

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No.D-1909 of 2024**

*[Muhammad Hashim Khan v. Muhammad Nasir Khan and another]*

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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*Before;*

*Mr. Justice Zulfiqar Ali Sangi;*

*Mr. Justice Abdul Hamid Bhurgri.*

For hearing of main case.

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**Date of hearing:- 25.08.2025**

Petitioner's attorney Muhammad Shahid Khan present in person.

Mr. Khursheed Javed, Advocate for the Respondent No.2/KDA.

Mr. Asad Mufti, Admin Clerk, District & Sessions Judge, East.

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***Abdul Hamid Bhurgri, J.-*** Through this petition the petitioner has prayed for the following relief:-

***a). To direct the Respondent No.2 to transfer the said property bearing House No. L-5, Block-3/A, Gulistan-e-Jauhar, Karachi, in the name of petitioner, for which the Respondent No. 01 have illegally and unlawfully by way of fraud and misrepresentation transfer the same in his favor.***

***b). To direct the respondent No. 01 to return the precious Gold ornament of the wife of petitioner weighing about 20 Tola, which is lying with the respondent No.01.***

***b). To Direct the NAZIR of this Honorable Court to immediately record the statement of petitioner due to his age became 80 plus.***

***c). Any other relief(s) which this Honorable Court deems fit and proper in the circumstances of the case, be also awarded to the plaintiff.***

2. The case of the petitioner is that respondent No.1 had the property bearing House No.L-5, Block-3/A, Gulistan-e-Jauhar, Karachi, transferred in his favour in collusion with respondent No.2, without purchasing from its real owner, the petitioner. It is further stated in the petition that the record of the property was transferred without any intimation, permission or supporting purchasing document from petitioner. It is also alleged in the petition that the respondent No.1 took away the precious gold ornaments of his wife weighing 20 tola, valued approximately Rs.40,00,000/-. The petitioner contends that although he approached the respondent No.1 to settle

the dispute but respondent No.1 had issued threats and harassed him. The petitioner had time and again approached along with people of vicinity/mohallah to resolve the issue but no heed was paid by respondent No.1 and he consistently issued threats. The petitioner further contends that in this regard a civil suit bearing No.335/2024, pending in the Court of X-Senior Civil Judge, East Karachi for adjudication. The petitioner contends that he is an 80 year old person and was paralyzed. The petitioner also allegedly moved applications to the respondents through TCS for taking necessary legal action against respondent No.1 but no action has been taken in this respect. Petitioner further contends that during the pendency of the suit, his wife expired on 06.08.2024. He further submits that the trial court failed to record the statement. He next contended that the family of the petitioner is disturbed due to the acts of respondent No.1 and 2 and finding no efficacious remedy, he has preferred this petition as his fundamental rights are being infringed and the respondents have violated the principle of natural justice and the Constitution, which gives guarantee to the citizens of the state.

3. The notices of this petition were issued to the respondents by this Court on 14.05.2024 when the following order was passed:-

**14th May, 2024**

***Petitioner is present in person.***

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***1. Urgency granted.***

***2. Exemption application is granted subject to all just exceptions.***

***3. Petitioner is present contends that he is an old age more than age of 80 years, one of his son alienated his property by committing fraud that has been challenged in civil Court; during pendency of civil suit [Suit No. 335/2024 pending in the Court of X-Senior Civil Judge, Karachi East] his wife passed away and her testimony was not recorded in due time. He apprehends that due to his old age and delay in the case that may be reason is that may not be recorded in his life and that would be serious injustice with the other legal heirs. Accordingly, District & Sessions Judge Karachi East shall direct the concerned Senior Civil Judge to ensure that evidence of Petitioner is recorded within one month with notice to respective parties.***

***Petitioner further contends that he has failed to pay the Court fee as required due to his an old***

*age and not in a job dependent on others, therefore, being pauper he may be exempted and proceed with the case. Accordingly, concerned Senior Civil Judge is directed to decide the issue of requisite fee at later stage.*

*Issue notice to Respondents as well as A.G. Sindh for a date to be fixed by the office after ten [10] days.*

4. Again the matter was fixed on 27.05.2024 when this Court has passed the following order.

**27<sup>th</sup> May, 2024,**

***Petitioner is present in person.***

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***While issuing notice this Court observed that Petitioner being pauper is unable to pay fees as required for filing of civil suit whoever, office listed this matter for non-prosecution. Under these circumstances, issue Court motion notice with direction to trial Court to proceed with the matter.***

***Adjourned to a date in office.***

5. After that an urgent application was filed by the petitioner and the matter was fixed before this Court on 19.08.2025 when the following order was passed:-

**Dated 19.08.2025**

***Petitioner Hashim Khan present in person.***

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***1. Urgency granted. Let a report be called from District and Sessions Judge, Karachi East in compliance of the order dated 14.05.2024. To come up on 25.08.2025.***

6. In compliance of the order of this Court, today a statement has been filed by the representative of learned District and Sessions Judge, Karachi East. It appears that on 23.08.2025 the learned District and Sessions Judge, Karachi East has communicated report to the Assistant Registrar (Writ) of this Court vide letter No.A.E/report/4209/2025.

7. We have gone through the report. It appears that the suit bearing No.335/2024 [Re: Muhammad Hashim v Muhammad Nasir & others] was disposed of by order dated 27.05.2024 by the trial court in terms of Order-VII Rule-11(c) C.P.C. For convenience, the report of X-Senior Civil Judge, Karachi East is reproduced as under:-

**The Honourable  
District & Sessions Judge,  
Karachi, East.**

**Subject: - REPORT IN COMPLIANCE OF ORDER  
DATED 19.08.2025, PASSED IN C.P.  
NO.D-1909 OF 2024 (RE: M. HASHIM  
KHAN V M. NASIR KHAN & OTHERS).**

**Respected Sir,**

**With due reverence and honor, it is respectfully submitted that the undersigned received the copy of the order of the Honorable High Court of Sindh and the order of Your Honor in respect of submission of report regarding the Civil Suit No.335 of 2024 (Re: Muhammad Hashim V. Muhammad Nasir & Others). The report is respectfully submitted as under:-**

**1. That the R&Ps of the Civil Suit No.335 of 2024 (Re: Muhammad Hashim V. Muhammad Nasir & Others) was called and same is not received for want of time as it is now 03:00 p.m. and the subject letter is received today in late hours, therefore, the report is submitted as per the available record of CFMS-DC.**

**2. That the Civil Suit No.335 of 2024 (Re: Muhammad Hashim V. Muhammad Nasir & Others) was disposed of vide order dated 27.05.2024 by the learned predecessor Judge of this Court in terms of Order VII Rule 11(c) C.P.C. The copy of order is annexed with report for perusal as obtained from CFMS-DC.**

**3. That the undersigned cannot submit the report without perusing the R&Ps of the suit as to why the orders dated 14.05.2024 and 27.05.2024 of Honorable High Court of Sindh were not complied with by the learned Predecessor Judge of this Court, it is respectfully submitted that perhaps such orders dated 14.05.2024 and 27.05.2024, passed by the Honorable High Court of Sindh either were not communicated to the learned Predecessor Judge or the same were communicated, but after the passing of the order dated 27.05.2024, by which the matter was disposed of. The proper report as to the communication of orders may be submitted after perusing the R&Ps of the suit, for which undersigned requests for time.**

**4. That the report is respectfully submitted for kind perusal and further orders (if any).**

8. We have heard the attorney of the petitioner in person and perused the material available on record.

9. From the perusal of the petition, it appears that the dispute is between the father and son for which the petitioner/father had filed a

civil suit bearing No.335/2024. The order passed by this Court on 14.05.2024 reflects that the petitioner could not pay the court fee in suit mentioned as supra, required under law due to his an old age and not in a job dependent on others and he requested for the exemption of the court fee, hence, this court has passed the order by directing the Senior Civil Judge through District & Sessions Judge, East to record the evidence in the case and decide the issue of requisite court fee at later stage. The matter was then adjourned for ten days and again fixed on 27.05.2024 for orders as to non-prosecution. On the said date this Court has issued court motion notice with direction to the trial Court, where the suit was pending, to proceed with the matter.

10. From the report of District Judge, which has been received by this Court today, it appears that the plaint has been rejected under Order-VII Rule-11(c) C.P.C on 27.5.2024. When confronted from the attorney of petitioner that whether any appeal has been filed against the said order, he replied in negative. From the perusal of the record it appears that the petitioner or his attorney had never taken efforts to proceed with the matter before the trial court and nor produced the orders dated 14.05.2024 and 27.05.2024 passed by this Court before the trial court. Resultantly, the plaint was rejected under Order-VII Rule 11(c) C.P.C. The record further reveals that order of this Court was never communicated to the trial court till 27.5.2024 and plaint was rejected before the order was communicated to the trial Court. Be that as it may, such non-communication, by itself, does not vitiate the civil court's order. Rather it underscores that any grievance regarding the propriety or legality of the rejection order must be tested in appeal or through any other statutory recourse available to the petitioner. This Court cannot, in writ jurisdiction, sit in appellate review over a civil court's decree nor revive a suit whose plaint stands rejected.

11. Since 27.05.2024, no efforts were made by the petitioner or his attorney to apprise this Court that their plaint has been rejected for want of court fee. Only urgency application was filed on 19.08.2025 and this Court has called the report from the District & Sessions Judge, East Karachi wherein, it is disclosed that the plaint was rejected. Surprisingly, the attorney of the petitioner was not aware of

the disposal order which indicates that he has not pursued the matter before the trial court. Thereby, petitioner's unawareness of the trial court's order for a considerable period further militates against discretionary relief under Article 199. Even otherwise, the petition has become infructuous as plaint bearing Suit No.335 of 2024, pending in the Court of X-Senior Civil Judge has been rejected. The prayer clause reveals that disputed questions of facts are involved in the petition, which cannot be decided in writ jurisdiction under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance has been placed on **2023 SCMR 1919** [*Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others*].

12. For the foregoing reasons, the petition being misconceived is not maintainable. The earlier directions were predicated on the assumption that the plaint subsisted; since the plaint already stands rejected, those directions are infructuous. Accordingly, petition is dismissed along with listed application, if any, with liberty to the petitioner to avail the appropriate statutory remedy against the rejection of plaint including appeal under Section-96 CPC against the rejection of plaint, or to pursue any other remedy available in law, including recourse under Order-VII Rule-13 CPC, subject to all legal exception, if so advised.

13. Observations herein are tentative and shall not prejudice the parties in any proceedings before the competent forum.

JUDGE

JUDGE

Ayaz Gul