

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.Nos.D-6094, 6095, 6096 & 6097 of 2014

Date _____ Order with signature of Judge _____

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

C.P. No.D-6094 of 2014

Khalid Hussain.....Petitioner

V E R S U S

Securities & Exchange
Commission of Pakistan & others.....Respondents

C.P. No.D-6095 of 2014

Khalid Hussain.....Petitioner

V E R S U S

Securities & Exchange
Commission of Pakistan & others.....Respondents

C.P. No.D-6096 of 2014

Sadaf Rasheed.....Petitioner

V E R S U S

Securities & Exchange
Commission of Pakistan & others.....Respondents

C.P. No.D-6097 of 2014

Sadaf Rasheed.....Petitioner

V E R S U S

Securities & Exchange
Commission of Pakistan & others.....Respondents

Date of Hearing: 27.03.2019.

Mr. Sufyan Zaman, Advocate for the Petitioners.
Mr. M. Arif Khan, Advocate for Respondent Nos.1 & 2.
Mr. Abid Naseem, Advocate for Respondent Nos.4 & 5.
Mr. Ishrat Zahid Alvi, Assistant Attorney General.

Muhammad Ali Mazhar, J: This is a bunch of four petitions. C.P. Nos.D-6094 and 6095 of 2014 have been filed by Khalid Hussain son of Sajid Hussain, whereas C.P. Nos.D-6096 and 6097 of 2014 have been filed by Ms. Sadaf Rasheed daughter of Reshidullah Yaqoub. The petitioners claim to be certificate-holders of First Pak Modaraba and First Prudential Modaraba respectively. The petitioners have challenged the orders passed by the Registrar, Modaraba Companies and Modaraba, Securities & Exchange Commission of Pakistan, Specialized Companies Division (Modaraba Wing) with respect to First Pak Modaraba, managed by Royal Management Services Pvt. Limited and First Prudential Modaraba, managed by Prudential Capital Management Limited. Both the orders were passed on 28.10.2010, whereas the present petitions have been filed by the alleged certificate-holders in the month of November, 2014. By means of the impugned orders passed by the Registrar, Modaraba Companies and Modaraba, Securities & Exchange Commission of Pakistan, Specialized Companies Division (Modaraba Wing), the management companies exercising control over respondent Nos.4 and 5 were changed. The counsel for the respondents pointed out that the same order was challenged in C.P. No.D-3158/2010 and C.P. No.D-3159/2010 by Royal Services Management Company Pvt. Limited, the respondent No.3 in the present constitution petition, however, vide judgment dated 22.05.2014 both the petitions were dismissed and the order passed by the learned Division Bench was challenged in the Supreme Court through Civil Petition Nos.978 and 979 of 2014 but vide order dated 23.10.2014 the petitions were dismissed and leave to appeal was declined. The same order has been

challenged by the present petitioners and their learned counsel argued that on appointment of management companies, the fundamental rights of the petitioners have been infringed. He further argued that Section 20 of the Modaraba Ordinance is ultra vires to Article 10A of the Constitution of Pakistan, inasmuch as Section 20 of the Modaraba Ordinance does not provide for any mode or right of appeal against the unfettered and arbitrary use of powers by the respondent No.2. He further argued that the respondents erred in handing over management of the Modaraba companies to respondent No.4 without following the standard procedure as before handing over such management the respondent Nos.1 and 2 were required to undertake an elaborate process to determine who would be better able to manage the Modaraba in question.

2. Before considering the arguments of the learned counsel for the petitioners, it is required to be appreciated that the same order has already been affirmed by an earlier learned Division Bench of this court and the said order was maintained by the hon'ble Supreme Court; hence no case has been made out to enter into a fresh adjudication with respect to the impugned orders.

3. One more important facet of the case is that the impugned orders challenged in these petitions were passed in the month of October, 2010, whereas the certificate-holders (petitioners) have challenged these orders in the month of November, 2014 when the order passed by the learned Division Bench was already affirmed by the Supreme Court. One more important aspect which cannot be ignored is that the petitioners are only certificate-holders with the Modaraba and have been unable to demonstrate any locus standi to challenge an action with

respect to management companies administering the Modarabas and in order to safeguard the interest of public at large the Securities & Exchange Commission of Pakistan exercised its jurisdiction to appoint management companies which does not in any way affect the rights of certificate-holders, therefore, the question of any infringement or contravention of their fundamental rights does not arise.

4. In view of the above, the petitions are dismissed alongwith pending applications.

Office is directed to place copy of this order in C.P. Nos.D-6095, 6096 & 6097 of 2014.

Judge

Judge

Asif