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**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, MULTAN BENCH,  
MULTAN  
JUDICIAL DEPARTMENT**

**C.O. No.06 of 2014  
&  
C.M. No.314-C of 2015  
(APPLICATION UNDER ORDER VII RULE 11 CPC)**

**Sheikh Kamran Shafi & others**

**Versus**

**Sadaqat Shafi & others**

**J U D G M E N T**

Date of hearing: 23.04.2024.  
Petitioners by: M/s. Shafqat Mehmood Chohan and  
Muhammad Suleman Bhatti, Advocates.  
Respondents by: M/s. Malik Muhammad Rafiq Rajwana and  
Muhammad Sohail Iqbal Bhatti, Advocates  
(Applicants of C.M. No.314-C of 2015).

**MUHAMMAD SAJID MEHMOOD SETHI, J.:-** This is an application under Order VII Rule 11 CPC read with Section 151 CPC seeking rejection of the main civil original petition filed under Sections 290, 291 & 292 of the Companies Ordinance, 1984 (“**the Ordinance of 1984**”), moved by respondents No. 1 to 4, 10 & 12.

2. Learned counsel for respondents / applicants submits that petitioners did not fulfill the statutory requirement for filing a petition on the ground of oppression and mismanagement, as they did not hold / possess twenty percent of the issued share capital of the company in terms of Section 290 of the Ordinance of 1984. He adds that respondents / applicants filed appeal for revocation of the Succession Certificate to the extent of shares and to set-aside the impugned order dated 15.10.2014, whereof the order of Succession Certificate was suspended as the proceedings to obtain the certificate were defective in substance. He maintains that petitioner Sheikh Kamran Shafi, had complete knowledge that the shares of his late father had been

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transferred to respondent No. 1 Sadaqat Shafi on 07.10.2005, but concealed this material fact from the Court. He argues that the deceased alongwith his family members during his lifetime, transferred all of his shares and since then, he and his family became stranger to the Company. He contends that even otherwise, the appropriate remedy available to petitioners under Section 152 of the Ordinance of 1984 was to apply to the Court for rectification of register, as rightly held by the respondent-SECP vide correspondence dated 13.01.2014, which has also attained finality as it was never challenged by petitioners before this Court under the relevant provisions of law. In support, he has referred to Miss Mahenau Agha v. United Liner Agencies of Pakistan Limited and 12 others (PLD 1990 Karachi 198), Messrs Shaheen Foundation v. Messrs Capital F.M. (Pvt.) Limited and others (2002 CLD 188), Shaukat Ali v. Amin Fabrics Ltd. and 3 others (2008 CLD 837), Hassan Al-Adawi and another v. Messrs HAMA International (Pvt.) Ltd. and 3 others (2009 CLD 1043) and Shaukat Ali v. Messrs Bawany Sugar Mills Ltd. 4 others (2009 CLD 497).

3. Contrarily, learned counsel for petitioners contends that petitioners possessed 40 percent of the issued share capital of the company, holding qualified shares for maintaining the civil original petition. However, when confronted with the above submissions of learned counsel for respondents / applicants, he requests for conversion of the main civil original petition into petition under Section 265 of the Ordinance of 1984 seeking investigation of the company through Inspector(s). In support, he has relied upon Mrs. Naila Naeem Younus and others v. Messrs Indus Services Limited through Chief Executive and others (2022 SCMR 1171).

Learned counsel argues that Court in exercise of civil original jurisdiction can pass any order either converting instant petition into petition under Section 265 of the Ordinance of 1984 as well as Section 152 of the Companies Act, 2017 for investigation of the entire aspect relating to the transfer of the shares as well as the forms of the company as well as for determination of transfer of shares allegedly

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shown by the respondents / applicants, as the entire controversy is relating to the non-submission of instruments regarding alleged transfer of the shares even before this Court during the present proceedings. In support, he has further referred to Abdul Kareem Khan v. Messrs Haroon-ur-Rasheed Textile Mills (Pvt.) Ltd. through Chief Executive and 13 others (2015 CLD 719). Lastly, he submits that non mentioning of Section 152 does not operate as a bar against power of this Court to assume the jurisdiction u/s 152, however, such allegations relating to the Section 152 are very much pointed out in the main Civil Original Petition. In the end, he submits that he has no objection if instant petition is converted into petition under Section 265 of the Ordinance of 1984.

4. Arguments heard. Available record perused.
5. Record shows that the main civil original petition has been filed under the provisions of Section 290 of the Ordinance of 1984, relevant portion whereof is as under:-

**“290. Application to Court. - (1)** If any member or members holding not less than twenty per cent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than twenty per cent of the paid up capital of the company, complains, or complain, or the registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition for an order under this section.”

6. The above provision authorizes any member or members holding not less than twenty per cent of the issued share capital of a company, to make an application to the Court. The pre-requisite qualification for making petition under said provision of law against mismanagement and malpractice in company is that petitioners must hold 20% of issued share capital of such company. In absence of any proof of such prescribed share capital, a petition cannot be held

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maintainable under Section 290 of the Companies Ordinance, 1984. Reliance is placed upon Bhai Azizur Rehman and 5 others v. Messrs Ghafur Textile Mills Ltd., Karachi and 19 others (1987 CLC 577), Mian Khalid Siraj and others v. Khalid Siraj Industries (Pvt.) and others (1997 CLC 1220) and Shaukat Ali v. Amin Fabrics Ltd. and 3 others (2008 CLD 837).

Undoubtedly, it is the stance of respondents / applicants that petitioners are not the members of the company as they had already transferred all of their shareholdings to the respondents / applicants way back in the year 2005, in support whereof, respondents / applicants have relied upon Form 29 and Form A for the year 2005, submitted in the Securities and Exchange Commission of Pakistan, Lahore, wherein such change in the shareholding was accordingly incorporated, clearly indicating the change / transfer of shareholding, whereby the present petitioners are no more the members of the company, hence, civil original petition being barred by law, is liable to be rejected. Conversely, the stance of petitioners is that respondents No.1 & 2 have acted with *mala fide* and conducted the affairs of the Company unlawfully, fraudulently, in breach of their fiduciary duties and in violation of mandatory provisions of the Ordinance of 1984; and that petitioners have been deprived of their shareholding and directorship in an illegal and unlawful manner in Form 29 & Form A.

7. The judicial consensus on when to allow an application under Section 265 of the Ordinance for seeking investigation in a company is by now settled by the Hon'ble Supreme Court in Brothers Steel Limited's case (PLD 1995 Supreme Court 320), relevant portion whereof is reproduced hereunder:-

"We are of the considered view that in proceedings under section 265 of the Ordinance, full-fledged inquiry in the form of a trial, is not required to be held nor any formal evidence is to be recorded. Needless to observe that before passing the order under section 265 of the Ordinance, the Court has to only satisfy itself *prima facie*, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegations during the investigation to be conducted by him whereafter he will submit the report to the concerned authority. The

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matter in fact rests in the discretion of the Court, to be decided after following the summary procedure as laid down in section 9 of the Ordinance”.

Further reliance is placed upon Sardar Khan Niazi v. Barex Lahore Ltd. (2005 CLD 1670) and Abdul Kareem Khan's case supra.

8. Needless to observe that mentioning a wrong provision of law in a petition would not prevent the Court from exercising its proper authority and appropriate jurisdiction vested under the law, keeping in view the circumstances of a case. Similarly, it is now well-settled that when more than one interpretation is fairly and reasonably possible then the interpretation which leads to manifest absurdity or injustice must be avoided. Moreover, valuable proprietary rights must not be allowed to be negated, unless the law clearly and expressly stipulates that such rights would expire with the efflux of time. It is not out of place to mention here that Article 24(1) of the Constitution provides that 'No person shall be compulsorily deprived of his property save in accordance with law'. Another fundamental right to acquire, hold and dispose of property, envisaged in Article 23 of the Constitution, would also be vitiated if a person's right to property is discarded in such manner that another, who is not entitled thereto, become its owner. Reference in this regard is placed upon Mst. Safia Bibi v. Mst. Aisha Bibi (1982 SCMR 494), Multan Electric Power Company Ltd. through Chief Executive and another v. Muhammad Ashiq and others (PLD 2006 Supreme Court 328) and Mrs. Naila Naeem Younus's case supra.

So far as argument of learned counsel for respondents / applicants that in the light of correspondence dated 13.01.2014, issued by the respondent-SECP, petitioners were required to file petition under Section 152 of the Ordinance of 1984 for rectification of register is concerned, suffice it to say that petitioners approached this Court by way of filing main original petition and this Court is referring the matter to Securities and Exchange Commission of Pakistan for investigation in terms of Section 265 of the Ordinance of 1984, therefore, this argument has lost its worth.

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9. In view of above discussion, instant application under Order VII Rule 11 CPC, filed by respondents / applicants, is allowed in the manner that the main petition filed under Sections 290, 291 & 292 of the Ordinance of 1984 is not maintainable in its present form and therefore in the light of case law cited supra, the same is converted into petition under Section 265 of the Ordinance. Resultantly, Securities and Exchange Commission of Pakistan is directed to proceed in the matter as per law and appoint Inspector(s), within a period of fifteen days from the date of receipt of this judgment, upon satisfaction that the facts and circumstances warrant investigation of the affairs of Messrs Montgomery Flour & General Mills Limited, after issuing show cause notice as per law, including the following questions:

- (i) Whether there are elements of fraud and misfeasance in transfer of shares by petitioners as mentioned in Form-A dated 31.10.2005?
- (ii) Render findings on petitioners' letters dated 04.01.2012, 04.12.2013 and 10.12.2013 addressed to the Securities and Exchange Commission of Pakistan.

Needless to add that petitioners are also entitled to avail alternate remedy available to them under the law in addition to the remedy provided in Section 265 of the Ordinance of 1984. Office is directed to immediately send a copy of this judgment to the worthy Chairman Securities and Exchange Commission of Pakistan, to do the needful as per law, as directed hereinabove and conclude the proceedings within a period of ninety days from the date of receipt of certified copy of this judgment, under intimation to this Court through Deputy Registrar (Judicial) of this Bench.

(Muhammad Sajid Mehmood Sethi)  
Judge

APPROVED FOR REPORTING

Judge