

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.02 of 2020

Present: Mr. Justice Nazar Akbar, J.

Appellant : Khalid Pervez
Through Mr. Sami Ahsan, advocate

Versus

Respondent No.1 : IVth Additional District & Sessions Judge,
Karachi Central/Model Court.

Respondent No.2 : Mst. Fouzia Talpur

Respondent No.3 : (a) Naeema Khalid
(b) Rizwana Khalid
(c) Tanveer Khalid

Date of hearing **02.03.2020**

Decided on **18.05.2020**

JUDGMENT

NAZAR AKBAR, J--- Through instant Miscellaneous Appeal, the appellant has challenged the order dated **29.11.2015** passed by the learned IV-Additional District Judge, Central Karachi on an application under **Section 151 CPC** filed by the appellant/objector in **SMA No.44/2011**, whereby the said application was disposed of with directions to the parties in compliance of order of High Court to return/ deposit the amount which they have received from the Nazir of trial Court, though they were not entitled to the said amount. The operative part of the impugned order is as under:-

*“After hearing the learned counsel and perusal to file, I have come to the conclusion that **both the petitioner and objector are under obligation as per the order of Hon'ble High Court of Sindh to return the amount duly collected from the Nazir of District, Central**, as being the Shaheed compensation amount, in the light of the Judgment passed by the Hon'ble High Court of Sindh as Shaheed's Compensation is strictly between the employer and employee. Apparently, the employer is the department and employee was*

*the Shaheed working in the said department, the employer was to distribute the Shaheed compensation to the “family” of the deceased, strictly in terms of limitation as provided under the law. Be that as it may, **the relevant parties are directed to deposit the amount as already received by them through the Nazir of this court within 30 days, and the Nazir of this court is directed to, not only collect and receive the said amount disbursed by him to the parties, but also to return the same to the employer, from whom the said amount was collected, however, the employer is strictly directed to follow the instructions issued by the Hon'ble High Court of Sindh, vide Judgment dated 01.03.2018, passed in Misc: Appeal No.48/2015 to disburse the amount to the Shaheed's family, according to law.***

2. The background of the above order is that wife of appellant who is Respondent No.2 on the death of her son Muhammad Imran has filed **SMA No.44/2011** in respect of Debit/ Liability of deceased amounting to a sum of **Rs.25,00,000/-** in shape of salary, G.P Fund, benevolent funds of her deceased son, which was lying in the account of Capital City Police at New Town, Karachi. The deceased was unmarried and, therefore, in the Succession petition, his legal heirs were the Petitioner herself as mother, the appellant as father and one brother and two sisters namely Respondents No.3(a), (b) and (c). The SMA was initially allowed by consent of all the legal heirs by order dated **06.5.2011** for distribution of the following assets:-

1. Shahadat Compensation	Rs.20,00,000/-
2. Group insurance	Rs.175,000/-
3. <u>National Police Fund</u>	<u>Rs.5,000/-</u>
Total	Rs.21,80,000/-

3. However, subsequently the Petitioner/Respondent No.2 herself raised the dispute that the brothers and sisters were not legal heirs of the deceased. She on **19.11.2012** filed an application for deleting names of Respondents No.3(a), 3(b) and 3(c) from the Succession

Certificate. The said application was disposed of by order dated **28.3.2013** whereby earlier order dated **06.5.2011** was modified. Respondent No.2 against the said order preferred an appeal and the case was remanded for fresh decision after hearing both the parties within two months. In compliance of the said order, the Court of IV-Additional District Judge, Central, Karachi after hearing on **17.09.2015** again decided the issue of deleting names of brother and sisters for disbursement of shaheed compensation and other amounts by the following order:-

*“In the light of above situation, the names of brother and sisters are hereby deleted from the record and **it is ordered to the Nazir of this court that an amount of Rs.8,00,000/-** out of total amount of Rs.20,00,000/- **be given to the petitioner** while remaining amount of **Rs.12,00,000/- be given to the father/ objector No.1, namely Khalid Pervaiz,** whereas, the amount of Rs.180,000/- be distributed amongst the petitioner and objector No.1, in accordance with law of inheritance on PR Bond. However, since no solid material brought on record, therefore, **the parties in field are advised to approach the competent court of law and to get themselves declare to be entitled for the recovery of monthly salary of deceased, if so advised.**”*

4. The appellant/objector was again aggrieved and dissatisfied with the above order and preferred **Misc: Appeal No.48/2015** before this Court, which was allowed by order **01.03.2018** to their disadvantage while holding that shaheed compensation and other amounts claimed in the SMA were not asset of the deceased in the following terms:-

*“Beside above conclusion/ observation, since the subject amount under aforesaid heads was not an asset of the deceased, the Succession Application could not have been filed by respondent No.2 and maintained by Court as such amount is to be distributed by the employer to the “family” of the deceased strictly in terms of its limitation as provided under the law and court of **Additional District Judge under Succession Act for the***

subject amount, which is not an asset of the deceased, had no role and/or jurisdiction under Succession Act.

In view of the above the appeal is allowed and the impugned order dated 17.09.2015 passed by I-Additional District & Sessions Judge Karachi Central is set aside.”

5. The appellant/objector after getting the order dated **17.9.2015** set aside, himself filed an application under **Section 151 CPC** in the said SMA with the following prayers:-

*“For the reasons disclosed in the accompanying affidavit, it is respectfully prayed on behalf of the objector above named that this Honourable Court may be pleased to release the salary of deceased Imran Khalid with arrears in favour of the objector and further be pleased to **direct the petitioner to deposit Rs.800,000/- as the Honourable High Court of Sindh has been pleased to set aside the order dated 17.9.2015 passed by this Honourable Court in Appeal No.MA-48/2015** vide its order dated 5.3.2018, in the interest of justice. Photo copies of MA-48 of 2015 and Judgment dated 5.3.2018 are annexed hereto and marked A & respectively.”*

The impugned order dated **29.11.2015** has been obtained by the appellant on his application in a bid to get the orders of this Court in **M.A No.48/2015** implemented.

6. I have heard learned counsel for the appellant at length on **02.03.2020** and directed him to also file written arguments **within one week** but till date he has not filed the same, therefore, I have perused the record available in the file and decided to pass an order on the instant appeal without further waiting for the counsel to submit written arguments.

7. Learned counsel for the appellant was required to satisfy the Court that once the order dated **17.9.2015** (reproduced in para-3 above) was set aside on the appeal filed by the present appellant

himself, then how only an amount of **Rs.800,000/-** disbursed under the said order to Respondent No.2 was required to be returned to the Nazir and not the amount of **Rs.12,00,000/-** received by the appellant himself under the same order. He was definitely having no answer to this question and, therefore, after making oral submissions he has not filed even written arguments since **02.3.2020** in order to get the impugned order set aside. The perusal of affidavit in support of the application under Section 151 CPC on which the impugned order has been passed shows that the appellant had stated on oath that the Hon'ble High Court of Sindh in Miscellaneous Appeal No.48/2013 has declared him (appellant Khalid Pervez) sole dependent of deceased Imran and is entitled to get the entire amount of claim. I did not find such order/observation of this Court in the order on M.A No.48 of 2015 available at page No.157 of the Court file. In the affidavit he has claimed "the entire amount" but in the application as reproduced above he wanted that "the amount of **Rs.800,000/-** given to the Petitioner/ mother of deceased be directed to deposit. It is indeed very unfortunate that even on oath a misstatement has been given by the appellant about findings in the judgment of this Court. The order of the High Court in M.A No.48/2015 is already reproduced above which shows that the entire amount of Rs.20,00,000/- was out of the purview of the jurisdiction of Court seized of SMA No.44/2011, therefore, it has to be refunded by whoever has received it from the office of the Nazir.

8. In view of the above legal and factual position and the order of this Court in Misc: Appeal No.48/2015, the appellant has no case to seek interference of this Court in the impugned order. The impugned order is perfectly in line with the judgment in Misc: Appeal No.48/2015 and the order is precisely in the nature of obedience/

execution of the order of the appellate Court dated **05.3.2018**. Consequently, this Miscellaneous Appeal is dismissed. Copy of this order be sent to the learned IVth Additional District Judge, Central, Karachi forthwith for information and execution of impugned order preferably within one month. The compliance may be reported to this Court for perusal in Chamber within 30 days of receipt of this order by the trial Court.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul