.B.S. Degree, JPMC's certificates and certificate of medical registration issued by PMDC dated 19.12.2006 all show the name of the Respondent No.2 with his father's name as Saeed Qureshi, which clearly establishes that Saeed Qureshi was his father. It is also contended that the issue of the legitimacy of appellant No.2 is also pending adjudication before the learned single judge as the appellant No.2 did not at any point of time produced her Nikahnama or any other document proving that she is the legal wedded wife of late father of the respondent No.2. Learned counsel further contended that the property bearing Plot No.111-M/2, situated at Khalid Bin Waleed Road, Karachi was not the part of the settlement agreement dated 28.04.2008. It is also argued that the appellant No.2 filed the Suit No.1537/2012 against the respondent before this Court and obtained ex-parte interim order against the property bearing No.111-M, Block-2, PECHS, Karachi, the subject matter of Execution No.13/2009, not at all in the name of respondent No.1 as it was gifted by the respondent No.1 to respondent No.2 much before filing of the aforesaid suit however the plaint of the said suit was rejected under Order VII Rule 11 C.P.C upon application filed by respondent No.2. and against the said order, no appeal was preferred by appellant No.2 which has attained finality. It is also contended that appellant No.1 (b) filed various frivolous cases against the respondents which, except one or two cases, were either dismissed or disposed of in favour of the respondent. It also contended that family registration certificate

produced by the appellants has no value in the eyes of law as on the top of the FRC it is clearly mentioned that the certificate is not valid in any Court of law for inheritance/property issues. It is argued that since issue of legitimacy challenged by both the parties through their respective suits which are still pending adjudication therefore the order dated 28.03.2012 is not maintainable, even otherwise being daughter appellant 1(a) is not entitled to receive whole share, that is also illegal in case it is declared that respondent No.2 (Dr. Waqar Saeed) is not son of deceased Saeeduddin Qureshi, in that event shall only be entitled to receive 50% share in the property whereas the rest would go to residuary. It is also argued that order dated 28.03.2012 even otherwise is untenable in law as the same was passed beyond the scope of execution as admittedly the execution application was for money decree. Lastly argued that the appeal may be dismissed with special and compensatory cost in favour of the answering respondents. Learned counsel in support of his stance in the case has relied upon following case law:

- (i) **PLD 2015 SC 327** *GHAZALA TEHSIN ZOHRA V. Mehr GHULAM DASTAGIR KHAN and another*
- (ii) **2014 SCMR 1481** *IRSHAD MASIH and others v. EMMANUEL MASIH and others*
- (iii) **PLD 2013 SC 364** *Syed MEHMOOD ALI SHAH V. ZULFIQAR ALI and 5 others.*

6. We have heard the appellants and the counsel for respondents and have also perused the impugned order and the relevant record as well as the law on the issue involved in the present case.

7. From the perusal of the record it appears that the appellants have challenged the impugned order to the extent of CMA Nos. 335 of 2012, 612 of 2012 and 02 of 2017. Before going into further discussion, it would be appropriate to reproduce hereunder the said CMAs for the sake of ready reference.

**CMA No.335 of 2012**

**“APPLICATION UNDER SECTION 151 OF CPC FOR SALE OF PROPERTY TO SATISFY THE DECREE**

For the reasons disclosed in the accompanying affidavit it is respectfully submitted that the plot bearing No. 111-M/2 measuring 300 Sq.Yds Main Khalid Bin Waleed Road P.E.C.H.S., Karachi may be sold to recover outstanding amount

to satisfy the compromise decree. The total Decretal amount was Rs.65,000,000/-(Rupees sixty five million only). The property situated at plot No. 141 measuring 2000 Square Yards, Khayaban-e-Hafiz, Phase VI, Defense, Karachi was sold through court auction proceedings for Rs.51,500,000/-

Respectfully submitted by the Decree Holder that remaining decretal amount of Rs.13,500,000/- may be recovered through sale of plot bearing No. 111-M/2 measuring 300 Sq.Yds Main Khalid Bin Waleed Road P.E.C.H.S., Karachi.

Application is made in the interest of justice.

Advocate for the applicant/DH”

**CMA No. 612 of 2012**

**“APPLICATION UNDER SECTION 47 READ WITH ORDER 21 RULE 58 AND SECTION 151 CPC**

For the reasons and grounds disclosed in the accompanying affidavit, it is respectfully prayed on behalf of the applicant this Hon’ble Court may be pleased to implead the applicant as one of the legal heirs of deceased Saeeduddin Qureshi being son of deceased and is entitled to inherit remaining sale proceed of deceased lying with Nazir of this Hon’ble Court in the above case to the extent of his share.

Advocate for the Applicant”

**CMA NO. 02 of 2017**

**APPLICATION UNDER SECTION 151 CPC**

1. It is respectfully submitted on behalf of the Applicant **D/H 1/B** legal heir abovenamed, that in view of the order dated 28.03.2012, passed in the above execution, the major beneficiaries were paid their entire due shares but the share of the above named minor was deposited with the Nazir of this Court.

2. That it is submitted the minor **D/H 1/B** abovenamed has attained the age of majority, and as such she is entitled for the release of her share lying with the Nazir of this Honourable Court along with the interest accrued thereon.

***Copy of CNIC is enclosed herewith  
Annexure A***

It is therefore prayed that this Honourable Court may be directed to the Nazir of this Honourable Court to release the share of the applicant after proper identification.

Prayer is made in the interest of justice.

COUNSEL FOR THE MINOR/APPLICANT D/H”

8. The record of the case also shows that learned Single Judge while hearing other applications [CMAs] also heard above three CMAs on 30.03.2017. From perusal of the record it also transpires that similar points and arguments as that of present appeal were advanced on behalf of the appellants before the learned executing



court at the time hearing of above CMAs. And the learned Single Judge after hearing counsel for the parties passed order the dated 30.03.2017, which is impugned in the present proceedings. For the sake of convenience relevant portions of the order dated 30.03.2017 are as under:

“10. I have heard learned counsel for respective parties and have meticulously examined the relevant orders as reproduced above and emphasized by respective parties.

11. It is a matter of record that instant execution application is pending since 2009 and matter even went up to apex Court and apex Court by order dated 14.04.2015 passed in Civil Revision Petition 211/2013 and civil Petition No.114/2013 whereas main order was passed on 03.07.2013 in civil petition No.114/2013. It would be conducive to refer para-8 of order dated 03.07.2013 and order dated 14.04.2015, as under:-

“03.07.2013:

2. HCA No.231 of 2013 had been filed by the respondent Mrs. Bushra Saeed and was disposed of finally by means of order dated 11.11.2011 as not pressed. The learned bench of the Sindh High Court appears to have proceeded on the erroneous premise that the property situated on Khalid Bin Waleed Road was not to be sold in any event whether or not the proceeds of sale of the DHA property were sufficient to meet the decretal debt. This premise is erroneous in view of the clear observation made in the order dated 4.8.2009 reproduced above.

3. In view of the foregoing discussion, the impugned order is set aside and it is clarified that even the property situated on Khalid Bin Waleed Road, if necessary, may be sold to satisfy the decretal debt. On this, learned counsel for the respondent Mrs. Bushra Saeed, stated that the distribution of the proceeds of sale is also an issue. We are, however, not required to comment on this. The said respondent may, **if so advised, approach the executing Court.**

This petition, is therefore, converted into appeal and allowed.”

[Emphasis supplied]

“14.04.2015:

We have heard this case at some length and have also given an opportunity to the parties to resolve the matter out of Court. WE have hold that an execution petition has been filed to execute the decree dated 28.04.2008. The said proceedings can continue and if at all there is an agreement to settle the matter, the same can be made through order in the execution proceedings.

2. Today, however, having heard the application (CMA No.5763/14) we are not inclined to pass an order thereon. Likewise, we do not find any need to interfere in our order dated 3.7.2013 which is sought to be reviewed in CRP-211 of 2013. The CRP and CMA-5763/14 are therefore, disposed of without

prejudice to the rights of the parties to agitate their respective grievances before the learned executing Court.”

12. From all the above referred orders and background referred hereinabove, it prima facie appears that main order (compromise decree), sought to be executed, was not disputed which even otherwise stood stamped by Apex Court as is evident from the order dated 03.7.2013 supra however, involved, is with regard to distribution or amount/entitlement of parties with reference to legitimate status as ‘legal heirs’ or otherwise. It is also a matter of record that independent litigations for adjudication of status of parties are also pending. It is also a matter of record that decree passed in referred three suits, cannot be taken as an adjudication with regard to status of legal heirs. It, in fact, was a compromise decree regarding claim of benami transaction.

[Emphasis supplied]

13. Maintainability of orders dated 01.03.2012 and 28.03.2012 is challenged. Learned counsel for Mst. Imtiaz Bibi and Ishna Saeed contends that same cannot be challenged in execution application. Suffice to say that such order(s) could only be given weight if status of parties, as referred in said order(s), are accepted but it is a matter of record that same have been questioned under a specific plea that Dr. Waqar Saeed is son of the deceased Saeeduddin Qureshi particularly while insisting that judgment debtor Mst. Bushra ‘admittedly issueless’ therefore, Mst. Imtiaz Bibi and Ishna cannot question maintainability of these applications because it is well settled principle of law that a right, if given by an order, if claims to be prejudicing rights of others (not party to lis) should normally be challenged by such aggrieved before same authority/court particularly when challenge is raised on ground of fraud; misrepresentation etc. It is also a matter of record that Dr. Waqar Saeed was not provided an opportunity of hearing or notice even before passing such order which otherwise requirement of law particularly when Saeeduddin Qureshi himself has challenged biological status of Dr. Waqar Saeed with reference to documentary status of Dr. Waqar Saeed showing him ‘son’ of Saeeduddin Qureshi. I would add that even the Apex Court while disposing of CRP and CMA-5763/14 has observed as “without prejudice to the rights of the parties to agitate their respective grievances before the learned executing Court. Since, such claims have been agitated which cannot be attended unless orders dated 01.03.2012 and 28.03.2012 are in force. Accordingly, applications challenging both orders are allowed. In consequence thereof, Waqar Saeed is also entitled to be joined with legal heirs in execution application along with Mst. Imtiaz Bibi and Ishna Saeed but their entitlement to receive the share (amount) would depend upon final determination of their status. In view of these findings, application under order I rule 10 C.P.C. is dismissed as having become infructuous.

[Emphasis supplied]

14. While attending application, filed by Ishna Saeed for release of her share as invested by orders of this Court, I would first make it clear that after examining the order of the apex Court in review application, office has wrongly numbered the applications followed by order dated 01.03.2013 and 28.03.2012

as miscellaneous applications. In fact, office was required to assign number as JM and it is further clarified that all matters are to be proceeded *independently* and parties shall be required to lead the evidence to substantiate their plea. However, in the interest of justice this Court tried to settle the dispute between brother and sister. Dr. Waqar Saeed agreed on the proposal given by the Court that 50% of his amount to SIUT but since learned counsel for *Ishna Saeed* is seeking order on merits and is not ready; contends that issue of legitimacy is crucial hence may be decided first; and he contends that since amount is invested in the name of minor therefore she is entitled for the same.

15. I would say in said background that order(s), under which Mst. Bushra, Imtiaz Bibi and Ishna, were held entitled to receive share-amount, in existence of controversies over legitimacy/entitlement of parties, are not maintainable, however, it is also a matter of record that Mst. Bushra and Mst. Imtiaz Bibi (widows) have withdrawn their shares while that of Ishna is deposited. Admittedly parties are Sunni by sect. There can be no denial to legally established principle of law of inheritance that in existence of a son, the daughter shall be entitled half of entitlement/share of son. In short, son receives doubles. In case of non-existence of son, she is entitled for 50% share and rest will go to residuary. It is also not a matter of dispute that minor has completed her intermediate; in the last year due to financial issue she was not admitted in medical college which *itself* is *tragedy* particularly when sufficient amount, in name of *Ishna*, is deposited in the Court who *otherwise* owned by Saeeduddin Qureshi as his *daughter* in para-3 of his Suit No.245 of 2009 “Re-Saeeduddin Qureshi v. Waqar Saeed” as:

“The plaintiff re-married in the year 1991 with Mst. Imtiaz Bibi and from the wedlock a daughter **Ishna Saeed was borne on 12.12.1998.**”

[Emphasis supplied]

*Normally* the amount, left by deceased, is meant to help and protect the *widows* and *minors* which *too* for those *affairs*, having direct or indirect effects upon their well-being and *future*. In the instant matter, the *prima facie* status of Imtiaz Bibi and Bushra as *widows* of deceased is not hotly disputed; it is also a matter of record that they *both* have received their shares. Ishna and Dr. Waqar *both* are claiming under said two ladies (widows) hence *prima facie* things appear to be revolving round these two only. Since, it has also come on record that retaining of amount has resulted in costing Ishna *deprival* from admission in *higher education*. The amount is also deposited in name of Ishna alone. The *scales* of justice always *tilt* in favour of helping out the *rightful* persons without prejudicing the interests of *others*, if any, therefore I do not find it appropriate to keep *named* owner (entitled person) away particularly when she needs such amount *most* at this time. Since Dr. Waqar has *categorically* agreed to give half of such deposited amount to Ishna while remaining half to be donated to SIUT. She (Ishna) would *legally* be entitled for half of deposited amount if Dr. Waqar is proved not to be *biological* son of deceased. In case he proves himself to be son of deceased he would be entitled to double but since he (Dr. Waqar) himself has agreed to give half amount to Ishna hence he (Dr. Waqar) would not be entitled to recover *voluntarily* given

amount. Thus, interests of residuary shall be protected *completely* in either cases i.e. determination of *biological* status of Dr. Waqar in either ways. Thus, looking to the circumstances of the case and old litigation. I am of the view that till determination of issue of *legitimacy* of parties, it would not be in interest of justice to keep Ishna and Dr. Waqar away from that amount for which they would be entitled if proved by counter claim by sister and brother. Accordingly, Nazir is directed to release fifty percent share after deduction of already received amount, to Ishna and fifty percent to Dr. Waqar of the deposited amount subject to furnishing solvent surety in the like amount with P.R. bond that in case they are not found entitled shall be bound to re-deposit such amount which then shall be distributed according to determination of status of parties. Dr. Waqar would be at liberty to hand over his share to S.I.U.T., such acknowledgement statement shall be filed. In above terms application filed by Ishna Saeed is disposed of.

[Emphasis supplied]

With regards to CMA No.106/2014 filed by residuary of Saeeduddin Qureshi that they are sharer and residuary. Since in this case son and daughter are contesting therefore unless and until their legitimacy is decided, they have no right to file application, same is dismissed.”

9. The record of case the also reveals that suit bearing No.245 of 2009 filed by Saeeduddin Qureshi, [subsequently present appellant 1 (a) and (b) has been impleaded as plaintiffs], inter alia, against Dr. Waqar Saeed [respondent No.2] for declaration, permanent and Mandatory Injunction with the following prayers is pending adjudication:

- (a) “Declare that the Plaintiff is not the biological/real father of the defendant No.1.
- (b) Permanently restrain Defendant No.1 from using the name of the Plaintiff as his father.
- (c) Direct Defendants 3 & 4 to correct the parentage of Defendant No.1 by deleting the name of the Plaintiff as his father in Defendant No.3’s record.”

[Emphasis supplied]

Similarly suit bearing No. 1408 of 2013 filed by Dr. Waqar, inter alia, against present appellants 1(a) and (b), for declaration, permanent and mandatory injunction, recovery and damages with the following prayers is also pending adjudication.

- “ a) To declare that Dr. Waqar Saeed son of Late Saeeduddin Qureshi and Mst. Bushra Saeed widow of late Saeeduddin Qureshi are the exclusive legal heirs of the said deceased Saeeduddin Qureshi.
- b) To declare that Mst. Imtiaz Bibi and Ms. Ishna Saeed (defendant No.1 and 2) are not the widow and

daughter of Late Saeeduddin Qureshi and having no lawful rights to claim any right and interest in the assets and properties of the deceased Saeeduddin Qureshi.

[Emphasis supplied]

- c) To direct the Nazir of the Court that an amount of Rs.45,985.000/-along with profit out of the sale proceeds may not be released to any other person or persons other than the plaintiff and his mother Bushra Saeed Qureshi.
- d) To direct the defendant Nos. 1 and 2 to deposit Rs.46,09,140/- including all other sums and money being received by them as their alleged share in the Estate of deceased Saeeduddin Qureshi before the Nazir of the Court with further direction to them to submit all true accounts of the properties and assets which they (defendant No.1 & 2) have taken over the charge and/or under their use and control.
- e) To permanently restrain the defendant Nos. 1 and 2 from using the name of the deceased Saeeduddin Qureshi as husband of the defendant No. 1 and father of defendant No.2
- f) To direct the defendant No.3 and 4 to correct the parentage of the defendant No.2 and relation as widow of the deceased by the defendant No.1 by deleting the name of the deceased as their husband and father in the records of the defendant No.3
- g) To grant a sum of Rs.10 Crore as damages against the defendant No.1 and 2 severally and jointly who have misused the name of the deceased with their names illegally and unlawfully and also caused heavy financial losses to the plaintiff by misappropriating the lawful share of the plaintiff and assets and properties of the deceased.
- h) Cost of the suit.
- i) Any other relief which this Hon'ble Court may deem fit and proper may be awarded to the plaintiff.

Both the above suits, pursuant to the orders of the court, have been tagged and directions were issued to file consolidated issues.

10. From the perusal of record, it also appears that amounts from the sale proceeds of the DHA property, the shares of two widows has been distributed between the two widows and only the shares of Ishna saeed, present appellant 1(a) and Dr. Waqar saeed, respondent No.2 are lying with the Nazir. Since, Miss. Ishna Saeed and Dr. waqar saeed, both have challenged, each other's, legitimacy in the above suits which have not yet been decided, therefore, any observation at this stage in respect of controversy involved in the subject matter of the above suits, will definitely prejudice the effecting party of the

above said lis and as the party who succeeds in the above lis will be entitled for amount lying with the Nazir

11. From the perusal of the above order, it appears that the learned Single Judge of this Court having considered and examined each and every arguments and fact of the case minutely and discussed the same in detail has correctly applied his judicial mind in deciding the above CMAs and we are of the view that no exception can be taken to the legal position explained in the impugned order in the facts of the present case. Consequently, for the forgoing reasons, we do not find any substance in the present appeal, which is dismissed with no order as to costs.

JUDGE

JUDGE

Karachi;

Dated: 30.05.2018.