

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**SMA No.380 of 2019**  
 [In Re-Shahid Jamal---deceased]

Date	Order with signature of Judge
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1. For hearing of CMA No.2672/2021
2. For hearing of CMA No.2673/2021
3. For hearing of CMA No.2674/2021

Mr. Muhammad Naqqash Siddiqui, Advocate for the petitioner.  
 Mr. Moulvi Iqbal Haider, Advocate for Applicants/Objectors.

**Date of Hearing and Order**      **17.10.2024**

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**ARSHAD HUSSAIN KHAN, J.-**      The Applicants / objectors namely; Hira Shahid, Faisal Ahmed, Yasir Ahmed and Sana Ahmed filed listed Applications viz: **(1) CMA 2672/2021** under Section 263 of Succession Act 1925 read with Section 12(2) CPC and Section 151 CPC for recalling / setting aside of the order dated 20.11.2019, passed in the above SMA and revocation / annulment of Letter of Administration/Succession certificate, on the ground that the same was obtained through fraud and misrepresentation; **(2) CMA 2673/2021** under Section 151 CPC seeking suspension of the operation of order dated 20.11.2019 till the decision of application under Section 12(2) CPC read with Section 151 CPC and **(3) CMA 2674/2021** under order XXXII Rule 2 read with Section 151 CPC seeking permission of this Court to file application under Section 12(2) CPC through Applicant No.4 as Applicant No.1 is the minor.

2.      The facts giving rise to the above applications are that the present SMA was filed by the petitioner namely; Sami Jamal son of Shahid Jamal in respect of the assets and the properties left by the late Shahid Jamal (the “**Deceased**”). The said petition remained non-contentious one despite publication, resultantly the same was granted, vide order dated 20.11.2019. The Applicants, claiming to be the legal heirs of Naheed Niazi, the second wife of the deceased Shahid Jamal, on 29.09.2021 filed listed applications challenging the order passed on 20.11.2019 (the “**impugned order**”) on the ground that the same was obtained through

fraud and misrepresentation. Upon notices of the applications, counter affidavits and rejoinders have been filed.

3. Learned counsel for the Applicants in support of listed applications while reiterating the contents of the applications as well as the rejoinders, inter alia, contended that the petitioner, who is not the biological son of the deceased, concealed this fact from the court and obtained the impugned order. It is further contended that the deceased had no biological male child and therefore adopted Sami Jamal from his relatives and had given him the name as Sami Jamal, but this fact was concealed by the first wife Nasira Jamal and other legal heirs of the Deceased from the court and had obtained the impugned order. Learned counsel further contended that the deceased had a second marriage with Naheed Niazi, but no children were born from this marriage. However, Naheed Niazi had three children from her previous marriage with Israr Ahmed, namely; Faisal Ahmed, Yasir Ahmed, and Sana Daniyal (applicants No. 2, 3, and 4). It is also contended that Naheed Niazi and Shahid Jamal adopted Applicant No.1 namely; Hira Shahid, however, her name was not appearing in the FRC filed in the present SMA. It is also contended that the facts regarding parentage of the petitioner can be proved only after DNA test from the forensic laboratory, however, the petitioner is avoiding for the said test. It is contended that the Applicants' only grievance is that if the petitioner, being an adopted son of the deceased, can get the share from the assets of the Deceased, then the Applicant No.1 is also entitled for the same being adopted child of Shahid Jamal and Naheed Niazi. Learned counsel has further contended that the impugned order has been obtained through fraud, misrepresentation and concealment of fact, as such, the same is unsustainable in law and liable to be recalled as well as Letter of Administration be revoked.

4. Learned counsel for the petitioner while reiterating the contents of the counter affidavits to the listed applications submits that the listed applications were filed by the Applicants, claiming to be the legal heirs of the second wife namely, Naheed Niazi, that too after her death whereas the said Naheed Niazi in her life time sworn her affidavit of "No Objection" for grant of the above SMA. She had also executed Special Power of Attorney in favour of the petitioner and she also appeared

before the Court on 20.11.2019 when the above SMA was allowed. Not only this, she also filed her affidavit of “No Objection” in support of the application filed by the petitioner seeking exemption from furnishing of surety as per the rules. He further submits that in the above SMA the present Applicants No. 2,3 and 4 have also sworn their respective affidavits stating that they are the children of Naheed Niazi from her previous marriage as such their names may be excluded from the list of legal heirs of the Deceased. Learned counsel for the petitioner submits that such fact is also corroborated from the order dated 20.11.2019. It is also contended that the petitioner neither concealed any fact nor misrepresented the Court in obtaining the order dated 20.11.2019 as such the question of recalling and setting aside the impugned order does not arise. He lastly submits that the applications being frivolous based on mala fide intention and ulterior motives, are liable to be dismissed with costs.

5. Heard learned counsel for the parties and perused the material available on the record.

From perusal of the record, it appears that the present SMA was filed in respect of the assets and properties left by the deceased namely; Shahid Jamal, who expired on 30.11.2018, the deceased succeeded by two wives namely; Nasira Jamal and Naheed Niazi as well as children from the first wife (Nasira Jamal). From the record, it reflects that in the SMA two FRCs of the deceased; one with Nasira Jamal and second with Naheed Niazi, were filed. However, due to some anomaly, in the Report of the Addl. Registrar dated 31.10.2019, the children of Naheed Niazi with previous husband Israr Ahmed were mentioned as children of the deceased. In order to clarify the position as to whether Faisal Ahmed, Yasir Ahmed and Sana Daniyal, the present Applicants Nos.2, 3 & 4, are children of the deceased or not, the Applicants have sworn their respective affidavits clarifying the position that they are the children from the earlier husband of Naheed Niazi namely; Israr Ahmed and have no right and interest in the properties left by the deceased and further they also requested that their names may be excluded from the list of the legal heirs of the deceased-Shahid Jamal. Above said fact is also reflected from the order impugned in the present proceedings.

6. Insofar as the contention of learned counsel for the Applicants that Applicant No.1 is the adopted child of Shahid Jamal and Naheed Niazi is concerned, he has failed to show any document in support of his stance. Furthermore, Naheed Niazi and the present Applicants, despite having knowledge and participation in the proceedings of the present SMA, neither raised any objection with regard to adoption of the petitioner nor sought insertion of Applicant No.1 in the list of legal heirs of the deceased, at the time of passing of the impugned order nor thereafter till Naheed Niazi remained alive. However, after the death of Naheed Niazi, that too, after a lapse of two years, the Applicants filed the above applications with the allegations of fraud and misrepresentation without providing any proof thereof. The law requires that whenever the practice of fraud and misrepresentation is alleged by a party, the particulars of fraud or misrepresentation with all the necessary details have to be mentioned in the pleadings. The burden to prove the factum of fraud or misrepresentation would always be upon the person who alleges the same; except the fraud is floating on the face of the record. The active concealment and suppression of facts in words and deeds is in fact an elementary and fundamental ingredient of the fraud, which cannot be inferred or proved by mere making some assertions, rather it must be proved through strong, independent and convincing evidence. If a party alleges a fraud without bringing the essential facts on the record in proof of the same, then mere pleading ignorance or lack of knowledge simpliciter to make it a ground for moving the Court would not be sufficient to dislodge the sanctity, which is otherwise attached to the judicial proceedings. Reliance in this regard can be placed on the case of *Mst. Nasira Khatoon and another Vs. Mst. Aisha Bai and 12 others* [2003 SCMR 1050].

7. In the instant case, the Applicants have also failed to substantiate their stance that the petitioner is an adopted child of the deceased Shahid Jamal. It is an admitted fact that the Applicants are claiming their rights in the properties of the deceased-Shahid Jamal through Naheed Niazi, second wife, who had executed an affidavit during her life time in support of the present petition and did not raise any objection till her death. The Applicants after a lapse of more than two years of the demise of Naheed Niazi filed the listed applications seeking recalling of the

order passed by this Court in the above SMA, that too without giving any plausible reason for the delay.

8. Section 263 of the Succession Act, 1925, deals with such cases, wherein the grant of Letter of Administration may be revoked/annulled, provided "just cause" is shown. For the sake of convenience, the provisions of Section 263 (ibid) are reproduced as under:-

**“ 263. Revocation or annulment for just cause.**

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. Just cause shall be deemed to exist where :--

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

From the record it appears that neither the claim of the petitioner was based on misrepresentation of facts, nor he committed any fraud upon this Court by pleading such facts, which were not correct and/or he concealed anything from the Court as such this case does not fall under any Explanations of Section 263 (ibid).

9. Insofar as the stance of the Applicants/objectors that Applicant No.1 being adopted child of the deceased is also entitled to shares in the properties of the deceased is concerned, firstly the Applicants have failed to file any document to substantiate their stance in the case that the petitioner as well as Applicant No.1 are adopted children of the deceased and secondly, this could hardly be a ground of revocation of Letter of Administration.

10. Besides above, record reflects that the present Applicants have also filed a Civil Suit for Declaration, Cancellation, Recovery and

Permanent Injunction, inter alia, against the present petitioner wherein the Applicants have also raised the issue of adoption of the petitioner as well as Applicant No.1, as such, the present applications raising similar issue are not maintainable.

11. In the circumstances, in absence of any proof in support of the instance of the present Applicants, the listed applications are nothing but misconceived and devoid of any merit, accordingly the same are liable to be dismissed. These are the reasons, the above applications were dismissed by my short order dated 17.10.2024.

It is clarified that any observation made herein above is only for the purposes of deciding the underlying applications and shall not influence the court (s) while determining the other cases of the present parties pending before it.

JUDGE

Jamil\*