

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

SUIT NO. 403 of 2014

**MRS. ISMAT ASHRAF
AND OTHERS**

VERSUS

**SALATEEN TRUST
AND OTHERS**

Date:	Order with signature of Judge
Plaintiff No. 1 in Suit No. 403 of 2014	: Represented by Mr. Mirza Moez Baig, Advocate
Plaintiff No. 2 and 3 in Suit No. 403 of 2014	: Represented by Mr. Khawaja Shams ul Islam, Advocate.
Defendant No. 1 to 6 in Suit No. 403 of 2014	: Represented by Mr. Ravi Pinjani, Advocate
Date of hearing	: 23 August 2023, 4 September 2023, 7 September 2023, 14 September 2023, 25 September 2023, 28 September 2023, 4 October 2023, 12 October 2023, 13 October 2023, 14 October 2023, 29 February 2024, 2 March 2024, 17 August 2024 and 24 August 2024

ORDER

MOHAMMAD ABDUR RAHMAN, J. Through this Order I will be deciding the following applications maintained in Suit No. 403 of 2014:

- (i) **CMA No. 3246 of 2014** being an application maintained under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by Plaintiffs seeking to restrain the Trustees of the

Defendant No. 1 from taking any financial or administrative decisions regarding the operation of any amount from the bank accounts of the Defendant No. 1;

- (ii) **CMA No. 3247 of 2014** being an application maintained under Section 94 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiffs seeking to place the names of the Defendants No. 2 to 6 on the Exit Control List;
- (iii) **CMA No. 3248 of 2014** being an application maintained under Order XX Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff seeking for a Preliminary Decree to be passed by this Court appointing a Chartered Accountant to carry out an audit of the Defendant No. 1 from the date it was settled to date;
- (iv) **CMA No. 15023 of 2014** being an application maintained under order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Defendant No. 1 to 6 seeking to modify the order dated 11 November 2014;
- (v) **CMA No. 12953 of 2014** being an application maintained under Order XL Rule 1 read Order XXXIX Rule 1, Section 94 and Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff seeking that the Nazir be appointed as a receiver of the Defendant No. 1 and to direct that independent accounts should be made of the trust; and
- (vi) **CMA No. 14336 of 2023** being an application maintained under order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiffs seeking to bring additional documents on the record of this Court.

The Applications have been maintained in this Suit, presented under Section 92 of the Code of Civil Procedure, 1908, seeking directions to be passed by this Court in respect of the duties and obligations of the Defendants No. 2 to 6 who are trustees of a trust known as the "Salateen Trust".

2. The Plaintiffs and the Defendants No. 2 to 5 are all the relatives of one Azim Sultan who on 6 July 1993 through a registered Deed of Trust settled a trust named the "Salateen Trust" for "charitable purposes." A Supplementary Deed of Trust was registered on 26 June 2006 and thereafter another Supplementary Deed of Trust was also registered on 4 July 2011. While there is no dispute regarding the Trust being settled, the Plaintiffs have reservations regarding the execution of the

Supplementary Trust Deed dated 26 June 2006 and the Supplementary Trust Deed dated 4 July 2011 and which they contend altered a balance amongst the Trustees that had been affected in the earlier deed as between the Plaintiffs and the Defendants No. 2 to 7 each of whom are the legal heirs of the (late) Mr. Azim Sultan.

3. Mr. Khawaja Shams ul Islam entered appearance on behalf of the Plaintiffs and contended that the original trustees of the Trust were identified in the original Deed of Trust dated 6 July 1993 as:

- a. *Mr. Azim Sultan,*
- b. *Mr. Azam Sultan,*
- c. *Mrs. Annie Tariq*
- d. *Mrs. Rubina Ali Khan*

As per clause 6 of the original Deed of Trust dated 6 July 1993, Mr. Azim Sultan was permitted to continue as a trustee for "as long as he likes to continue" and the corpus of which was to vest in Mr. Azim Sultan "during his life time" and which after his death would vest in the trustees as indicated in Clause 9 of the Deed of Trust dated 6 July 1993 and which reads as hereinunder:

- " ... 9. *When the Settlor seizes to be a Trustee in consequence of his decision or on his death as the case may be all the first trustees shall stand retired and the Trust Estate shall vest and be managed by a Board of Trustees consisting of not less than three and not more than five and shall consist of the following persons*
- (a) One Trustee being the eldest son of the Settlor. Upon the death of the son, the second son and so on and then their male descendants, the eldest being first entitled and so on.*
 - (b) One Trustee each from amongst the two daughters Mrs. Annie Tariq and Mrs. the settlor, their husbands and the male descendants of the said daughters of the settlor to be nominated by the Trustee qualifying under clause 9 (a) above .*
 - (c) in addition to the above three trustees, two more persons may act as Additional Trustees as are elected by the three Trustees specified in clause 9 (a) and (b),"*

He contended that Clause 9 of the Deed of Trust dated 6 July 1993 was supplemented by Clause 10 and which stated as hereinunder:

- " ... 10. *Notwithstanding any thing contained herein above, every new trustee inducted into office by virtue of the provisions of clause 9 (a) shall be entitled to determine the appointment of the remaining trustees and thereafter to cause a new Board of Trustees to be constituted in accordance with the Provisions of clause 9 (b) and (c)."*

He referred to Clause 16 of the Deed of Trust dated 6 July 1993 which related to the manner in which the trustees were to manage and control the corpus of the Trust and which clarified as hereinunder:

“ ... Subject to the provisions of this Deed the management and control of the Trust estate and affairs of the Trust hereby constituted shall exclusively vest in the Settlor during his lifetime and thereafter in the Trustees who shall act from time to time in accordance with the decision of the majority of Trustees present and voting at a meeting.”

He next referred to Clause 19 of the Deed of Trust dated 6 July 1993 which relates to issues pertaining to the accounts to be maintained by the Trustees and which reads as hereinunder:

“ ... The Trustees shall cause full accounts to be entered in proper books of account provided for the purpose of all monies, received and paid respectively on account of the Trust, such books of account shall be made up for each year and shall be audited by Chartered Accountant to be appointed by the Trustees at their first ordinary meeting in each year and shall be thereupon signed by the Chairman of the Meeting. The report of the Trustees alongwith the Balance Sheet shall be printed and published once every year.”

4. He clarified the Deed of Trust dated 6 July 1993 was amended by a Supplementary Deed of Trust dated 26 June 2006 and by which various changes were brought about in the composition of the trustees and which are as hereinunder:

(i) the first Trustees were replaced with the following persons:

- (a) Mr. Azam Sultan
- (b) Mr. Muhammad Rafiq Dossani,
- (c) Mr. Ebrahim Qasim;
- (d) Mrs. Sofia Sultan;
- (e) Mrs. Firoza Sultan;
- (f) Mr. Moazam Sultan.

(ii) on the demise of Mr. Azim Sultan the corpus of the trust was to vest in the following trustees:

- (a) Mr. Azam Sultan
- (b) Mr. Muhammad Rafiq Dossani,
- (c) Mr. Ebrahim Qasim;
- (d) Mrs. Sofia Sultan;
- (e) Mrs. Firoza Sultan;
- (f) Mr. Moazam Sultan.

(iii) the authority to operate the accounts of the trust came to be regulated as hereinunder:

“ ... All Cheques (and orders) for the payment of money shall be signed by the Settler and after the Settler has to be a Trustee all such cheques and orders shall be jointly signed by the two trustees. Provided that for this joint signature - one trustee shall be from the Group A and another shall necessarily be from the Group B named below

1. *Group A*
 - (a) *Mr. Muhammad Rafiq Dossani,*
 - (b) *Mr. Ebrahim Qasim*
2. *Group B*
 - (a) *Mr. Azam Sultan*
 - (b) *Mrs. Sofia Sultan;*
 - (c) *Mrs. Firoza Sultan"*

5. Identifying the reason for making such changes Mr. Khawaja Shams ul Islam clarified that Mr. Azim Sultan had married four times and had children from two of his wives. Identifying the Plaintiff No. 1 and the Plaintiff No. 2 as the children of the Plaintiff from his first wife Mrs. Fehmida Bano, he clarified that the Plaintiff No. 3, the Defendant No. 2, the Defendant No. 5 and the Defendant No. 7 were the children of Mr. Azim Sultan from his second wife Mrs. Sultana Sultan. He therefore contended that Mr. Azim Sultan created the two groups to allow for transparency in the management of the trust after his demise.

6. He next contended that further changes were brought about in the working of the trust by a Supplementary Deed of Trust dated 4 July 2011 and by which the trustees were re-nominated as:

- (a) *Mr. Azam Sultan*
- (b) *Mrs. Sofia Sultan;*
- (c) *Mrs. Firoza Sultan;*
- (d) *Mr. Moazam Sultan;*
- (e) *Mrs. Annie Tariq;*
- (f) *Mrs. Rubina Ali Khan*
- (g) *Mr. Sofiyan Sultan.*

The authority to operate the accounts of the trust came to be regulated as hereinunder:

" ... *All Cheques (and orders) for the payment of money shall be signed by the Settler and after the Settler has to be a Trustee all such cheques and orders shall be jointly signed by the two trustees. - one trustee shall be from the Group A and another shall necessarily be from the Group B named below*

1. *Group A*
 - (a) *Mr. Azam Sultan*
 - (b) *Mr. Moazam Sultan*
2. *Group B*
 - (a) *Mr. Sofiyan Sultan*
 - (b) *Mrs. Sofia Azam Sultan;*
 - (c) *Mrs. Annie Tariq*
 - (d) *Mrs. Rubina Ali Khan*
 - (e) *Mrs. Firoza Sultan*

7. Mr. Khawaja Shams ul Islam contended that while the trust was meant to be for charitable purposes, in fact it was, in his words, a "sham" trust and the funds for which were utilised by the Defendants No. 2 to 6 for their personal benefit

without “sharing” that “benefit” with the Plaintiffs and the Defendant No. 7. It was therefore pleaded in paragraph 9 of the Plaint that so as to purge this illegality:

“ ... *the present suit is being filed as the Defendant No. 2 are illegally, unlawfully and immorally acting in complete breach of express and constructive covenants of the trust, therefore direction of this Hon’ble Court is necessary for the proper administration of Defendant No. 1 for the purpose of removing Defendants No. 2 to 6 acting as trustees of Defendant No. 1 trust as well as appointing the Plaintiffs no. 1,2 3 and proforma Defendant No. 7 as new trustees....”*

8. He clarified that earlier Suit No. 1643 of 2013 had been maintained by the Plaintiffs and in which other causes of actions, not relating to a public charitable trust, had been consolidated and which had been ordered to be bifurcated by this Court in an order dated 17 January 2014 passed in that Suit and where after having obtained the approval of the Advocate General Sindh under Section 92 of the Code of Civil Procedure, 1908, this Suit had been maintained.

9. An Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 had been maintained in this Suit bearing CMA No. 4197 of 2014 on the ground that the Plaintiffs had maintained this *lis* under Section 92 of the Code of Civil Procedure, 1908 for their personal benefit and which could not be maintained. The Application was dismissed on 3 April 2017.

10. To identify the “sham” that existed in this trust, Mr. Khawaja Shams ul Islam contended that monies held in trust were utilized by the Defendants No. 2 to 6 for their personal benefit and to pay the medical expenses of Mr. Azim Sultan and which fact had been admitted by the Defendants and which necessitated this Suit to be maintained. He in addition maintained that the removal of the Plaintiffs as trustees through the Supplementary Deeds of trust was also illegal and made fraudulently.

11. Regarding the fraud he stated that there were variations in the signature of the Settlor in each of these documents. He further contended that as in respect of the Supplementary Deed of Trust dated 26 June 2006 and Supplementary Deed of Trust dated 4 July 2011, Mr. Azim Sultan was in a “vegetarian” state (which I assume was meant to be a “vegetative” state) and therefore it was not possible for him to have executed that document. He referred to a certificate issued by a doctor who had attended to Mr. Azim Sultan at the Aga Khan University Hospital on 26 April 2003 and who had confirmed that Mr. Azim Sultan had suffered a stroke on that date and while having been discharged from care, he contended was not able to act independently from that date. He also referred to other medical reports relating to the years 2003 and April 2006 to indicate that Mr. Azim Sultan had been seriously unwell with fibrosis during this period and therefore was incapacitated on this basis as well. He also alleged that funds of the Defendant No. 1 were used

to pay personal medical bills of Mr. Azim Sultan and which clarified the status of the Trust as a “Sham”.

12. Regarding the character of Mr. Azam Sultan, Mr. Khawaja Shams ul Islam he referred to various documents which he contended confirmed that the Defendants No. 2 name had been listed in the “Panama Papers” and which ipso facto indicated that he was a person who was involved in dubious financial dealings.

13. He relied on a decision of the Supreme Court of India reported as **Kt. N. Rm. Thenappa Chettiar & Ors vs N. S. Kr. Karuppan Chettiar & Ors**¹ in which while considering whether persons who had founded a trust had a right to maintain a *lis* for removing a trustee or to settle a scheme of arrangement for the management of the trust it was held that a suit can be maintained for the removal a trustee or for settlement of a scheme for the purpose of effectively carrying out the objections of the trust. Reliance was also placed on a decision of the Supreme Court of Pakistan reported as **Muhammad Hanif Abbasi vs. Jahangir Khan Taree and others**² and the decision reported as **Faraz Ahmad Bhutta vs. Additional District Judge and others**³

14. He concluded his arguments by referring to the statements of accounts of the trust to indicate the amounts that have been purportedly siphoned off from the trust by the Defendants No. 2 to 6.

15. Mr. Mirza Moez Baig entered appearance on behalf of the Plaintiff No. 1 and addressed arguments on CMA No. 12953 of 2023 and referred to the order dated 11 November 2014 and contended that this order should be confirmed. He contended that a charitable trust was liable to audited and that the Plaintiff No. 1 should not be removed from the management of the trust.

16. Mr. Ravi Pinjani who appeared on behalf of the Defendants contended that the Trust was settled by Mr. Azim Sultan for charitable purposes, and the objects of the Trust were highlighted in Clause 4 of the Deed of Declaration of Charitable Trust dated 6 July 1993 and which was amended by a Supplementary Deed of Trust dated 20 June 2006 and a Supplementary Deed of Trust dated 4 July 2011.

17. He contended that while maintained under Section 92 of the Code of Civil Procedure, 1908 the Plaintiff’s interests are adverse to the interest of the Trust and who in fact seek that the trust be dissolved and a distribution be made of the corpus

¹ AIR 1968 SC 915

² PLD 2018 SC 114

³ PLD 2011 Lahore 483

of the trust as amongst the Plaintiffs and the Defendants No. 2 to 6 as inheritance from Mr. Azim Sultan. He contended that by maintaining this *lis*, the Plaintiff No. 3 in particular, who is still a trustee, has breached her fiduciary obligations by asking for the trust to in effect be dissolved and the corpus to be treated as the personal estate of Mr. Azim Sultan.

18. Mr. Pinjani drew the Courts attention to an order dated 17 January 2014 that was passed in Suit No. 1643 of 2013 and by which order this Court bifurcated the causes of action that existed in that suit into two separate causes, the first being in respect of the corpus of the trust and the second in respect of a claim made to the personal estate of Mr. Azim Sultan and held that while the latter could continue in that *lis*, the former could not have been instituted without first obtaining the Advocate General's permission as required under Section 92 of the Code of Civil Procedure, 1908. He contended that the Plaintiffs accepted this order by separating each of the claims and maintaining this Suit and never challenged the order dated 17 January 2014 that was passed in Suit No. 1643 of 2013.

19. While referring to C.M.A No. 2062 of 2015 he contended that while the Plaintiffs had unconditionally withdrawn Prayer (a) of this Suit and which was allowed by this Court by its order dated 27 March 2015, the Plaintiffs in their affidavit in support of that application had unequivocally reasserted that the Trust was not a sham and had lawfully be created by Mr. Azim Sultan and had clarified their desire to pursue this Suit only for the implementation of the objects of the Trust. He on the basis contended that the Plaintiffs are estopped from now alleging that the purpose of settling the trust was a sham and which should therefore be dissolved.

20. He contends that the mala fide of the Plaintiffs was however evident as in the affidavit in support of CMA No.12593 of 2023 at Paragraph 3, the Deponent on behalf of the Plaintiffs have contradicted themselves and once again stated that the Trust was sham and ought to be dissolved and it's corpus treated as personal assets of Mr. Azim Sultan and which should be distributed as amongst the Plaintiffs and Defendant Nos. 2, 3, 4 and 7. He contends that on this basis alone the Plaintiffs are not entitled to any relief as their intention is not to ensure the proper management of the trust but rather to use these proceedings as a means to compel the Defendants No. 2 to 6 to settle this issue and extort monies from the Trust.

21. He clarified, that this intention is also reflected from various emails copies of which were appended by the Defendants No. 2 to 6 to the Counter Affidavit filed to CMA No. 3246 of 2014 and which were not denied in the rejoinder to the Counter Affidavit filed by the Plaintiffs. He next contended that the same plea was reasserted by Mr. Khawaja Shams ul Islam during the course of the hearing of these applications and which continue to be the sole motivation for maintaining this *lis* and these proceedings. He relied on the decision reported as **Fakir Shah vs.**

Mehtab Shah Pir Bukhari Masjid⁴ wherein it was inter alia held that where a suit is maintained under Section 92 of the Code of Civil Procedure, 1908 the suit must be pleaded as being in a representative capacity on behalf of the public and not for the assertion of personal rights of the Plaintiffs and which if maintained for asserting personal rights could not be sustained. He also relied on a decision of this Court reported as **Khawaja Muhamamd Ali and 6 others vs. Sir Jehangir Kothari Trust through Trustees and 16 others**⁵ which followed the Judgment of the above referred judgment of the Supreme Court of Pakistan.

22. Drawing the courts attention to Clause 33 of the Deed of Trust dated 6 July 1993, he submitted that the right to amend the trust had validly been exercised by Mr. Azim Sultan and there was no cause to call into question either the Supplementary Deed of Trust dated 20 June 2006 or the Supplementary Deed of Trust dated 4 July 2011 and stressed that such amendments not being prohibited by any law were permitted⁶. While accepting that neither the provisions of the Trust Act, 1882 or the Sindh Trust Act 2020 directly applied to Charitable Trust on account of the exclusions that existed in each of those statutes he stated that the provisions of each of those statutes would in principle apply to charitable trusts as held in the decision reported as **Kandawalla Trust through Trustees and another vs. The State**⁷ and by the Supreme Court of India in the decision reported as **State Of Uttar, Pradesh vs Bansil Dhar And Others**⁸ and there being no restriction on amendments and the Trust Deed dated 6 July 1993 specifically envisaging such a scenario the same should be permitted. While conceding that there was no authority in Pakistan which had considered the right of the Settlor to reserve a right to amend a trust, he placed reliance on a decision of the Calcutta High Court reported as **Naresh Sengupta Foundation v/s CIT**⁹ following a decision of the Madras High Court reported as **CIT v/s Ramaswamy Iyer**¹⁰ wherein it was held that a settlor cannot vary the purpose of a trust subsequently without a power being reserved in the original deed of trust.

23. He next contended that while various allegations were being levied, there is nothing on record that would indicate that the trust was not validly settled on 7 July 1993 or that any ground has been made by the Plaintiffs for revoking the that instrument except in Prayer Clause (a) which was unconditionally withdrawn. Similarly, it was contended, that the Supplementary Deed of Trust dated 20 June

⁴ PLD 1989 SC 283

⁵ PLD 2013 Sindh 592

⁶ Reliance was placed on **Islamia University, Bahawalpur vs. Muhammad Hameed Bhatti** 2004 SCMR 649; **Imam Bakhsh Versus Ghulam Nabi** 1999 SCMR 34; **Additional Collector-Ii Sales Tax, Lahore Versus Messrs Abdullah Sugar Mills Ltd.** 2003 SCMR 1026

⁷ 2013 MLD 640

⁸ 1974 (1) SCC 446

⁹ 1994 207 ITR 340 Cal

¹⁰ 1977 110 ITR 364 Mad

2006 has not been impugned and which therefore could not be questioned in these proceedings as to do so would run contrary to the pleadings. Reliance in this regard was placed on two decisions of the Supreme Court of Pakistan reported as **Sardar Muhammad Naseem Khan vs. Returning Officer, PP-12**¹¹ and **Muhammad Iqbal Versus Mehboob Alam**¹² both of which decisions advanced the proposition that a person cannot plead contrary to the pleadings.

24. Regarding the contention being advanced that Mr. Azim Sultan was mentally incapacitated at the time the Supplementary Deed of Trust dated 20 June 2006 was executed, Mr. Pinjani contended that the Plaintiff in this Suit does not claim that the Supplementary Deed of Trust dated 20th June 2006 Deed was made while he was allegedly unfit and such a contention was only pleaded in respect of the Supplementary Deed of trust dated 4 July 2011. He contended that the conduct of the Plaintiffs including the Plaintiff No.3, would act as an estoppel preventing them from claiming that Mr. Azim Sultan was mentally unfit at the time of execution of Supplementary Deed of Trust dated 4 July 2011 as:

- (i) The Plaintiff No. 3 and Defendant No. 7 have both supported the Supplementary Deed of Trust dated 4 July 2011, accepted it and acted upon it as indicated in Minutes of the Meeting of the Trustees dated 4 July 2011 that are appended with the Plaintiff;
- (ii) The Plaintiff No. 3 and the Defendant No. 7 have both acted upon the Supplementary Deed of Trust dated 4 July 2011 by assuming the office of Trustees and signing cheques for benefiting charitable causes and which are appended to the Counter Affidavit of the Defendants in response to the Affidavit in Support of C.M.A No. 12953 of 2023;
- (iii) No allegation was made by the Plaintiffs at any forum during the lifetime of Mr. Azim Sultan that he was mentally ill.

25. In addition, it was clarified that a finding as to the mental stability of Mr. Azim Sultan could not be adjudicated by this Court as the determination of such a fact came within the sole jurisdiction of the Court of Protection established under the Sindh Mental Health Act, 2013 (previously the Mental Health Ordinance, 2001). Reliance in this regard was placed on a decision of this court reported as **Farrukh Afzal Munif vs. Muhammad Afzal Munif**,¹³ **Irfan Wahid vs. Lucky Cement**

¹¹ 2015 SCMR 1698

¹² 2015 SCMR 21

¹³ 2019 CLC 431

Limited¹⁴ and a decision of the Lahore High Court Lahore reported as **Arshad Ehsan Through Legal Guardian Versus Sheikh Ehsan Ghani**¹⁵

26. In respect of CMA 3247 of 2014 that was maintained by the Plaintiffs to place the Defendants No. 2 to 6 name on the Exit Control List, Mr. Pinjani contended that procedurally this application was not maintainable as the Federation of Pakistan through the Ministry of Interior was not a party to this Suit and hence no order could be passed in this regard. Jurisdictionally, the placement of names on Exit Control List was covered by a special law under Exit from Pakistan (Control) Ordinance 1981 and hence this court's jurisdiction did not allow for such an order to be passed. Finally, on merits he contended that such a direction cannot be made as the same would be violative of Articles 9 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance in this regard was placed on the decision of the Lahore High Court, Lahore reported as **Farah Mazar & Others versus Federation of Pakistan & Others**¹⁶ **Ali Muhammad Turab versus Federation of Pakistan & Others**¹⁷ and **Tanveer Hussain Manji & Others versus Federation of Pakistan & Others**.¹⁸

27. I have heard Mr. Khawaja Shams ul Islam, Mr. Mirza Moez Baig and Mr. Ravi Pinjani and have perused the record.

(i) CMA No. 14336 of 2023

28. This is an Application that has been made by the Plaintiff to bring certain documents onto the record of this Court and which can therefore be considered by this Court during the hearing of interlocutory applications. I do not see any impediment in allowing this Application as issues have to date not been framed in this matter and which documents could therefore also be presented with the List of Documents when evidence is adduced. Hence, without prejudice to the rights of the Defendant to challenge the veracity of the documents, **CMA No. 14336 of 2023 is allowed** and the documents appended to the Application are taken onto the record of this court.

¹⁴ PLD 2022 Sindh 69

¹⁵ PLD 2006 Lahore 654

¹⁶ PLD 2022 Lahore 119

¹⁷ PLD 2020 Islamabad 454

¹⁸ 2016 CLC 1534

(ii) **CMA No. 3246 of 2014, CMA No. 12953 of 2014 and CMA No. 15023 of 2014**

29. These three applications will be decided together and are detailed as hereinunder:

(a) **CMA No. 3246 of 2014** is an application maintained under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by Plaintiffs seeking to restrain the Trustees of the Defendant No. 1 from taking any financial or administrative regarding the operation and withdrawal of any amount from the bank accounts of the Defendant No. 1;

(b) **CMA No. 12953 of 2014** being an application maintained under Order XL Rule 1 read Order XXXIX Rule 1, Section 94 and with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff seeking that the Nazir be appointed as a receiver of the Defendant No. 1 and to direct that accounts should be taken of the trust; and

(c) **CMA No. 15023 of 2014** being an application maintained under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 that has been maintained by the Defendant No. 1 to 6 seeking to modify the order dated 11 November 2014.

30. The Suit, as maintained by the Plaintiffs, has been instituted under the provisions of Section 92 of the Code of Civil Procedure, 1908 and which provides as hereinunder:

“ ... 92.-(1) *in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate. General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate, to obtain a decree-*

- (a) *removing any trustee,*
- (b) *appointing a new trustee ;*
- (c) *vesting any property in a trustee ;*
- (d) *directing accounts and inquiries ;*
- (e) *declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;*
- (f) *authorizing the whole or any part of the trust-property to be let sold, mortgaged or exchanged ;*
- (g) *settling a scheme ; or*
- (h) *granting such further or other relief as the nature of the case may require.*

(2) Save as provided by the Religious Endowments Act, 1863 no suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsections.

In **Fakir Shah Versus Mehtab Shah Pir Bukhari Masjid Committee**¹⁹ the Supreme Court of Pakistan clarifying the nature of proceedings instituted under Section 92 of the Code of Civil Procedure, 1908 has held:

“ ... It will be seen from the aforesaid provisions that in order to file a suit under section 92, C.P.C. the following conditions must be fulfilled:

(1) There must exist a trust for a public purpose of a charitable or religious nature

(2) The plaint must either allege that there is a breach of trust or that the directions of the Court are necessary for the administration

(3) The suit must be a representative one on behalf of the public and not for the assertion of the personal rights of the plaintiffs.

(4) The relief claimed must be one of the reliefs enumerated in section 92.”

*If the above-said conditions are satisfied in regard to a suit then such a suit can only be filed in accordance with the procedure laid down in section 92, and any action in any other form will be barred. **Some of the principles which are well-settled in this connection are that in order to attract the applicability of this section it has to be seen whether the suit is for vindication of a public right; and for this purpose the substance and not the form of the suit must be looked at.** Another principle laid down is that the contents of the plaint will determine the maintainability of the Suit and the attraction of the bar contained in section 92.”*

Applying the law, as clarified by the Supreme Court of Pakistan, it is quite clear that the nature of the right devolving on the general public, the Advocate General has been entrusted with a statutory obligation to consider any complaint brought before him regarding a public charitable trust and when brought, the Advocate General has the jurisdiction to either maintain a Suit under Section 92 of the Code of Civil Procedure, 1908 himself or afford his consent to “two or more persons having an interest in the trust” to institute such a suit. I do not think this is an exercise that the Advocate General should take lightly or for that matter administratively. As per my understanding, the practice that has developed in the Advocate General’s office is to ask for a copy of the Plaint to be provided to them and thereafter to “administratively” grant approval to any two persons to institute such a suit without properly examining as to whether the Suit fulfills the criteria to institute such a suit indicated in Section 92 of the Code of Civil Procedure, 1908 as settled by the Supreme Court of Pakistan. This surely is not correct. The Advocate General on information being put before him must diligently and quickly investigate into the matter and where it is found that there is good cause should fulfil his statutory obligation and ideally institute the suit through his office as allowing private persons to institute such proceedings could lead to more worrying

¹⁹ PLD 1989 SC 283

questions, such as whether or not a comprise can be affected in such proceedings or whether the suit once instituted can be unconditionally withdrawn, from having to be decided.

31. In this suit the prayer as originally framed read as hereinunder:

“ ... (a) Declare that the Defendant No.1 was established/created by late Mr. Azim Sultan for keeping his wealth in its accounts in order to avail certain tax exemptions, and in view of the fact that no charity work was ever done by the Defendant No.1 from its inception till the death of late Azim Sultan, therefore, it was a sham trust, hence decree be issued for its dissolution and its assets be distributed among the legal heirs of late Azim Sultan in accordance with shariah.

(b) Declare that the management of affairs of Defendant No.1/trust is being run illegally without any lawful authority by the Defendants No.2 to 6, in gross violation of law and without proper authority and mandate and after illegally ousting the Plaintiff No.3 and proforma Defendant No.7 who are also the trustees of Defendant No.1.

(c) Appoint some appropriate officer of this Hon'ble Court as Administrator and Receiver in respect of Defendant No.1/trust as well its properties mentioned in para 10 of body of the plaint from the inception of the trust in 1993 up-to-date.

(d) Pass orders for freezing and attachment of the accounts mentioned in para 10 of the body of the plaint, to avoid withdrawal of any amounts or monthly profits belonging to Defendant No.1/trust from these accounts by the Defendants No.2 to 6, in order to protect the interest of all the trustees/beneficiaries of Defendant No.1.

(e) Order for administration, marshalling and distribution of the estates and properties of Defendant No.1/Trust as well as to make proper scheme for running the affairs of Defendant No.1/Salateen Trust, by holding such enquiry and taking accounts as deemed necessary and/or pass Preliminary Decree for appointment of Nazir or any other officer of this Hon'ble Court or the Plaintiffs No.3 and proforma Defendant No.7 (ousted trustees of Defendant No.1) as Administrator of Defendant No.1/Salateen Trust, as well as to remove the Defendants No.2 to 6 from the list of trustees, and restrain them from acting as trustees of Defendant No.1 anymore.

(f) Directions to the Administrator to engage the services of some chartered account for proper audits of the accounts of Defendant No.1/ Salateen Trust from its inception (1993) till to date, and all the unaccounted for, misappropriated and embezzled amounts belonging to Defendant No.1 shall be recovered from the Defendants No.2 to 6 as well as the Defendants No.2 to 6 be directed to render true accounts of the expenses illegally made by them for their personal enrichment out of the funds of the Defendant No.1/trust, and to deposit the same with the Administrator.

(g) Directions be given for initiating appropriate criminal prosecution and lodge F.I.R. against the Defendants No.2 to 6 for criminal breach of trust as well as acts of fraudulent misappropriation of huge amounts belonging to Defendant No.1, consequently, the names of Defendants No.2 & 6 be also placed in ECL so that they may not leave the country till final settlement of accounts and recovery of amounts.

(h) Grant mandatory injunction restraining the Defendants, more particularly the Defendants No.2 to 6, their agents, representatives, legal heirs, successors, attorneys or any one claiming on their behalf, not to operate or withdraw any amounts from the aforesaid bank accounts in which funds belonging to Defendant No.1/trust are lying.

(i) Grant permanent injunction restraining the Defendants, more particularly the Defendants No.2 to 6, their agents, representatives, legal heirs, successors, attorneys or any one claiming on their behalf, not to not to operate or withdraw any amounts from the aforesaid bank accounts in which funds belonging to Defendant No.1/trust are lying.

(j) Grant cost of the suit,

(k) Grant any other, better or alternate relief, as this Hon'ble Court may deem appropriate under the facts and circumstances of the case."

Clearly the very existence of the first prayer clause should have been alerted the Advocate General to consider whether or not the proceedings were "**for the assertion of the personal rights of the plaintiffs**" or not. This apparently was ignored and permission was accorded in the following terms:

" ... Please refer to your letter dated 07 March, 2014 on the subject, wherein you have prayed on behalf of your client as under :-

a) Declare that the Defendant No.1 was established / created by late Mr. Azim Sultan for keeping his wealth in its accounts in order to avail certain tax exemptions, and in view of the fact that no charity work was ever done by the Defendant No.1 from its inception till the death of late Azim Sultan, therefore, it was a sham trust, hence decree be issued for its dissolution and its assets be distributed among the legal heirs of late Azim Sultan in accordance with shariah.

b) Declare that the management of affairs of Defendant No.1/trust is being run illegally without any lawful authority by the Defendants No.2 to 6, in gross violation of law and without proper authority and mandate and after illegally ousting the Plaintiff No.3 and proforma Defendant No.7 who are also the trustees of Defendant No.1.

c) Appoint some appropriate officer of this Hon'ble Court as Administrator and Receiver in respect of Defendant No.1/trust as well its properties mentioned in para 10 of body of the plaint from the inception of the trust in 1993 up-to-date.

d) Pass orders for freezing and attachment of the accounts mentioned in para 10 of the body of the plaint, to avoid withdrawal of any amounts or monthly profits belonging to Defendant No.1/trust from these accounts by the Defendants No.2 to 6, in order to protect the interest of all the trustees/ beneficiaries of Defendant No.1.

e) Order for administration, marshalling and distribution of the estates and properties of Defendant. No.1/Trust as well as to make proper scheme for running the affairs of Defendant No.1/Salateen Trust, by holding such enquiry and taking accounts as deemed necessary and/or pass Preliminary Decree for appointment of Nazir of any other officer of this Hon'ble Court or the Plaintiff No.3 and proforma Defendant No.7 (ousted trustees of Defendant No.1) as Administrator of Defendant No.1/Salateen Trust, as well as to remove the Defendants No.2 to 6 from the list of trustees.

f) Directions to the Administrator to engage the services of some chartered account for proper audits of the accounts of Defendant No.1/Salateen Trust from its inception (1993) till to date, and all the unaccounted for, misappropriated and embezzled amounts belonging to Defendant No.1 shall be recovered from the Defendants No.2 to 6 as well as the Defendants No.2 to 6 be directed to render true accounts of the expenses illegally made by them for their personal enrichment out of the funds of the Defendant No.1/ trust, and to deposit the same with the Administrator.

g) Directions be given for initiating appropriate criminal prosecution and lodge FIR against the Defendants No.2 to 6 for criminal breach of trust as well as acts of fraudulent misappropriation of huge amounts belonging to Defendant No.1, consequently the name of the Defendants No.2 & 6 be also placed in ECL so that they may not leave the country till final settlement of accounts and recovery of amounts.

h) Grant mandatory injunction restraining the Defendants, more particularly the Defendants No.2 to 6, their agents, representatives, legal heirs, successors, attorneys or any one claiming on their behalf, not to operate or

withdraw any amounts from the aforesaid bank accounts in which funds belonging to Defendant No.1/trust are lying.

i) *Grant permanent injunction restraining the Defendants, more particularly the Defendants No.2 to 6, their agents, representatives, legal heirs, successors, attorneys, or any one claiming on their behalf, not to operate or withdraw any amounts from the aforesaid bank accounts in which funds belonging to Defendant No.1/trustee are lying.*

j) *Grant cost of the suit.*

k) *Grant any other, better or alternate relief, as this Hon'ble Court may deem appropriate under the facts and circumstances of the case.*

We have examined the case and observed that the dispute is regarding management of "Salateen Trust" (Defendant No.1) in terms of registered Trust Deed dated 06-07-1993. Subsequently, supplementary trust deed was executed on 20-06-2006 with some changes but as per plaint Defendants No.2 to 6 got another supplementary deed executed and become trustees with power to sign the cheque and order for payment of all moneys in respect of the trust. Since the dispute is regarding management of trust, therefore, permission to file proposed suit as prayed is hereby granted as the trust was created for public purposes of charitable nature and the direction of competent court of law is necessary for its proper and effective management."

The permission makes no reference to prayer clause (a) which, as per the Plaintiffs own subsequent admission was a prayer maintained to enforce private rights and for which, to my mind, sanction should not have been granted by the Advocate General Sindh within the perimeters of maintaining such a *lis*, as clarified by the Supreme Court of Pakistan, for granting such permission and which has clearly been overlooked by the Advocate General Sindh while granting permission to maintain this *lis*.

32. While prayer clause (a) was unconditionally withdrawn by the Plaintiff, so as to bring the matter within the purview of Section 92 of the Code of Civil Procedure, 1908, the contentions as raised by Mr. Khawaja Shams ul Islam, on behalf of the Plaintiff, **while arguing these applications** leaves me with no doubt that personal rights are being asserted through these applications and through this *lis*. Mr. Ravi Pinjani has correctly referred to the affidavit in support of CMA No.12593 of 2023 wherein, the Deponent on behalf of the Plaintiffs have once again stated that the Trust was sham and ought to be dissolved and its corpus treated as personal assets of Mr. Azim Sultan and which should be distributed as amongst the Plaintiffs and Defendant Nos. 2, 3, 4 and 7. Once such a statement is made the only conclusion that I can reach is that the real purpose and intent of the applications maintained by the Plaintiffs was not to ensure the proper management of the trust but rather was to make a claim to the corpus of the trust for their own personal benefit. The Plaintiffs are therefore bound by their statements as made in affidavits in support of applications and I am not inclined to look any further when considering these applications. The applications as drafted and as argued are clearly not a vindication of a public right as ascertainable from the substance of the pleadings.

33. I also do not think that the simpliciter sanction that has been granted by the Advocate General Sindh to institute this suit or the withdrawal of the prayer clause would in any manner override such statements that have been made by the Plaintiffs in their affidavits. As the Applications are patently tainted with an aspect of asserting personal rights, any injunctive orders that are passed to my mind could be used as a means to coerce the Defendants into settling the matter to secure the personal interests of the Plaintiffs and which runs contrary to the nature of proceedings under Section 92 of the Code of Civil Procedure, 1908 and on this ground alone I am inclined to dismiss **CMA No. 3246 of 2014** as no prima facie case has been made out by the Plaintiffs that their intention is to preserve the corpus of the trust for the purpose of public charities. Rather and to the contrary a prima facie case has been made out that the Plaintiffs real intention is to seek the dissolution of the trust with the ulterior motive that the corpus of the trust should divest in their favour. In addition on the basis of the documentation produced by the Defendant, it is apparent that the Trust is doing charity and any injunction granted would prevent such work from being carried out by them and for which the balance of convenience also vests in favour of the Defendants and which interfered with will also cause irreparable loss to be suffered by the beneficiaries of such charities. **CMA No. 3246 of 2014 must therefore be dismissed and CMA No. 15023 of 2014 must therefore be allowed.**

(ii) **CMA No. 12953 of 2014**

34. **CMA No. 12953 of 2014** has also be maintained by the Plaintiffs seeking that a receiver be appointed to administer the trust. On the basis of the provisions of Order XL Rule 1, I am obligated to see whether it is "just and convenient" to appoint a receiver. On the basis of the pleadings and arguments, I cannot think how it can possibly be "just" to appoint a receiver on the basis of the application as maintained as to my mind the application is tainted with mala fide being an attempt to wrestle control of the trust from the Defendants.

35. Under the doctrine of Cy Pres, I am obligated to interpret the terms of the charitable trust as per the intention as indicated in the Trust Deeds. To appoint a receiver would run contrary to the intent as indicated in the Trust Deed as amended in the duly registered Supplementary Deed of Trust dated 4 July 2011. I am left asking myself as to why, after the registration of that document it took two years to allege a lack of capacity of the settlor to execute such documents from being pleaded before this Court. This coupled with the intent from the pleadings tend to suggest that the Plaintiffs real desire is that the corpus of the trust should be divided as amongst each of them and the Defendants, with the ancillary purpose that the assets should not therefore be used for public benefit and which would

clearly run contrary to the intent of the Settlor. I therefore am of the opinion that in the circumstances, it is neither just nor convenient to appoint a receiver. **CMA No. 12953 of 2014 is therefore dismissed.**

(iii) **CMA No. 3247 of 2014**

36. **CMA No. 3247 of 2014** is an application maintained under Section 94 of the Code of Civil Procedure, 1908 by the Plaintiffs seeking to place the names of the Defendants No. 2 to 6 on the Exit Control List. Mr. Pinjani contended that procedurally this application was not maintainable as the Federation of Pakistan through the Ministry of Interior was not a party to this Suit and hence no order could be passed in this regard. Jurisdictionally, he contended that the placement of names on Exit Control List was covered by a special law under Exit from Pakistan (Control) Ordinance, 1981 and hence this court's jurisdiction did not allow for such an order to be passed. Finally, on merits, he argued that such a direction if issued would be violative of the fundamental rights of the Plaintiffs as guaranteed under Articles 9 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973.

37. While Mr. Pinjani's contention that the authority to place a name on the ECL can be exercised under the provisions of the Exit from Pakistan (Control) Ordinance, 1981 and in accordance with the provisions of that statute is to that extent correct, I do not think that would take away a power of this court to exercise such a right in the requisite circumstances. That being said the law that exists on this issue as developed by the Supreme Court of Pakistan and by this Court in its constitutional jurisdiction is, and as has been suggested by Mr. Pinjani, quite well settled²⁰. In the decision reported as **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**²¹ the Supreme Court of Pakistan held that:

“ ... *However, Article 15 which confers upon every citizen, inter alia, the right to enter and move freely throughout Pakistan, is of greater relevance. Article 15 Guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to enter the country, are subject to reasonable restrictions imposed by law in the public interest. **By reading the provisions of Article 4, 9 and 15 it is manifest that every citizen has the liberty to go abroad and to enter Pakistan,** unless he is precluded from doing so under some law made in the public interest. The Passports Act, 1974 is one such law. ...*

²⁰ See PLD 1987 SC 504; Followed by this Court in **Saleem Akhtar vs. Federation Of Pakistan** PLD 1999 Karachi 177; **Hashmat Ali Chawla vs. Federation Of Pakistan** PLD 2002 Karachi 705; **Kishar Jabeen vs. Federal Government of Paksitan through Secretary Ministry of Interior Affairs** 2005 YLR 2348; **Khan Muhammad Mahar vs. Federation of Pakistan** PLD 2005 Krachi 252; **Mian Munwr Ahmed vs. Federation of Paksitan** 2008 YLR 1508; **Abdul Qayyum Khan vs. Federal Government of Pakistan through Federal Secretary Ministry of Interior, Interior Division, Pakistan Secretariat and 2 others** PLD 2009 Karachi 361; **Habibullah Niazi vs. Federation of Pakistan through Federal Secretary Ministry of Interior, Pakistan Secretariat Islamabad and 2 others** PLD 2009 Karachi 243; **Farooq Saleh Chohan vs. Government of Pakistan Ministry of Interior, through Secretary/Section Officer Islamabad** PLD 2010 Karachi 394;

²¹ PLD 1987 SC 504

Moreover, a citizens right to travel abroad is an important aspect of the citizens liberty and is closely relate to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon one another and foreign policy decisions have come to have greater impact upon the lives of the citizens, the right to travel has become correspondingly more important. Through travel, by private citizens as well as by journalist and Government Officials, information necessary to the making of informed decisions can be obtained. And under our constitutional system, the ultimate responsibility for the making of informed decisions rests in the hands of the people."

It being a fundamental right of a person to both go abroad and enter Pakistan, it would have to be shown that the restriction being imposed were both reasonable and proportional to the act that it is attempting to control to allow for such an order to be passed. On the facts I do not see how a case has been made out to restrict the movement of the Defendants from Pakistan. The case of the Plaintiffs is that the execution of Supplementary Trust Deeds thereby removing certain persons as Trustees would ipso fact result in the Defendants relocating from the jurisdiction of Pakistan and which should be restrained to my mind does not satisfy that criteria. Clearly, the intention of the Plaintiffs was to press this application as a means of threatening the Defendants to coerce them into a settlement and which is to my mind misconceived. **CMA No. 3247 of 2014 is therefore dismissed.**

(iv) CMA No. 3248 of 2014.

38. Through this Application the Plaintiffs seek special directions to be issued for accounts to be prepared of the trust as it is alleged that the corpus of the trust is being wasted. As no prima facie case has been made out by the Plaintiffs that their intention is to preserve the corpus of the trust for the purpose of public charities, rather and to the contrary a prima facie case has been made out that the Plaintiffs real intention is to seek the dissolution of the trust with the ulterior motive that the corpus of the trust should divest in their favour I am of the opinion that this Application is contrived and hence not maintainable. **CMA No. 3248 of 2014 is therefore dismissed.**

39. For the foregoing reasons CMA No. 3246 of 2014, CMA No. 3247 of 2014, CMA No. 3248 of 2014, CMA No. 12953 of 2014 are dismissed while CMA No. 14336 of 2023 and CMA No. 15023 of 2014 stand allowed. The interim order passed on CMA No. 3246 of 2014 on 11 November 2014 is consequentially recalled and with the additional order that the Parties shall each bear their own costs.

JUDGE

Karachi dated 13 September 2024

