

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 1419 of 2019

Date	Order with signature of Judge
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1. For orders on Nazir's report dated 18.10.2021 :
2. For orders on CMA No.4897/2021 (U/S 152 CPC) :

21.10.2021 :

Mr. Abdul Wajid Wyne, advocate for the petitioners.

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1. This report submitted by the Nazir is taken on record.
2. Through this application, petitioner No.2 has prayed that her name in the title of this petition be corrected from Ms. Saba Waqas daughter of Abdul Ghani to Saba Muhammad Ali wife of Muhammad Ali. It is contended that the correction sought through this application is necessary as the share of petitioner No.2 deposited by respondent No.1 in pursuance of order dated 26.01.2021 could not be released in her favour as the cheque issued by the Nazir of this Court was in the name of Saba Waqas. The report submitted by the Nazir shows that the order dated 26.01.2021 has been complied with by both the parties, and it appears that the dispute between them has been resolved completely and finally in terms of the said order. However, the relief sought through this application is beyond the scope of Section 152 CPC, and the amendment in the title of the petition cannot be made as it was finally disposed of vide order dated 26.01.2021. Be that as it may, petitioner No.2 is entitled to receive her share from the amount deposited by respondent No.1 in pursuance of the aforesaid order, and her said entitlement is not under dispute. Despite this position, if she is denied her legitimate share merely due to a discrepancy in her name, such an absurd situation cannot be allowed to prevail. It is the duty of the Court not only to ensure that its orders are implemented, but also that they are given effect to in letter and spirit.

In Director General, National Savings, Islamabad V/S Balqees Begum and others, PLD 2013 SC 174, the Hon'ble Supreme Court was pleased to hold that equity has to give way to the law and its principles can only be resorted to and invoked when the resolution of a proposition is not provided or available by or under the law ; it is equity then which

comes into play to fill up the vacuum where the law has no answer to provide for doing justice ; in any case, the rules of equity cannot be taken into account to frustrate and defeat the law ; like equity, the concepts of compassion and hardship shall also be considered by the Courts for providing relief to an aggrieved party in terms of Article 199 of the Constitution, only when there is room in the relevant law to do so, but undoubtedly not by the breach of law and more so by stultifying the right accrued to the opposite side and/or to enforce a right which the aggrieved party under the law has lost.

The above principle of doing equity and justice enunciated by the Hon'ble Supreme Court can be applied to the instant case as no proposition is provided for or available by or under the law to cater to the situation at hand nor has the law any answer to provide for doing justice in such situation ; the hardship being faced by respondent No.2 is evident as she is unable to receive her legitimate and undisputed share ; she has not lost the right to receive her said legitimate and undisputed share ; if the principle of equity is exercised in her favour, no law will be frustrated, defeated or breached, nor shall any right of the opposite party, or for that matter of any party, be stultified or violated.

Accordingly, the Nazir of this Court is directed to release the share of respondent No.2 after proper verification and identification, and subject to her executing her personal bond equivalent to the amount of her share. The listed application stands disposed of in these terms.

J U D G E