

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Misc. Appeal Nos.52/2025

[Naseem Fatima Zaidi through her LRs vs. Government of Sindh and others]

Misc. Appeal Nos.61/2025

[Syed Hikmatullah vs. Naseem Fatima Zaidi and others]

Misc. Appeal Nos.93/2025

[Muhammad Yaseen Shareef vs. Rani Naz and others]

23.09.2025.

Mr. Nadir Khan Burdi, advocate for the appellant in MA No.52/2025 and respondent in M.A. 61/2025.

Sardar Abdul Hameed, advocate for the appellant in MA No. 61/ 2025 and respondent in M.A No. 52/2025

Mr.Muhammad Ali Talpur,advocate for the appellant in MA No. 93/ 2025.

M/s. Javed Ahmed Rajput and Ebad, Advocate for the respondent- Quetta Town Cooperative Housing Society in MA No.52/2025

Mr. Ahmed Khan Khaskheli, AAG Sindh.

ARSHAD HUSSAIN KHAN, J. At the request of the learned counsel for the parties, these petitions are taken up together for disposal of the same through this common order as the similar point of law is involved in all the matters.

The appellants, through the instant Miscellaneous Appeals, filed under Rule 53(2) of Co-operative Societies Rules 2020, have assailed the orders dated **25.02.2025, 17.03.2025, 02.07.2025, [the Impugned Orders]** passed in the Society Suits Nos. **Nil** of 2025 and 543 of 2023 respectively by the learned Special Court for Co-operative Societies, Karachi, **[the trial court]** whereby the Plaints of the suits have been ordered to be returned for presenting the same before the competent court of law having jurisdiction.

2. Learned counsel for the appellants contended that the impugned orders are contrary to both law and facts, having been passed on a misinterpretation of Sections 73 and 117 of the Sindh Co-operative Societies Act, 2020, (the “**Act 2020**”) read with Rule 53 of the Co-operative Societies Rules, 2020 (the “**Rules 2020**”). It is further contended that the learned trial court erred in holding that its jurisdiction is confined only to offences, whereas the Statute expressly empowers it to adjudicate *all disputes, civil as well as criminal*, with provision for transfer of all pending matters to the said court. It is also

contended that the appellants were denied a fair opportunity to produce evidence, and the premature return of complaints caused serious prejudice to their rights. It is further contended that reliance was placed on reported judgment reported as 2024 YLR 1668, affirmed in HCA No. 96 of 2024 by the Division Bench of this Court, vide order dated 03.04.2024, as well as an unreported order dated 06.05.2024, passed by Division Bench of this Court in CP No.D-5256 of 2023 and CP No.D-7449 of 2022, which unequivocally recognize the Special Court's jurisdiction over civil disputes. These binding precedents, however, were ignored by the learned trial court, which instead placed undue reliance on an unreported order dated **02.11.2024**, passed by a learned Single Judge of this Court [sitting on the original side] in case of *Shamim Barlas v. Al-Habib Co-operative Society Ltd.* It is argued that the order in *Shamim Barlas* was neither reported nor circulated, and therefore not binding on the trial court. It is further argued that the decisions of a Division Bench necessarily prevail over those of a learned Single Judge, particularly as Rule 53 of the Sindh Co-operative Societies Rules, 2020, was not under challenge in the *Shamim Barlas* case. The learned Single Judge, in exceeding the scope of jurisdiction, ventured into judicial overreach, and the observations made therein constitute at best *obiter dicta*, which under the settled principles of precedent are binding only if emanating from the august Supreme Court of Pakistan, and not from a Single Bench of this Court. Lastly, it is argued that reliance placed by the trial court on the *Shamim Barlas Case* is legally misconceived and untenable. It is, therefore, prayed that the impugned orders be set aside and the suits remanded to the trial court for decision on merits in accordance with law.

3. Learned counsel representing the respondent-society raised "No Objection" to the matters being remanded to the Special Court for Cooperative Societies for adjudication on merits. It is submitted that the respondents are equally desirous of an expeditious and conclusive resolution of the underlying disputes in accordance with the statutory mechanism provided under the Sindh Cooperative Societies Act, 2020. The learned counsel submit that the proper forum for determining disputed questions of fact, particularly those relating to title, membership rights, internal governance, and the validity of transactions

concerning cooperative societies, is the Special Court constituted under Section 116 of the Act 2020. It is further submitted that the respondents reserve all rights to contest the claims of the appellants before the Special Court, but do not oppose the remand of the suits for fresh adjudication by the said forum in accordance with Sections 73 and 117 of the Act 2020 read with Rule 53 of Rules, 2020.

4. The learned AAG, while concurring with the submissions advanced by learned counsel for the appellants, has placed on record two notifications, namely: (i) **Notification No. S.JUDL:4-1/2021/109 dated 03.08.2021**, and (ii) **Notification No. S.JUDL:4-1/2021 dated 09.08.2021**, issued by the Government of Sindh. The latter notification, in continuation and partial modification of the former, expressly provides that *“the specified courts under Notification No. S.JUDL:4-1/2021/109 dated 03.08.2021 for conducting trial of offences under the Sindh Cooperative Societies Act, 2020 shall also try civil disputes as mandated under the Act and the rules made thereunder.”*

5. I have considered the arguments advanced by learned counsel for the parties as well as the AAG, examined the impugned orders and gone through the relevant statutory provisions.

It is observed that, in the present matters, the central contention of learned counsel for the appellants is that the learned trial court, for reasons of convenience, preferred to rely exclusively upon the order passed in the *Shamim Barlas Case*, rather than on the judgment rendered in *Syed Muhammad Kazim & another v. Rub Razi Cooperative Housing Society Limited & another* [2024 YLR 1668], which squarely determined the jurisdictional issue in question. Significantly, the said judgment also stood affirmed by the Division Bench of this Court in HCA No. 96 of 2024, vide order dated 03.04.2024.

6. At the very outset, it is deemed appropriate to reproduce the concluding paragraphs of the impugned orders passed in the aforesaid suits, which read as under:

“As in the paragraph No.49(i), it has been held that the disputes relating to the trial of offences or a dispute relating to the rights and obligations regulated by the Co-operative Societies Act, 2020 as per Section 73 are mandatorily to be tried by the Special Court for Co-operative Societies while other matters fall within the

purview of the Civil Court or Criminal Court or Court of competent jurisdiction to try. It is relevant to clarify that the question of rights and obligations arising out of the Co-operative Societies Act, 2020 has been discussed in paragraph No.32 of the said Order dated 02-11-2024, while discussing the Section 73 of Co-operative Societies Act, 2020, it has been held that all the disputes relating to the Chapter-viii of the Co-operative Societies Act, 2020 are to be tried by the Cooperative Court”.

It is also relevant

“Coming back to the suit brought by the plaintiff, I am of the considered opinion that since the question of the declaration of his title, cancellation of the adverse documents against the title of the plaintiff, possession, mesne profit, damages, mandatory and permanent injunction is involved, which does not fall within the jurisdiction of Section 117 or Section 73 of the Act, 2020 and falls within the jurisdiction of the ordinary Civil Court in the light of the said Order dated 02-11-2024 of the Honorable High Court of Sindh, it would be appropriate for the plaintiff to submit the plaint before the Court having the jurisdiction. Hence, the plaint presented by the plaintiff is hereby returned under Order VII Rule 10 of CPC in the above terms. Office is directed to return the plaint to the plaintiff as per law for presenting the same before the competent Court of law having the jurisdiction of the matter”.

7. From perusal of the record, it appears that learned trial court while returning the Plaint of the aforesaid societies suits has relied upon the order dated **02.11.2024**, passed in *Shamim Barlas Case* by learned Single Judge of this Court; relevant paras of the said order for the sake of convenience reads as follows :

49. To summarize, when one examines the jurisdiction of this Court to try a suit relating to issues pertaining to Cooperative Societies, a Court will have to:

- (i) First examine as to whether the dispute pleaded relates to the trial of an offence or is a dispute relating to rights and obligations regulated by the Act, 2020 and where, in either case under Section 117 and Section 73 of the Act, 2020 respectively, the lis will mandatorily have to be tried or adjudicated by the "Special Court for Cooperative Societies", while all other disputes would be within the purview of a Civil Court or Criminal Court of competent jurisdiction to try;
- (ii) if this Court has jurisdiction to adjudicate on a civil dispute pertaining to a Cooperative Society in terms of clause (i) hereinabove and the matter in dispute is maintained "against a society or any of its officers" and is an issue "touching the business" of a Cooperative Society, then it will, subject to clauses (iii) to (v) hereinbelow, be mandatory for a notice under Section 115 of the Act, 2020 to be issued by the Plaintiff in the manner prescribed in that Section and which suit can only be maintained after the time period prescribed in that section i.e. two months has expired and within which Plaintiff a statement confirming that such notice has been delivered or left must be pleaded;

- (iii) the provisions of clause (ii) hereinabove will not apply where the suit is not one which is maintained against either a society or any of its officers;"
- (iv) the provisions of clause (ii) hereinabove will also not apply where the suit is not one which is maintained on an issue which is not "touching the business" of a Cooperative Society;
- (v) finally, the provisions of clause (ii) hereinabove will also not apply whereas per the decisions of the Supreme Court of Pakistan reported as Abbassia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others 37 and Scarle IV 37 PLD 1997 SC 338 Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others in the Plaintiff it is alleged that either:
 - (a) the action or decision made by the Cooperative Society or its officers which is impugned was not legally exercised under the Act, 2020;
 - (b) the action or decision attributed to the Cooperative Society or its officers, was mala fide, provided that the mala fide is expressly pleaded and supported by a tangible argument with proof;
 - (c) the order passed or action taken by the Cooperative Society or its officers was such which could not have been passed or taken under the Act, 2020; or
 - (d) in passing the order or taking the action the Cooperative Society or its officers violated the principles of natural justice.

In the above findings, the learned Single Judge observed that the initial determination in jurisdictional matters under the Act, 2020, is whether the dispute concerns the trial of an offence or relates to rights and obligations governed by the Act 2020. In either case, Sections 117 and 73 vest exclusive jurisdiction in the Special Court for Cooperative Societies, while other disputes fall within the jurisdiction of ordinary civil or criminal courts. It was further noted that civil suits filed against a cooperative society or its officers involving matters "touching the business" of the society are generally within the Special Court's purview. However, exceptions exist where the challenged action is alleged to be mala fide, beyond jurisdiction, unlawful under the Act, or violative of principles of natural justice, as supported by the Supreme Court's decisions in PLD 1997 SC 338 and 2022 SCMR 1374.

8. From a perusal of the order passed in the *Shamim Barlas Case*, it appears that the judgment in *Syed Muhammad Kazim's Case*, as well as the order dated 03.04.2024 passed by a Division Bench of this Court upholding the decision of *Syed Muhammad Kazim's Case*, and the

subsequent order dated 06.05.2024, passed by another Division Bench of this Court in C.P. No.D-5256 of 2023 and C.P. No.D-7449 of 2022, were never brought to the notice of the learned Single Judge. Consequently, the learned Judge was not properly assisted while passing the order in *Shamim Barlas Case*.

9. Before advancing further in the proceeding, it would also be appropriate to first discuss the order dated 05.12.2023, case of *Syed Muhammad Kazim v. Rub Razi Cooperative Housing Society Limited and others* [2024 YLR 1668]. In that case, the Court primarily examined whether the suit falls within the definition of a “dispute” under Rule 53 of the Sindh Co-operative Societies Rules, 2020, thereby attracting the jurisdiction of the Special/Co-operative Court under Sections 116 and 117 of the Sindh Co-operative Societies Act, 2020. Upon consideration of the pleadings and the relevant statutory provisions, it was held that the matter pertained to the affairs of a Co-operative Housing Society and that, notwithstanding the multiple reliefs claimed, such as specific performance, possession, injunctions, and damages, the underlying dispute undeniably arose out of co-operative society matters. The Court further observed that the plaintiff must be treated as a member of the society, and that the dispute clearly falls within the ambit of Rule 53(1), even if the society itself had not been formally impleaded. In reliance on Section 116(2) of the Act 2020, the Court held that such matters, including those already pending, are required to be transferred to the Co-operative Court, which retains jurisdiction under Section 9 of the Code of Civil Procedure to adjudicate all civil claims, including claims for damages, unless specifically barred by law.

It is also noteworthy that the aforesaid decision was subsequently upheld by a Division Bench of this Court, vide order dated 03.04.2024, passed in H.C.A. No. 96 of 2024. The learned Division Bench, while dilating upon the issue, categorically held that the dispute raised by the appellants, seeking specific performance and execution of a sub-lease/sale deed by the Co-operative Housing Society, squarely falls within the ambit of a “dispute touching the business of a society” as defined under Rule 53 of the Sindh Co-operative Societies Rules, 2020. The Bench further observed that such

matters are now exclusively triable by the Special Court under Sections 116 and 117 of the Sindh Co-operative Societies Act, 2020, and consequently, the jurisdiction of the ordinary civil courts stands barred.

10. Before going into any further discussion, it would be conducive to reproduce Rule 53 of the Sindh Co-operative Societies Rules, 2020, which reads as under:-

"53. Disputes:-- (1) If any dispute touching the business of a society other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society arises.

(a) between Members or past members of the society or persons claiming through a member or past member; or

(b) between members or past members or persons so claiming and any past or present officer, agent or servant of the society; or

(c) between the society or its committee and past or present member of the society, or

(d) between the society or its committee and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is or is a member of the society or surety of such officer, agent or servant, whether such surety is or is not a member of the society;

(e) between a society authorized under sub-section (1) of section 45 and a person who is not a member of a society.

A bare perusal of the above provision makes it unmistakably clear that the dispute in the present case squarely falls within the jurisdiction of the Special Court. The Rule comprehensively encompasses disputes "touching the business of a society," including those arising between the members, past members, office-bearers, agents, and even non-members in certain defined circumstances. The controversy at hand relates to the internal functioning and management of a co-operative society and involves parties who fall within the categories expressly enumerated under Rule 53. Accordingly, the matter is triable by the Special Court established under the Act 2020. The learned trial court's failure to appreciate the true scope and applicability of Rule 53, therefore, amounts to a clear misapplication of the statutory scheme governing co-operative societies.

11. It may further be observed that Sections 73, 116, and 117 of the Act, 2020, when read conjointly, establish a comprehensive jurisdictional framework. Section 73 delineates the nature of disputes

cognizable under the Act; Section 116 provides for the constitution of the Special Court; and Section 117 vests in that court jurisdiction over all matters arising under the Act and the Rules. Rule 53 operationalizes this framework by defining the contours of disputes “touching the business of a society.” The legislative framework, when read as a whole, leaves no manner of doubt that civil disputes arising from the internal affairs of cooperative societies are to be adjudicated exclusively by the Special Court.

12. Insofar as the reliance placed by learned counsel for the appellants on the unreported judgment dated 06.05.2024, passed by a Division Bench of this Court in Constitution Petitions No. D-5256 of 2023 and D-7449 of 2022, is concerned, I have carefully examined the same and find that the Division Bench authoritatively held that all contentious matters involving disputed facts, and arising under the Act, 2020, fall within the exclusive domain of the Special Court for Co-operative Societies, as envisaged under Sections 73 and 117 of the Act 2020 read with Rule 53 of the Rules 2020. The Division Bench further observed that such disputes cannot be adjudicated in writ jurisdiction, as their resolution necessarily entails a comprehensive appraisal of evidence, which lies squarely within the statutory jurisdiction of the Special Court.

13. Moreover, learned counsel for the appellants have drawn the attention of this Court to the judgment rendered by the Hon’ble Supreme Court in *Muhammad Dawood v. Mst. Sakeena Farooque and other* [2025 SCMR 1229]. Upon careful consideration of the said judgment, it emerges that the apex Court categorically affirmed that the disputes touching upon the business of a Co-operative Society, particularly those involving the transfer of property within the society’s records, fall squarely within the exclusive jurisdiction of the Special Court established under Section 117 of the Sindh Co-operative Societies Act, 2020, read with Rule 53 of the Rules framed thereunder. The Supreme Court emphasized the legislative intent underlying the Act, namely, to streamline adjudication of such disputes by vesting civil jurisdiction in a specialized forum. It was further held that such matters, being inherently factual in nature and requiring evidence regarding ownership, gifts, and allegations of fraudulent transfers, are

most appropriately triable before the designated Special Court created under the Statute.

14. In view of the above authoritative pronouncement by the Supreme Court, there remains little room for doubt that the Special Court, constituted under the Sindh Cooperative Societies Act, 2020, is the proper forum for adjudication of such disputes. The affirmation of jurisdiction by the apex Court further reinforces the legislative scheme that ousts the jurisdiction of ordinary civil courts in matters directly emanating from the affairs of a cooperative society.

15. For the foregoing reasons, all the aforesaid three appeals are allowed along with pending applications. The orders of the learned trial court, passed in respective Societies Suits, which are impugned in the abovementioned three appeals are set aside. Resultantly, the operation of the impugned orders are suspended and the matters are remanded back to the Special Courts for Co-operative Societies [the trial court] with the directions to decide the suits of the appellants afresh in accordance with the law and facts and adjudge the same on merits.

JUDGE

Jamil*