

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Suit No. 739 of 2024

(Salman Saeed Siddiqui v. Sheeba Ahmed Kapadia)

Date	Order with Signature of Judge
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1. For hearing of CMA No.15331/2024
2. For hearing of CMA No.15332/2024
3. For hearing of CMA No. 11794/2024
4. For hearing of CMA No.10131/2024
5. For hearing of CMA No.10132/2024
6. For hearing of CMA No.10133/2024

26.02.2025

M/s. Haider Waheed and Fahad Ali Hashmi, advocates for plaintiffs
Mr. Shahbakht Pirzada, advocate for defendants

JAWAD AKBAR SARWANA, J.: Although several applications are listed for hearing today, given that the notification of the Sindh Civil Courts (Amendment) Act 2025 is imminent and the High Court may no longer exercise original civil jurisdiction thereafter, with the consent of Counsel, the hearing of the CMAs at s.nos.2 to 6 are deferred.

1. Notwithstanding the foregoing, Counsels submit that the fate of CMA No.15331/2024 is heard and decided by me today, provided that none of the observations made in this Order shall prejudice nor be relied upon by the trial court and the parties in terms of the hearing of the remaining CMAs appearing at s.nos.2 to 6 above, or for that matter, any other CMAs subsequently filed and/or the trial proceedings. Further, the Order passed today will be limited to the determination concerning inspection and preservation of the record and inventory of SAK doing business as "Sheeba Ahmed Kapadia", i.e. the books of accounts, ledgers of receivables, correspondence/orders, files, fitting and fixtures, etc. and applies to the financial years beginning January 2016 and ending November 2021, without prejudice to the final and/or tentative finding which may emerge on conclusion of the hearing of the remaining CMAs listed at s.nos.2 to 6 above or after the recording of evidence, at the stage of final arguments, as the case may be, concerning the status of the business which is the subject matter of the lis, i.e. whether plaintiff's relationship with SAK was a partnership at will, an association of persons, interaction with a sole

proprietorship concern, or an investment, or anything else. Accordingly, CMA No.15331/2024 is decided in this paragraph's contours.

1.1 Plaintiffs Salman Ahmed Siddiqui and his spouse, Rafia Salman (hereinafter referred to as "Plaintiffs"), have filed this suit against Sheeba Ahmed Kapadia ("SAK") seeking a declaration, injunction, dissolution of the partnership, receivership, rendition of Accounts, Mesne Profits and Damages. It is alleged in the Complaint that the Plaintiffs and SAK carried on the business of manufacturing, designing, and selling garments and bespoke wedding clothing through retail and online channels under the brand name "Sheeba Ahmed Kapadia."

1.2 Plaintiffs' Counsel contended that a partnership at will between the Plaintiffs and SAK came into existence around 24.12.2016 when Plaintiff No.1 allegedly created the Facebook/Meta page of SAK.¹ He argued that the Plaintiffs had a 2/3rd share in the partnership until it was dissolved. In support of his claim that a partnership was in operation, he relied on: (i) three trademark applications nos.475595 in class 25, 475596 in class 35, and 475597 in class 42 – all three TM Applications filed on 15.11.2017 with the Trademarks Registry, and advertised in the TM Journal published on 01.05.2018 which indicate the name and address of the applicant of the said TMs as "the Plaintiffs and SAK trading as Sheeba Kapadia";² (ii) remittance advice from UAE made by Plaintiff No.1 to SAK and Statement of Accounts for the period 2016 to 2021 showing fund transfers from Plaintiffs to SAK, apparently in the sum of approx., Rs. Four Crore;³ (iii) Billing Report of Facebook/Meta evidencing payment made by Plaintiff No.1 through his AMEX credit card from 23.02.2014 to 03.06.2024,⁴ and (iv) various assertions/acknowledgements on the part of SAK, including, but not limited to: (a) Email dated 02.05.2021, "OUR business, not MY business";⁵ (b) Email dated 15.03.2021 "You yourself want to f@\$k your 4 crore" (underlining is Counsel emphasising that this 4 Crore corresponds to the cumulative 4 Crore disbursed, allegedly to SAK);⁶ (c) manuscript note dated 22.07.2019 at 4:20am setting out alleged terms of partnership;⁷ and (d) an

¹ Page 57 of the Suit File.

² Pages 273-283 of Part-II of the Suit File

³ Pages 99 to 121 of the Suit File

⁴ Annexure "G-2" on pages 123-139 of the Suit File

⁵ Annexure "H-7" on page 161 of the Suit File

⁶ Annexure "H-2" on page 151 of the Suit File

⁷ Annexure "H/10" on page 167 of the Suit File

admission on the part of SAK on page 3 of SAK's Written Statement, paragraph "1" which reads as follows:

"1. That , it is evident by email annexed by the plaintiffs with instant plaint that there was business relations between the plaintiff No.1 and defendant on the basis of 50% share. Similarly bias note and other documentary correspondences exchanged between plaintiff No.1 and defendant that the business relations, if any, stood extinguished, in the year 2021,.. . . :

1.3 Plaintiffs' Counsel argued that based on the above materials and admission in paragraph "1" of the Written Statement, the Court appoints the Nazir as Commissioner to inspect and preserve the record and inventory therein, i.e. the books of accounts, ledgers of receivables, correspondence/orders, files, fittings and fixtures, for the financial years beginning January 2016 till the date of filing of Suit No.739/2024 when the partnership at will stood dissolved upon the date of filing of the suit.

1.4 Counsel for SAK vehemently opposed Plaintiff Counsel submissions. He submitted that the Plaintiff had produced no documentary evidence of any partnership. He contended that there was no movement of funds to show that SAK had ever shared any profits or losses of the business with the Plaintiffs. The Plaintiffs were simply investors, and SAK was a sole proprietor doing business as "Sheeba Ahmed Kapadia". Merely sharing of profits did not meet the ingredients of "partnership" under the Partnership Act, 1932. He argued that the disbursements made by Plaintiff No.1 to SAKs were out of love and affection, and the emails filed with the Plaint supported this contention. These investments came to an end in June 2021 and none were disbursed to SAK after November 2021. Further, neither the parties agreed upon nor signed a verbal/oral or written partnership. Counsel argued that the Plaintiffs had released their ownership rights in the trademark based on a stamped agreement signed by Plaintiff No.2 available on page 31 of the Written Statement. He objected to the statement in paragraph "1" to be in the nature of an admission as the same had to be read in the light of the opening of the Written Statement wherein the Preliminary / Legal Objections appeared in alphabetical order were made on without prejudice basis to the para wise reply in the main body of the Written Statement and to this end, paragraph "1" was contrary to paragraph "2" in the main body of the Written Statement which denied the existence of the partnership. The entire matter required evidence and the Plaintiffs had no case, notwithstanding that even otherwise, until the

relationship between the parties could be established, i.e. whether the business was a partnership, no corpus existed to be saved in which the Plaintiffs could claim any interest until the Plaintiff could prove his case for partnership after recording of evidence. Hence, CMA No.15331/2024 was liable to be dismissed.

1.5 Heard Counsel and perused the pleadings. At the present stage of proceedings, based on the facts available on record, there is a difference of opinion between the Plaintiffs and SAK's interpretation of their ("A") business, i.e. partnership, sole proprietorship, investor, or anything else; ("B") the period/timeline/snapshot in time when this business ("A") came into existence and ended; and (C) the percentage of share such business (as in "A" read with "B"), i.e. the share of business was either 2/3rd or 50%. With regard to "A", the Plaintiffs have asserted in the Complaint that the business between them and SAK was a partnership until it was dissolved. At the same time, this "partnership" based on the documents filed (and not filed) with the Complaint, needs to be established during the trial. With regard to "B", the Plaintiff's alleged that the partnership commenced with the creation of the Facebook/Instagram page on Meta on 24.12.2016, whereas the remittances attached to the Complaint for which they seek accounts from SAK include funds transferred from 14.04.2016 onwards,⁸ Paragraph 12 of the Complaint states that the business's sales and profits commenced in March 2016.⁹ Additionally, there is no communication from the Plaintiffs to SAK, available on record for over five (5) years for the period from, say, 2016 to November 2021, when Plaintiffs seeking a claim for their share in the business or calling for the disclosure of accounts, ledgers, etc. or any other information to be shared with the Plaintiffs. Finally, with regard to (C), the percentage share of 2/3rd of profits is not available in writing for the above period (2016-2019). In SAK's Written Statement, the Defendant, with regard to "A", in paragraph "I" reproduced above, has accepted:

"that there was business relations between plaintiff
No.1 and defendant on the basis of 50% share"

Counsel for SAK has argued that this is a preliminary submission and does not bind SAK as in the main body of the Written Statement elsewhere,

⁸ Computer generated simpliciter Statement of Account of Al Rostamani International Exchange, Customerwise Transaction Report 01.01.2016 to 30.12.2016 and another for the period 01.07.2016 to 31.12.2016 available on pages 113 and 115 of the Suit File.

⁹ Available on page 9 of the Complaint (paragraph 12).

specifically, paragraph 2 of the Written Statement, SAK has categorically denied that there was any partnership between the plaintiff and defendant. Yet this bench notes on perusal of the Written Statement, SAK, has made several averments regarding the status of the business with the Plaintiff:

In paragraph 9 of the Written Statement, SAK clarifies after the denial of the contents of Para 9 of the Plaint that “no amount has been given by the plaintiffs after June 2021, however, concession of an amount was extended from plaintiff No.1 to defendant for improvement of her business due to friendly relations in the shape of social media plus Facebook facility.”

In paragraph 20 of the Written Statement , SAK states that “it is a matter of record that the business is solely run by the defendant after 2021 and the same is evident by the audio messages and emails sent by the plaintiff No.1 and all the expenses ([after 2021] are being borne by her as such the plaintiffs are not entitled for any relief.”

The upshot of the above statements made by SAK and discussion is that, tentatively, a relationship existed between the Plaintiffs and SAK from 2016 up to the year 2021 on the basis of a 50% share, and this provides a framework to deal with CMA No.15331/2024.

1.6 While the precise nature of the business between the Plaintiffs and SAK remains unclear, at present, yet at the same time, for the years 2016 to 2021, based on paragraph “1” of SAKS Written Statement, there appears to be some “business” association between the parties. Further, almost 4 years have passed from the Defendant’s date of severance between the parties if the same is to be accepted as the conclusion of business date, notwithstanding that the Plaintiffs vehemently oppose such date of 2021, as they contend that the partnership at will came to an end in 2024 and not it 2021. Be that as it may, if SAK’s admission is to be accepted, it cannot be split into parts by this Court and at this interim stage must be accepted as a whole. Thus, at this preliminary stage, I am tentatively inclined to accept SAKs admission made in the Written Statement while limiting the scope of CMA No.15331/2024 filed under Order 18 Rule 18 read with Order 39 Rule 7 and Sections 94 and 151 CPC to the narrow period from March 2016 to November 2021 as this period falls within the broader/larger period of business alleged by the Plaintiffs. Further the scope of the inspection to be carried out is not only for the purpose

of understanding the controversy and the evidence which will be brought on record and for the Court to appreciate such information in the context of Order 18 Rule 18 CPC, but this exercise also serves the purpose of any observation to be made which may be necessary or expedient for the purpose of obtaining full information or evidence under Order 39 Rule 7 CPC.

1.7 Given the above, I now turn to the information to be gathered and preserved in this lis, at this interim stage, as per the Plaintiffs CMA No.15331/2024, This may be categorized under three categories, namely: "Category X" consisting of the physical inventory, stocks in trade, etc.; "Category Y" consisting of fitting and fixtures; and "Category Z" consisting of books of accounts, ledgers or receivables, correspondence/orders files, inventory and stock in trade records, etc. At the outset, during this period, according to SAK, the latter has continued to carry on business independently post-November 2021. Even otherwise, if the Plaintiffs assertion that the partnership at will stood concluded upon the filing of the suit in July 2023, SAK has also continued to carry on business independently beyond this period. Whereas, any orders passed by me today for an inspection/preservation will, at best, be carried out in February/March 2025, which will not capture the record of Category "X" and "Y" as it stood in the year 2021 or 2023. Parties appear to have crossed this bridge. The items in Category "X" and "Y" too may have been dissipated or disposed of, and no information is available on record to compare what items were available with SAK between 2016 and 2021 and/or 2023 under the said two categories and which ones have been dissipated/disposed of. Further, items may also have been sold after the filing of the Suit in July 2023 when the partnership, according to the Plaintiffs, stood dissolved, and the current state/quantum of the physical items may not have nexus to the partnership. To this extent I do not find any meaningful purpose will be served in terms of Order 18 Rule 18 CPC and Order 39 Rule 7 to inspect and preserve the items falling under Category "X" and "Y" and CMA No.15331/2024 to the extent of Category "X" and "Y" stands dismissed but the said CMA for Category "Z" for the reasons set out in this Order stands allowed in terms of the mode articulated in the Order.

1.8 Turning now to Category "Z" consisting of books of accounts, ledgers or receivables, correspondence/orders files, inventory and stock in trade records, etc. may well be preserved and kept maintained today. This may be to some extent based on statutory requirements under the Income Tax Ordinance,

Sales Tax laws and labour laws of Pakistan as well as good/prudent business practice, computerization/digitalization of records, etc. Accordingly, CMA No.15331/2024 is granted to the extent of Category "Z" subject to the terms set out in this Order. The Nazir is directed to inspect and preserve the entire record of information, in physical form and digital pertaining to Category "Z". For the purpose of conducting this exercise, the Nazir will appoint a chartered accountant firm listed on the panel of ICAP, which has some prior experience in forensic accounting and investigation. The Plaintiff and Defendant will each submit to Nazir names of three CA firms within three weeks that meet the above qualification, including the price/fee quote and expenses agreed upon with the said firm to complete the exercise. In case any party fails to submit any names of CA within the prescribed time, the Nazir will be at liberty to appoint any CA firm to complete the exercise set out herein. The Plaintiff shall pay the fees and expenses associated with this exercise to the CA firm. The Nazir's Fee to manage and coordinate the task herein between the CA and this Court is fixed as Rs.50,000. The CA shall prepare four sets of records for the Court, the Nazir (the Nazarath), and the parties, as well as prepare a list of the information and provide physical copies of the above-mentioned information to the parties on payment of costs. Meanwhile, SAK will continue to retain all original records.

1.9 CMA No.15331/2024 is disposed of in the above terms.

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