

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-1266 of 2025

*Shaheen Anwerv/s... ..Works Cooperative Housing
Society Ltd. & others*

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

- 1.For orders on office objection.
- 2.For hearing of CMA No.7962/2025
- 3.For hearing of main case:

Date of Hearing & Order: 11-08-2026

Petitioner: Through Mr.Muhammad Arif,
Advocate

Respondent No 1 Ms.Rizwana Ismail & Mr.Noor Muhammad,
Advocates

Respondents No 2 to 11: Nemo

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the order dated 22.10.2025 (**impugned order**) passed by learned XIIth Additional District & Sessions Judge, Karachi East (**Revisional Court**) in Civil Revision No.240/2025 (Works Cooperative Housing Society

Limited.....v/s.....Yasmin Akbar Shahbaz & others), whereby the the revision application filed by the Respondent No 1 was allowed and order dated 29.07.2025 passed by Court of learned IIIrd Senior Civil Judge Karachi, (**Trial Court**) in Suit No.23/2024 (Re- Yasmin Akhter Re- Nasreen Ahmed), through which the society was restrained from recovering the dues against the property from Petitioner, for transfer of the title of property was set aside. .

2. Briefly sated the facts of the Petitioner's case are that Mst. Yasmin Akhter filed a suit for administration and partition of the life estates of the deceased Mst.Anwar Jahan viz Double Storey House constructed on Plot No.C-58, measuring 600 sq.yards Block-8, Gulshan-e-Iqbal, Karachi (hereinafter referred as to "**the Subject Property**") before Learned Senior Civil Judge-III, Karachi East. The suit was granted through preliminary decree dated 24.04.2024, the Nazir of the Court was appointed to either partition the Subject Property or to auction it if the same was not a partition case. It appears from the record that Nazir proposed for auction of the property and Suit was decreed pursuant to Nazir report vide final decree dated 24.08.2024. The auction proceedings were conducted through Nazir, wherein petitioner Shaheen Anwer was declared as a successful bidder. Petitioner paid the auction amount, thereafter, he approached the society for the transfer of title. The society demanded payment in respect of the excess area occupied by the original owner, which petitioner refused and instead preferred an application under section 151 of the Code of Civil Procedure before learned trial Court against demand of the society. Learned Trial Court vide its order dated 29.07.2025 allowed the application and declared the demand of payment by the society as illegal. Respondent

No 1 filed revision application against the order, which was accepted vide the order impugned herein

3. Learned counsel for the petitioner submits that the society cannot demand the extra amount as the ownership rights of the property were being transferred in favour of the petitioner. He contended that the property was purchased by the predecessor in interest of the petitioner some 42 years back and such an objection of excess area was never raised. He further submits that in compliance of the auction proceedings the society was required to transfer the ownership rights in favour of the petitioner without demanding excess payment. He contended that Learned Revisional Court allowed the revision application without affording the right of hearing to the Petitioner, as such its orders were illegal and liable to set aside. He lastly prayed to allow this Petition.

4. Learned counsel for the respondent society has opposed the petition on the ground that since the Petitioner's predecessor in interest was in possession of excess area, therefore, he cannot claim the transfer of ownership rights without making payment of the said excess area and other dues mentioned in the demand notice dated 17.0-3.2025. She contended that the right of Petitioner would be limited and restricted to the original area and if petitioner intends, and was not willing to make payment for the excess area under possession he must surrender the same to Society. She contended that Petitioner approached the society for transfer of title, which can be done once the legal heirs of the deceased clear all the outstanding dues. She contended that under the circumstances Society has rightly issued the demand notice for payment against excess area under possession. She contended that Trial Court cannot interfere into the affairs

of Respondent No 1, which is cooperative Society and dispute fell under the domain of the Cooperative Court established under the provisions of Sindh Cooperative Societies Act, 2020 (the said Act). She, therefore prayed to dismiss the Petition.

5. Heard arguments. Perusal of the record reflects that a suit for administration and partition of the life estate of deceased Anwer Jahan was filed by her legal heirs. Trial Court passed a preliminary decree vide order dated 24.04.2024 by appointing Nazir of the Court as Commissioner for inspection of the Subject Property and report. Nazir submitted its report and proposed for the auction of Subject Property, thereafter, Trial Court passed a final decree dated 24.08.2024 directing the Nazir to initiate auction proceedings. The petitioner remained successful bidder in the auction proceedings. On deposit of bid amount by Petitioner, Respondent No 1 was directed to transfer the property in Petitioner's name. When approached by the Petitioner, the Respondent No 1/ society issued a demand notice dated 17.03.2025 for the payment of dues in respect of plot, which included Building Fund, Scrutiny Fee of Completion Plan, Extra Covered Area and area occupied beyond approved plan, Transfer Set and Transfer Fee.

6. On issuance of Demand Notice, Petitioner filed an application section 151 C.P.C. before Trial Court seeking appropriate directions against Society. Learned Trial Court allowed the application and directed the Society to transfer the title of Subject Property leaving the Society at liberty to institute proceedings for recovery of dues against excess area before appropriate forum. However declined relief in respect of the dues payable in lieu of charges levied for transfer of title.

7. Since the petitioner is seeking transfer of the property which is in excess of the original area, the society has the right to make such demand and if the petitioner is unwilling to make payment of excess area, he may surrender the same to the society. The observation of the learned trial Court that the society cannot make such claim are beyond its mandate as through the administration suit the parties had sought the assistance of the Court regarding the administration and partition of the life estate of the deceased. Learned Trial Court decreed the Suit and conducted the partition proceedings. After passing the final decree and its execution Trial Court became functus officio and was not competent to interfere into the matters pertaining to the Society. Trial Court through its order dated 29.07.2025 interfered into the affairs of the Respondent Cooperative Society regarding demand for payment of excess area occupied beyond approved plan and other dues against the Subject property. Dispute if any against the said demand fell within the meaning and definition of Section 73 of the Sindh Cooperative Societies Act, 2020 (**the said Act**) which vested powers exclusively to the Cooperative Court established under the provisions of the said Act. Section 73 for the sake of convenience reads as under:

73. Disputes referred to Cooperative Court: All disputes (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes) shall be tried by the Cooperative Court established under section.

8. From the perusal of the above provisions, it is crystal clear that all the disputes other than a dispute regarding disciplinary action taken by Society or its Committee against a paid servant of the Society and liquidation disputes shall be triable by Cooperative Court. Sections 37, 38 and 39 lay down a procedure to settle the disputes as to the assets and

liabilities of a deceased member of Cooperative Society thus were a dispute falling within the definition of Section 73, *ibid*.

9. Learned Trial Court on passing the decree on main suit and after its execution through bid became *functionous officio* and was not competent to pass any orders, in particular, the matters which did not fall under the lap of its jurisdiction. The Order dated 08.10.2025 was *Corum non judice* as Trial Court lacked jurisdiction to entertain a dispute relating to the affairs of Cooperative Society. Needless to observe that in the administration of justice determination of the jurisdiction by the Court seized with the matter is one of the important elements, because if justice has been provided basing upon *corum non judice* orders, it would have no legal sanction behind it. Though the issue of jurisdiction was not taken up by the Revisional Court, however being a question of law, can be attained by this Court under its writ jurisdiction.

10. For the aforementioned reasons, this petition being devoid of merits is dismissed, however, the petitioner is at liberty to avail remedy against the Respondent society before the appropriate Forum if so advised.

Judge

Nasir

Approved for reporting