

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

High Court Appeal No. 220 of 2004

M/s S.M. Corporation (Pvt.) Ltd. & others  
Versus

Deceased Muhammad Mohsin Butt & others

Date of Hearing: 27.03.2024

Appellant No.1: None present

Appellants No.2 and 3: Through Mr. Muhammad Najeeb Jamali  
Advocate

Respondent No.1(ii)&(iii): Through Mr. Amir Saleem Advocate.

Respondents No.3 & 4: Through Mr. Noor Muhammad Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- In a Judicial Misc. Application filed under Section 290, 291 and 292 of the Companies Ordinance, 1984, respondent No.1 prayed for rendition of accounts/division of assets and properties of S.M. Corporation (Pvt.) Ltd. (appellant No.1) with further prayer of future dividends.

2. The above JM was contested by the appellants on many grounds including the ground of limitation. Counter-affidavit and rejoinder were exchanged. Prime question, being one as to whether for resolution of intricate questions, as involved, should the Court undertake to enquire into the matter by undertaking enquires/investigation and/or by recording evidence. The Court held as under:-

*“28) The cases in hand, in my opinion, are covered by the Ordinance and the factual controversies raised therein are to be adjudicated by this Court. The controversies, however, are of the nature, which cannot be decided without an investigation/inquiry or by recording evidence.*

*I, therefore, find it necessary to first determine the disputed points and thereafter call for evidence.*

*29) All these matters are adjourned and on the next date of hearing, this Court will determine the controversial points involved in the matters.”*

3. Thus, all controversial questions/points were ordered to be resolved in terms of paragraphs 28 and 29 above, and winding up petition No.1 of 2002 was also ordered to be fixed after the decision in the said petition and CMA No.1587/2003.

4. Appellants being some of the respondents in the above JM then filed this appeal that their preliminary point of limitation was not heard and decided while passing the impugned judgment.

5. We have heard the learned counsel for the parties and perused record.

6. Point of limitation, no doubt was taken in the counter-affidavit but its consideration was lost in the debate as to whether in a company matter involving intricate questions such summary procedure could be attended by way of an inquiry/evidence and the latter prevailed i.e. inquiry and evidence is required in case involving intricate questions even in Company J.M. The learned Single Judge however in the extensive order deciding the controversy as to requirement of evidence in the matter involving intricate questions, has left to attend one of the crucial question i.e. its maintainability on the count of limitation.

7. It is contended that had it been suit for recovery it would have been barred by time as purportedly a claim which triggered in 1994 would have been barred by time by applying Article 181 of the Limitation Act. Not always but invariably the limitation is found to be mixed question of law and fact. A number of company matters have been tagged along with main J.M. i.e. No.3 of 2001 which claims/seekes rendition of accounts, division of assets and properties and payment of

dividend, kind of an administration suit not strictly. The other questions in J.M. were considered as intricate questions and evidence was required, as adjudged by learned Single Judge.

8. This being a situation, we are of the view that since learned Single Judge has not gave its mind as to the maintainability of the company petition on the touchstone of Article 181 of the Limitation Act, it would be unfair if such question is decided by the Division Bench in this High Court Appeal without giving an opportunity to the parties to address the said question before learned Single Judge and if required evidence be recorded.

9. In view of above, instant High Court Appeal is disposed of with such understanding that the parties to agitate their case as to the maintainability of the company petition on the touchstone of Article 181 of the Limitation Act before learned Single Judge and if required the evidence be recorded and a finding be recorded on this point in addition to other intricate questions as are being investigated in terms of impugned judgment.

Dated:

**J U D G E**

**J U D G E**