

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit Nos.713 of 2011 & 1288 of 2003

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff in Suit
No.713 & Defendant
in Suit No.1288/2003.

Zainab Kotsianou and another
Through Mr. Khawaja Shamsul Islam,
Advocate.

Plaintiff in Suit
No.1288/2003.

Parveen Hilaluddin Through Abdul Rehman,
Advocate.

Defendants No.2 to 4
In Suit No.1288/2003:

Through Mr. Abdul Sattar Pirzada &
Ms. Marium Malik, Advocates.

Defendant No.3 in
Suit No.713/2011.

Ali Shafi through Mr. Sufiyan Zaman,
Advocate.

Defendants No.9
In Suit No.1288/2003:

Through Mr. Muhammad Khalid Hayat,
Advocate.

Ms. Tabinda Islam, Official Liquidator.

Mr. Khalid Mehmood Siddiqui, Advocate.

Suit No.713/2011.

For hearing of CMA No.13647/2016

Suit No.1288/2003

1. For hearing of CMA No.13587/2016.
2. For hearing of CMA No.17430/2016.
3. For hearing of CMA No.9881/2016

Dates of Hearing:	14.11.2017, 27.02.2018 & 12.04.2018.
Date of Order:	21.05.2018

ORDER

Muhammad Junaid Ghaffar, J.- These are connected Suits, whereas in Suit No.713/2011 CMA No.13647/2016 and in Suit No.1288/2003 CMA Nos.13587/2016 and 17430/2016 have been filed on behalf of the Official Liquidator appointed by the learned Lahore High Court in terms

of Section 316 of the Companies Ordinance, 1984 for stay of the proceedings. A similar application bearing CMA No.9881/2016 has also been filed on behalf of the Plaintiff in Suit No.1288/2003, seeking the same relief. All these applications are being dealt with and decided through this common order.

2. Learned Official Liquidator has contended that Section 316 of the Companies Ordinance, 1984 provides that when a winding up order is made or a Provisional Manager has been appointed the proceedings or Suits are to be stayed except by leave of the Court, which has appointed an Official Liquidator, and therefore, both these Suits are to be stayed. She further submits that various orders have been passed by the learned Lahore High Court, whereby, Official Liquidator has been appointed, hence on the basis of these orders; both these Suits are to be stayed. In the alternative, she has contended that parties may approach the Lahore High Court, seeking leave to proceed with these Suits.

3. On the other hand, learned Counsel for Plaintiff in Suit No.713/2011 has opposed these applications on the ground that firstly this is a Suit for Administration in respect of the estate left behind by the father of the Plaintiffs, and therefore, it has got no concern with the matters concerning the company(s) in question. He has further contended that the learned Lahore High Court has no jurisdiction in the matter as all properties are located in Karachi, whereas, the registered office of the Company is also in Karachi, therefore, no jurisdiction could be exercised by the learned Lahore High Court. According to the learned Counsel, the proceedings under the Companies Ordinance and appointment of Official Liquidator is to circumvent and frustrate the rights being claimed by the Plaintiffs, whom he represents, whereas, it is the private defendants as well as Plaintiff in Suit No.1288/2003, who

have approached the learned Lahore High Court and have consented for the appointment of Official Liquidator. He has further contended that in fact there is a difference in the name of the Companies, which are before this Court and the one in which Official Liquidator has been appointed by the learned Lahore High Court, therefore, according to the learned Counsel the question of applicability of Section 316 (ibid) does not arise. Learned Counsel has also referred to Nazir's Report dated 10.03.2012 as well as Letters issued by the concerned Mukhtiarkar and has contended that the assets in question do not belong to the Company under liquidation, and therefore, the Company Judge of the Lahore High Court has no jurisdiction.

4. On the other hand, Counsel for the Plaintiff in Suit No.1288/2003 has supported the stance of Official Liquidator and has submitted that these proceedings must be stayed. Insofar as Counsel for Defendant No.2 & 3 are concerned, learned Counsel appearing on their behalf has submitted that they are only contesting parties in the Suit as Directors in the Companies but are not legal heirs, and therefore, the Court may pass appropriate orders.

5. I have heard all learned Counsel and perused the record. The Official Liquidator has come before this Court with these applications on the ground that the learned Lahore High Court in the case of Defendant No.6 (M/s Shafi & Co. (Pvt) Ltd., as stated) in Suit No.713/2011 has pleased to appoint Official Liquidator in Company Application No.08/2004 vide Order dated 10.12.2015 and similarly in respect of Defendant No.5 (M/s Iftikhar & Co. (Pvt) td., as stated) in the same Suit again the same Official Liquidator has been appointed in Company Application No.09/2004 vide Order dated 10.12.2015. The first objection raised on behalf of the plaintiff is that the companies in which the Official Liquidator has been appointed are different entities as compared to the defendants in this

case and the said argument is based on the difference in name as appearing in the orders of Lahore High Court and the one mentioned in the title of the plaint. However, this objection is totally misconceived as along with the plaint, the plaintiff has itself annexed the Articles and Memorandum of the Association of the two companies in question in which official liquidator has been appointed. At page 115 (Annexure "B/5") is the Memorandum of Association of **"M. Iftikhar & Company Limited"**, for which Company Application No 9 of 2004 has been filed before the learned Lahore High Court. Certified true copy of such title of petition has been placed on record at pg:857 of instant file pursuant to orders of this Court. Whereas, in the title of plaint, the plaintiff has mentioned the name of defendant No.5 as **M/s Iftikhar & Co (pvt) Ltd.** This appears to be a mistake on the part of plaintiff itself, and now an objection is being raised that the orders passed by the learned Lahore High Court are in respect of some other company. This is not the correct position. Similarly at page 149 (Annexure "B/6"), is the Memorandum of Association of **"M. Shafi & Company Limited"**, for which Company Application No 8 of 2004 has been filed before the learned Lahore High Court. Certified true copy of such title of petition has been placed on record at pg: 831 of instant file pursuant to orders of this Court. Whereas, in the title of plaint, the plaintiff has mentioned the name of defendant No.5 as **M/s Shafi & Co (pvt) Ltd.** It again appears to be a mistake on the part of the plaintiff. In these circumstances the objection in this regard is misconceived and is hereby repelled. It is also noteworthy that there are two other companies i.e. defendant No.4 (*M.Ali Shafi & Co. (pvt) Ltd.*) and defendant No.7 (*M/s Iftikhar & M. Shafi joint venture (pvt) Ltd.*) who have been arrayed as defendant, but the application made on behalf of the official liquidator does not pertain to these two companies. Though no assistance has been provided by anyone in this regard,

however, from perusal of Memorandum of Association of at least one of these companies placed on record at Pgs: 87 reflects that name of the company has been struck off from the register of companies in terms of Section 439 of the Companies Ordinance 1984. Be that as it may since both these companies do not appear to be a bone of contention insofar as the official liquidator's appointment is concerned, I have restrained myself from dealing with this issue.

6. Coming to the issue in hand it appears that both these Companies were owned privately by various persons including Muhammad Iqbal Shafi, Muhammad Riaz Shafi and Muhammad Iftikhar Shafi, who all appear to be brothers and insofar as Suit No.713/2011 is concerned, same has been filed by two daughters of late Muhammad Iqbal Shafi, who was one of the Directors in the two Companies in question. Such Suit has been filed for Administration of his estate, which besides other assets, also includes the ownership and shareholding in the Companies by the deceased. Insofar as the scope of an administration Suit is concerned, it is by now a settled proposition that the scope of administration of the estate of a deceased cannot be made in respect of the Company itself. At the most and without prejudice, it is only the shareholding to the extent of the ownership of a deceased, which could be administered under an Administration Suit. The entire assets as well as liabilities of the Company cannot be made part of an administration Suit. Here in this matter it appears that according to the Plaintiffs in Suit No.713/2011, the deceased left behind various properties including the shareholding in the Company itself, therefore, it appears that from the Plaintiffs' own version, there are two set of assets, which according to them were owned by the deceased. It further appears that the Plaintiff is not only seeking administration of some of the estate of the deceased, but so also cancellation of a Gift Deed as well as Declaration as to the

alleged ownership of properties as mentioned in Prayer Clauses, therefore, even otherwise it is not merely a simple Suit of Administration. Whereas, it appears to be a matter of record that the defendants while filing winding up petitions before the learned Lahore High Court, have arrayed the present plaintiffs in Suit No.713 of 2011 as Respondents, and therefore, to that extent there appears to be no dispute as they have been recognized as legal heirs of late Muhammad Iqbal Shafi.

7. Insofar as Section 316 of the Companies Ordinance, 1984 is concerned, the same reads as under:-

316. Suits stayed on winding up order.- (1) When a winding up order has been made or a provisional manager has been appointed, **no suit or other legal proceeding shall be proceeded with** or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of, any suit or proceeding by or against the company.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by the Court.

The aforesaid provision provides that when a winding up order has been made or a Provisional Manager has been appointed, no Suit or other legal proceedings shall be proceeded with or commenced against the Company except by leave of the Court and subject to such terms as the Court may impose. Subsection (2) provides that the Court, which is winding up the Company, shall, notwithstanding anything contained in any other law for the time being in force, has jurisdiction to entertain, or dispose of, any Suit or proceeding by or against the Company. Lastly Subsection (3) provides that any Suit or proceedings by or against the Company, which is pending in any Court other than that in which the winding up of the Company is proceeding, may, notwithstanding anything contained in any other law for the time being in force, be transferred to, and disposed of by the Court. The cumulative effect of the

above quoted provisions of law is that whenever a winding up petition is presented and an order of winding up has been passed thereon or a provisional manager has been appointed, then no suit or other proceedings shall be proceeded with or initiated against the said company except by leave of the 'Court' as defined in section 7 of the Ordinance. Beside this the proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by the 'Court', except by leave of the 'Court', and subject to such terms as the 'Court' may put in force. The Court here means the Company Judge¹. It is provided under section 316 of the Ordinance, 1984 that no suit or any other legal proceedings shall be proceeded with or commenced against such Company for which winding-up order has been made or a Provisional Manager has been appointed except by Leave of the Court and subject to such terms as the said Court may impose². When a winding up order has been made in respect of a Company or a provisional liquidator has been appointed in respect of such Company, no suit or other legal proceedings can be proceeded with or commenced against it, except by leave of the Court and subject to such terms as may be imposed³. The consequences of winding up order are that all the assets of the company come under the control of the Court and the management of the company vests with liquidator instead of Directors and the Chief Executive. The transfer and disposition of property of the company by anyone, except by the liquidator, is prohibited and the law renders any such transaction as void. When the winding up order has been passed, no suit or proceedings against the company can commence against the company, except with the leave of Court. The Court (company Judge) where the winding up proceedings are pending, has the jurisdiction, within the contemplation of section 316 of the Companies

¹ Messrs GAC Pakistan (Pvt) Ltd., v E.F.U. General Insurance Ltd. (2013 CLD 1568)

² Industrial Development Bank of Pakistan v Bahawalpur Board Mills Ltd (2001 MLD 1708)

³ State Life Insurance Corporation of Pakistan v Ibrahim Management Ltd. (1990 CLC 206)

Ordinance, 1984, to entertain and dispose of any suit or proceedings, by or against the company. Even pending proceedings by or against the company stand transferred to the company Court. The object of section 316 of Ordinance, 1984, is to accelerate disposal of winding up proceedings, cheap and summary remedy in respect of claims for and against the company, and to save unnecessary litigation. The provisions of Companies Ordinance, 1984 are special and will prevail over other laws. The company Court exercises a wide jurisdiction, over all matters relating to the company in the process of winding up. The matter relating to a company in winding up are to be adjudicated before one Court and the wisdom behind this provision is that company should be dissolved finally, without complication⁴. In these proceedings winding up proceedings appears to have been filed way back in 2004, whereas, the orders, which have been placed on record are subsequent to filing of the present Suits, however, it is a matter of record that an Official Liquidator has been appointed in respect of the two Companies in question under Section 316 of the Ordinance, 1984, therefore, the objection as to the lack of jurisdiction with the Court, which has appointed the Official Liquidator is perhaps not only misconceived but so also without any reasonable cause or justification. Perusal of the record placed before this Court, reflects that it is not for this Court to enter into this question that the learned Lahore High Court has no jurisdiction. If the Plaintiffs in Suit No.713/2011 are aggrieved by any such order, they ought to have approached the learned Lahore High Court to raise all such objections as they deem fit. In fact they are respondents in those proceedings, and have failed to appear on Court notice, whereafter, to effect service upon them publication has been made. Not only this, it is also in dispute as to the ownership of certain properties purportedly in the name of two

⁴ Pakistan Industrial Leasing Corporation v Sunrise Textile Mills (2009 CLD 1662)

Companies under liquidation. Once an Official Liquidator has been appointed, then entire proceedings are to be conducted by the Company Judge before whom the winding up proceedings have been initiated. It is not that one party, or shareholder for that matter objects to such winding up proceedings, then challenge of such proceedings can be made in any other or parallel proceedings. This has been provided for quite obvious reasons and by now the law is finally settled that once an Official Liquidator has been appointed, then all other Courts lack jurisdiction in respect of the affairs of the Company and it is only the Court, which is winding up the company, shall have jurisdiction, not only to decide all claims in and arising out of the Company; but so also in a Suit or proceedings by or against the Company.

8. Insofar as the facts of the present case are concerned these Suits are not merely and exclusively in respect of the assets of the Company; but so also in respect of various other issues as well as estate of the deceased. As to the assets of the companies in question are concerned, this question has to be decided by the learned Lahore High Court, which has already taken cognizance as a Company matter and this Court being bound by the special provision of law, has no other alternative, but to stay the proceedings to the extent of assets of the companies in question being claimed. However, the stay of the proceedings could only be made applicable to the extent of the admitted assets which are in the name of the two Companies in question.

9. In view of hereinabove facts and circumstances of this case, the Applications of the Official Liquidator as well as the Plaintiff in Suit No.1288/2003 are allowed but only to the extent that the present proceedings shall stand stayed in respect of the assets of the two Companies under liquidation before the learned Lahore High Court,

however, the Suit may proceed in respect of the other estate of the deceased Muhammad Iqbal Shafi in accordance with law. These applications bearing CMA No.13647/2016 in Suit No.713/2011 and CMA Nos.13587/2016, 17430/2016 and 9881/2016 in Suit No.1288/2003 stand disposed of, whereas, all other pending applications are adjourned to a date in office.

Dated: 21.5.2018

Judge

Ayaz