

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
S.M.A. No. 215 of 2017

Date	Order with signature of Judge
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For order on CMA No. 116/2018 (Urgency Application).

22.01.2018.

Mr. Mehar Qazi, advocate for petitioner.

Learned counsel states that the matter was fixed on 16.01.2018; however, due to paucity of time, it could not be heard and was discharge. He further states that all formal requirements have been complied with, as confirmed by the Deputy Registrar (O.S). He also states that the petitioner is residing in U.S.A. and has already made three visits to Pakistan with the purpose of settling all matters relating to the estate of her deceased mother including payment of debts of her deceased mother; hence, there is urgency in the matter. Considering the contentions of the learned counsel, the urgency application is allowed and the matter is taken up today for hearing.

1. Petitioner Ms. Nuha Ansari has filed this petition under section 278 and 372 of the Succession Act, 1925 read with Rules 377 and 379 of the Sindh Chief Court Rules (Original Side) for the grant of Succession Certificate and Letter of Administration in her name in respect of moveable properties including debts and securities and immovable properties left by her late mother Dr. Hamida Ansari w/o late Abdul Haleem Ansari (**“the deceased”**), who died on 12.02.2017 at Karachi. It is stated in the petition that the deceased died intestate, she professed Sunni Hanafi Law.

2. The petitioner prays for the grant of **Succession Certificate** in respect of moveable properties including/securities and debts left/owed by the deceased at the time of her death, which are described in Schedules "A" and "B" attached to the petition at pages 69 to 81 and 205, as Toyota Corolla vehicle, royalty accrued from Oxford University Press and Feroz Sons Pvt. Ltd. Lahore amount lying in bank Accounts maintained at JS Bank, Khayaban-e-Shahbaz, DHA-V, Karachi, Bank Al-Habib Limited, Zamzama Branch, Karachi, National Bank of Pakistan, Clifton former NDFC branch and Model branch Clifton, G-C-3, BL-8, Khayaban-e-Iqbal, Karachi, First Women Bank Limited Clifton branch, Karachi as well as amount invested in shape of shares in First Equity Modaraba, Fauji Fertilizer Bin Qasim Limited and Clariant Pakistan Limited. As per Schedule "B", the deceased was indebted to her sister Ms. Rashida Yousuf Pasha in the amount of Rs. 27,00,00,000/-. The petitioner also prays for the grant of **Letter of Administration** in respect of immovable properties described in Schedule "A" to the petition as (i) 17.6% undivided share in Plot No. G-18, Block-5, Scheme-5 main Clifton Road, Clifton, Karachi admeasuring 3682.67 sq. yds. (ii) House No. 26/1, situated in 9th street, DHA phase-V, Karachi admeasuring 974.28 sq. yds, and (iii) 18 acre orchard situated on agricultural land bearing survey Nos. 150/1, 150/2, 154/1, 154/2, 169, 170, 171, 172, 181/1 and 181/3, situated in Lehno Samtio, District Larkana.

3. As per paragraph 6 of the petition, the deceased left behind as her legal heirs one daughter, namely, Ms. Nuha Ansari (petitioner), one full sister, namely, Ms. Rashida Yousuf Pasha and

three full brothers, namely, Shah Zaman Khuhro, Masood Ahmed Khuhro and Khalid Mehmood Khuhro. Original Death Certificate of deceased as well as photostat copies of Family Registration Certificate, issued by the NADRA, title documents in respect of above mentioned immovable properties as well as documents in respect of above mentioned movable properties, bank accounts and Share Certificates are also filed at as annexures "A/2 to A/27" at 91 to 203.

4. The legal heirs, namely, Rashida Yousuf Pasha, Shah Zaman Khuhro and Khalid Mehmood Khuhro have filed their affidavits of no objection for the grant of Succession Certificate and Letter of Administration in favour of the petitioner. They have also waived and relinquished all their rights to and shares in the estate of the deceased in favour of petitioner, while legal heir Masood Ahmed Khuhro has waived and relinquished his right to and share in the estate of deceased in favour of petitioner, with the exception of his sharia share of the deceased's 17.6% undivided share in Plot bearing No. G-18, situated in Block-5, Scheme-5, Main Clifton Road, Clifton, Karachi and deceased's 18 acre orchard situated on agricultural land bearing survey Nos. 150/1, 150/2, 154/1, 154/2, 169, 170, 171, 172, 181/1 and 181/3, situated in Lehno Samtio, District Larkana, as mentioned at Item 1 and 3 of the Schedule "A" to the Petition.

5. The petitioner has also filed an application, bearing C.M.A. No. 77 of 2017, under Section 151 C.P.C, in order to seek dispensation from furnishing security for issuance of Succession Certificate and Letter of Administration. Alongwith the application, affidavits of two legal heirs, namely, Mrs. Rashida Yousuf Pasha

and Masood Ahmed Khuhro have been filed, wherein they have recorded their no objection for exempting the petitioner from furnishing any security on the ground that all the legal heirs have waived/relinquished their right in the estate of the deceased. However, former says that she has interest in the estate of deceased in respect of loan of Rs. 27,00,00,000/-, obtained from her by the deceased, pursuant to Loan Agreement, dated 21.06.2016, while latter claims his right with regard to his sharia share in respect of Item 1 and 3 of the Schedule "A" to the petition, as mentioned in paragraph No.4 (supra).

6. The learned counsel for the plaintiff contends that the immovable property mentioned in schedule "A" at serial No.1 in which the deceased owned a 17.6 undivided share at the time of her death, is the subject matter of the decree that was being enforced by means of Execution Application No. 10 of 2017 before this Court, which should be sold out pursuant to such decree; however, the Execution Application was dismissed as withdrawn vide order dated 19.04.2017 and the proceed of such sale, as are attributable to the deceased's estate, shall be distributed amongst all the heirs of the deceased, with the exception of the waiving heirs. He further contends that at the time of her death, the deceased was indebted to her real sister Ms. Rashida Yousuf Pasha in the amount of Rs.270,000,000/- pursuant to Loan Agreement, dated 21.06.2014, clause 2 of which provides that in case of death of deceased the loan shall be repaid from the sale proceeds of deceased's share in the property listed at serial No.1 of Schedule "A" as and when such property was sold. He also contends that as per Sunni Hanafi Law of inheritance the petitioner is the heir of

deceased to the extent of half of the estate of the deceased as a “sharer” and the immediate descendants of the father of deceased, in the instant case the surviving sibling of the deceased, are entitled to the other half of the estate of deceased as residuaries inasmuch as the full brother shall be entitled to double the share to that of the full sister in the estate of the deceased. He maintains that since the petitioner has inherited major portion from the assets of the deceased in her own right and that the other legal heirs have waived/relinquished their right in the estate of deceased, except Mrs. Rashida Yousuf Pasha and Masood Ahmed Khuhro that too for some extent, who have also filed their affidavit of no objection for exempting the petitioner from furnishing any security, therefore, the petitioner may be exempted from furnishing securities as per rules and the Succession Certificate and Letter of Administration may be issued in her name on execution of personal bond by her. In support of his contentions, he has relied upon the case of *Kamran Mirza Vs. Moazzam Mirza* (PLD 2014 Sindh 500)

7. Two witnesses, namely, Mahesh Lal Dodani s/o. Mohan Lal and Abdul Hameed s/o. Muhammad Awais Mirbahar have also filed their respective affidavits and affirmed that there is no other legal heir of the deceased except mentioned above. Their affidavits are also available on record. Notice of this petition was published in Daily “Jang” Karachi and daily “Kawish” dated 16.10.2017; however, none has filed any objection to the grant of Succession Certificate and Letter of Administration to petitioner, as per the report submitted by the Deputy Registrar (OS) on 16.11.2017

8. Since all the legal formalities/ requirements have been fulfilled, there is no impediment in grant of Succession Certificate and Letter of Administration to petitioner, therefore, the petition is allowed. The office is directed to issue Succession Certificate and Letter of Administration in respect of movable assets and debts and immovable properties as per details disclosed in the Schedule "A" and "B" to the petition, subject to executing personal bond equivalent to the value of her share in the properties and furnishing surety equivalent to the debts payable to Ms. Rashida Yousuf Pasha, to the satisfaction of Nazir of this Court.

J U D G E

Athar Zai