

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

**H.C.A No.39 of 2023**

**[Ali Mushtaq and others v. Federation of Pakistan through M/o  
Housing & Works and others]**

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Order with signature of Judge(s)

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Present:  
Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Muhammad Osman Ali Hadi

Hearing of case

- For hearing of main case

**22-05-2025**

Mr. Sarmad Hani, Advocate for the appellants  
Mr. Abbas Rasheed Rizvi, Advocate for Respondent No.4 alongwith  
Mr. Shoaib Khatyan, Advocate  
Mr. Shaheer Memon, Associate of Mr. Mohammed Vawda,  
Advocate for Respondent No.5  
Mr. R.D. Kalhoro, Assistant Attorney General  
Mr. Pervez Mastoi, AAG

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**JUDGMENT**

**Muhammad Iqbal Kalhoro, J:-** We have heard the parties. It appears that the learned single Judge seized with CMA No.12891 of 2016 filed under order VII rule 11 CPC in Suit No.02 of 2016 formed an opinion that the suit shall be stayed under section 10 CPC in view of the fact that connected suit No.432 of 2009 between the parties was pending. In view of such fact, he simply disposed of application under order VII rule 11 CPC vide impugned order dated 19.01.2023 and stayed the suit No.02 of 2016 till decision of the Suit No.432 of 2009.

2. However, what it is apparent is that while forming such an opinion learned single Judge did not put any of the parties on notice or afforded an opportunity of hearing to them, so that their point of view could have come on record. In our view that this approach has resulted in miscarriage of justice, for, we are aware that learned single Judge had powers under section 10 CPC to stay the said suit, but such powers were

expected to be exercised judiciously and the judicious approach demands that before passing such order, whereby one party has been non-suited, the parties should have been given an opportunity to present this point of view and assist the Court on the question whether section 10 CPC can be invoked in this matter or not.

3. In view thereof, with consent we *set aside* the impugned order and remand the matter to the learned civil court, as in the meanwhile the case has been transferred to the relevant Senior Civil Judge. And if he is of the opinion that in this case section 10 CPC shall be invoked, he shall afford an opportunity of hearing to the parties, take their point of view and decide this point first within a period of two months. In any case, and afterwards, if the suit survives, or if learned single Judge does not call upon the parties to satisfy him over applicability of Section 10 CPC in the case, he shall proceed with the matter expeditiously and decide it as soon as possible.

The HCA is accordingly disposed of.

JUDGE

JUDGE

B-K Soomro