

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Zulfiqar Ahmad Khan, J

Suit No.576 of 2020

[Sohail Ilahi and others v. Usman Elahi and others]

Plaintiffs : Through Mr. Khalid Mahmood
Siddiqui, Advocate

Defendants : Through Mr. Ravi R. Pinjani,
Advocate

Date of hearing : 11.06.2020

Date of order : 11.06.2020

Order on CMA No.4470 of 2020

Learned counsel for the plaintiffs/applicants submits that the plaintiff No.1 is a leading businessman and the plaintiff Nos.2 and 3 are his nephews and they all are part of the famous “Elahi Family”. Defendants are legal heirs of Mian Kamran Illahi (late), who was also an integral part of Elahi Family. He submits that Mian Kamran Ilahi remained sole proprietor of well-known firm “Elahi Electronics”, till he died in a road accident on 26.05.2016 and his sudden death put the entire Elahi Family and their businesses in a devastated condition, as there were huge liabilities of the deceased payable to the banks, contractors, vendors, employees, transporters etc. In addition, there were also family expenses including domestic, travelling, medical, wedding etc. which were also required to be paid regularly to the deceased’s wife and children. He further submits that the plaintiff Nos.1 and 2 convinced the plaintiff No.3, being the proprietor of “Elahi Group of Companies” and upon further persuasion of the elders of the Family, Plaintiff No.3 assumed the responsibilities of settling outstanding liabilities of the deceased and the payment of monthly domestic expenses to the deceased’s wife and children, which led them to sign the Family Agreement on 30.05.2016.

2. Through the instant application made under Order XXXIX Rules 1 & 2 read with Section 151 CPC, the plaintiffs/applicants seek permanent injunction against the defendants, their legal heirs, agents or any other person acting on their behalf, from selling, disposing, gifting, exchanging alienating and creating any third party interest in the properties and bank accounts left behind by the deceased or to have those transferred in the name of the legal heirs of the deceased till final disposal of the case.

3. On the other hand, learned counsel for the defendants challenged the very authenticity of the subject Family Agreement by pointing out that the said Agreement is shown to have been signed by the deceased's wife on 30 May 2016, just within 3 days from the death of Mian Kamran Elahi when the lady was in *laddut* as well as under utter shock and duress. As well as if the said agreement is taken on its face value, it is not signed by other legal heirs of the deceased, thus cannot be enforced against them. It is also pointed out that after death of Mian Kamran Elahi, the defendants filed a Suit bearing No.5321 of 2017 before the Civil Judge 1st Class seeking declaration that the defendants were the only legal heirs of the deceased, which suit was decided in favour of the answering defendants vide judgment and decree dated 20.12.2017 and none challenged it, which consequently attained finality, therefore the instant application cannot be allowed as it seems to seek an order against the law of inheritance as well as against the said judgment and decree. Maintainability of the suit is also challenged in terms of Order VII Rule 11 CPC read with sections 2 and 20 of the Arbitration Act, 1940 and Succession Act, 1925 on the ground that the defendant Nos.3 and 4 are neither residents of Karachi nor they have work place in Karachi, and this Court does not have territorial jurisdiction into the matter. Lastly he contended that the instant *lis* is a collusive exercise to deprive the defendants of their Sharia right to the income and property of the deceased, hence its dismissal is sought.

4. Heard the counsels and reviewed the material on record.
5. As the bone of contention is the Family Agreement dated 30.05.2016 in respect of which through this Suit a prayer is made under Section 20 of the Arbitration Act, 1940 for the appointment of Mr. Arif Elahi as arbitrator, I find it relevant to reproduce the entire agreement in the following:-

FAMILY AGREEMENT

The ELAHI FAMILY lost our Mian Kamran Ilahi (Late) on 26th May, 2016 in a road accident while traveling from Lahore to Islamabad. This untimely death has put the entire family and the Business in a devastated condition.

That its time like this that we & our families all should support each other as there are certain liabilities of Kamran Ilahi (late) payable to the Banks, Contractors, vendors, Employees, Transporters etc. these payments need to be paid urgently and on its due dates. In addition there are family expenses including domestic, traveling, medical wedding etc which are required to be paid.

Hence the family has decided to resolve as under:

- 1) That M/s Elahi Group of Companies (EGC) through its own resources and borrowing from other family members shall pay Bank Liabilities after reconciling and negotiating with the Banks. The Assets released by the Banks shall be handed over to EGC for liquidation. That EGC shall also pay monthly payments of Pocket Money, Domestic Servants, Utilities, POL, Mobile, Club Payments etc as per monthly requirements to be ascertained by Mr. Sohail Ilahi. In addition to Travel & Family events.
- 2) That Usman Elahi to return from Melbourne, Australia after completion of his education of Bachelors;
- 3) On receipt of the Succession, the properties of Mian Kamran Ilahi (late), these properties, receivable, shares and other current and fixed assets shall be liquidated and all such payments made as per Serial No.1 & 2 above and / loans of late Kamran Ilahi paid by M/s Elahi Group of Companies shall be reimbursed to Elahi Group of Companies.
- 4) That Mr. Arif Elahi our family elder shall supervise the distribution of the proceeds of such liquidation amicably of Kamran Ilahi's assets as per their Shariah Legal Share to the legal heirs after deduction of all payables. We all have full faith in Mr. Arif Elahi who always treated Late Kamran Ilahi as his son and looked after the entire family.

That all decisions by our elder Mr. Arif Elahi shall be final and binding on all members of the family including the Legal heirs of Kamran Ilahi Late.

{SIGNED}

Mr. Arif Elahi

Mr. Sohail Ilahi

Mst. Mariam Kamran

Mr. Danish Elahi

Mr. Raza Elahi

On Behalf of all Legal Heirs

On Behalf of EGC

On Behalf of SCL

6. Admitted facts are that the deceased was a successful businessman; he died on 26.05.2016 and left behind the defendants as his legal heirs, as well as, certain assets and liabilities stood in his name. Also admitted is that the Defendant No.1 was recently widowed and she, as it has been informed to the Court is a *Pardanasheen* lady, was in *Iddut* on the date when this agreement seem to have been signed within 3 days of the death of her husband, making it a classical text book example of having an agreement signed in distress (if it was at all signed by her). The agreement presented to this Court as an Arbitration Agreement also fails to satisfy requisites of Section 2(a) of the Arbitration Act, 1940 as parties therein have not agreed to submit present or future differences to arbitration, as well as, the scope of alleged arbitration and/or disputes which may be submitted to, or adjudged vide the alleged arbitration are not ascertainable. The agreement to me is a set of dictates which recently widowed (Defendant No.1) was forced to accept, and reminds me of the Hindu tradition of *Satti*, where the widow was forced to burn herself alive with the body of the deceased husband. The said inhuman tradition was only arrested through the Bengal Sati Regulation 1829 in India for the first time under East India Company rule, by the Governor-General Lord William Bentinck, which made this practice illegal in all jurisdictions of India and subject to prosecution. If not in bodily terms, the agreement in my view is "Financial *Satti*" of the Defendant No.1, ignoring the fact that Sections 264, 270, 273, 254, 216 and 218 of the Succession Act, 1925 provided a mechanism for the administration of assets and liabilities of a deceased, on the basis of which Civil Judge 1st Class Lahore in Suit No.5321 of 2017 rendered his judgment appointing legal heirs of the deceased. The agreement in my view is also *void* in terms of Section 29 of the Contract Act, 1872 as its terms are not certain or capable of being made. With regards appointment of Mr. Arif Elahi as an Administrator of the estate of the deceased, such a desire could not be fulfilled unless so granted by a Court through a speaking order under the Succession Act.

On the touchstone of requisites of Order XXXIX Rules 1 and 2, I fail to see any *prima facie* right, title or interest of the plaintiff/applicant in deceased's assets (who is survived by male heirs), neither there is any balance of convenience in their favour nor there is any threat of irreparable losses to be caused to them. I therefore through my short order dated 11.06.2020 dismissed this application, and here are my reasons of doing so.

JUDGE

Karachi,
9th July, 2020

Barkat Ali, PA