

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
R.A No.S-100 of 2015  
R.A No.S-101 of 2015

Date	Order with signature of Judge
1.	For orders on statement dated 29.11.2024
2.	For orders of main case
3.	For hearing of CMA No.62/2020
4.	For hearing of CMA No.537/2015.

**07.04.2025**

Mr. Mukesh Kumar G. Karara, Advocate for Applicant No.1 in both revision applications  
Mr. Asadullah Soomro, advocate for Applicants No.2(a) to 2(e) in both revision applications  
Mr. Shafqat Rahim Rajput, advocate holding brief for Mr. Shakeel Ahmed Kamboh, advocate for the Respondents  
Mr. Ashok Kumar K. Jamba, advocate for Respondent No.8 in Civil Revision Application No.101 of 2015  
Mr. Ahmed Ali Shahani, AAG

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**Zulfiqar Ahmad Khan, J:** At the outset, learned Counsel representing the Applicants No.2(a) to (e) submits that on instructions, he does not press captioned revisions, which are accordingly dismissed as not pressed to the extent of Applicants No.2(a) to (d). It is interesting to point out that these are not the legal heirs of main signatory, who has already expired and his son, as well, has also expired.

The main grievance of the other set of the applicants is that Nazeer Ahmed, who was the scribe of the agreement in question and a material witness, ought to have been examined during the course of the trial. However, despite its significance, the trial court did not take effective or adequate measures to procure his attendance and facilitate the recording of his testimony.

Learned counsel further contends that the trial court failed to adopt the proper procedure as prescribed under Order XVI Rule 1 of the Code of Civil Procedure, 1908, for compelling the attendance of a witness who, despite being duly summoned, failed to appear. It is urged that the court ought to have taken coercive or punitive measures, as contemplated under the said provision of law against such a

non-compliant and reluctant witness, rather than proceeding in his absence without making meaningful efforts to secure his testimony. Learned counsel has drawn the attention of this Court to a paragraph of the impugned order, which indicates that the applicant did not include the name of Nazeer Ahmed in the initial list of witnesses and that his name was added at a later stage. Even thereafter, the applicant was unable to secure his attendance. On the other hand, it was contended that Nazeer Ahmed is not a relevant or necessary witness. Learned counsel further submits that the trial Court failed to follow the proper procedure prescribed under Order XVI Rule 1 of the Code of Civil Procedure, 1908, for procuring the attendance of Nazeer Ahmed, who was a marginal witness to the agreement. Counsel further argues that even this Court is empowered to exercise such authority under the said provision of law.

In the present circumstances, where the litigation has been pending since 2008, the core contention raised by learned counsel for the applicant is that, although the law permits summoning a witness e.g. Nazeer Ahmed even at this stage, it would not be legally appropriate for this Court to now exercise such power. From perusal of record, it reflects that Nazeer Ahmed, a crucial witness, has consistently failed to appear since 2008, and therefore, directing his examination at this belated stage, or re-initiating coercive proceedings under Order XVI Rule 1 of the Code of Civil Procedure, would be contrary to established legal principles. The Courts have also emphasized that procedural powers must not be exercised arbitrarily or in a manner that unduly prolongs litigation. Claim regarding the non-examination of Nazeer Ahmed, or the alleged failure to adopt coercive measures against him, ought to be raised before the appropriate forum, and not before this Court at the present stage. There is a report that he left Pakistan long ago.

Resultantly, upon careful consideration of the submissions made and the material available on record, I find no illegality, irregularity, or jurisdictional error in the concurrent findings recorded by the Courts below that would warrant interference by this Court in its revisional jurisdiction. The impugned judgments and decrees appear to have been passed in accordance with law and based on a proper appreciation of evidence. Accordingly, both these revision applications are found to be devoid of merit and are hereby dismissed.

JUDGE

Faisal Mumtaz/PS