

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Munib Akhtar  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petition No. 1220-K/2022**

[Against the judgment dated 14.09.2022 passed by High Court of Sindh in C.P.No.D-2363/2009]

***Sikandar Ahmed Ghouri***

*...Petitioner(s)*

***Versus***

***Syed Rafat Abbas Jafferi and others***

*...Respondent(s)*

For the Petitioner(s) : Mr. Syed Shahenshah Hussain Sr. ASC

For the Respondent(s) : N.R.

Date of Hearing : 21.03.2025

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this petition, petitioner has called in question the judgment dated 14.09.2022 (“**impugned judgment**”) passed by the learned High Court of Sindh (“**High Court**”) whereby the constitutional petition (C.P.No.D-2363/2009) filed by the respondent No.1 was allowed and decided against petitioner.

2. A perusal of the factual matrix of the case reveals that the dispute pertains to the ownership rights of a built-up property, on plot Number- R-123, Block ‘R’, measuring 120 square yards, situated in Sector No. 38-E, Scheme No. 33, Rizwan Co-operative Housing Society, Karachi (“**disputed property**”). The disputed property was initially an open plot, allotted and subsequently leased by Respondent No.2 (Rizwan Co-operative Housing Society) to one Muhammad Hasan, son of Ghulam Farid, through a registered lease deed dated 13.03.1989, vide Registration No. 1560, Book-I, M.F. Roll No. 934, before the Sub-Registrar T. Div XII, Karachi. Muhammad Hasan later sold the property

through his duly appointed attorney, Syed Sultan Ali, to Mrs. Raunaq Ara Afridi by a registered conveyance deed dated 04.09.1997, vide Registration No. 5004, pages 70–74, Volume No. 807, Book-I, before the Additional Sub-Registrar, T. Div XII, Karachi. Thereafter, Mrs. Raunaq Ara Afridi executed an agreement of sale dated 10.02.2003 with Respondent No.1, thereby transferring her ownership rights in respect of the disputed property.

However, a dispute arose regarding the ownership of the disputed property between Mrs. Raunaq Ara Afridi (the predecessor-in-interest of the present Respondent No.1) and the petitioner. Consequently, Mrs. Raunaq Ara Afridi instituted a suit for Declaration and Permanent Injunction (Civil Suit No. 219 of 1997) in the Court of Senior Civil Judge Malir, Karachi asserting that the petitioner (who was Defendant No. 1 in the said suit) had unlawfully approached her, claiming to have purchased the disputed property from the Society and had executed agreements in that regard. The case of Mrs. Raunaq Ara Afridi before the trial court was that she had acquired the disputed property upon full and final payment to one Syed Sultan Ali, the duly constituted attorney of Muhammad Hasan, son of Ghulam Farid, and had executed an agreement of sale. The petitioner, who was Defendant No. 1 in the said suit, claimed to be a builder and disputed the ownership of the property. He allegedly attempted to have the property vacated forcibly in connivance with the local police. Furthermore, it was also the case of Mrs. Raunaq Ara Afridi that on 28.06.1997, the petitioner approached her and demanded that she vacate the property on the pretext that he had purchased it from Mubarak Hussain Siddiqui (Defendant No. 2 in the suit), who had been elected as Chairman of M/s Rizwan Co-operative Housing Society in November 1989. Mrs. Raunaq Ara Afridi contended that since 1989, Mubarak Hussain Siddiqui had been illegally occupying

the office of Chairman of M/s Rizwan Co-operative Housing Society, as no elections had taken place. She further alleged that Mubarak Hussain Siddiqui had fraudulently started selling, transferring, and allotting plots belonging to the Society to different individuals without lawful authority.

The said suit was decreed in favor of the plaintiff (*the predecessor-in-interest of Respondent No.1*) and against the petitioner, vide judgment and decree dated 06.07.1998 and 19.08.1998, respectively. The petitioner, being aggrieved, filed a review petition against the said judgment, which was dismissed vide order dated 25.05.2000.

Thereafter, the petitioner malafidely invoked arbitration proceedings under the Co-operative Societies Act, 1925 (**“the Act”**), without impleading the necessary parties and by concealing the material fact of the prior litigation concerning the disputed property with Mrs. Raunaq Ara Afridi. As a result, the petitioner obtained a favorable ex-parte award dated 27.03.2003, wherein it was held that he was a bona fide member of the Society and the lawful transferee of the disputed property. The award was executed through Execution Application No. 01 of 2005, vide order dated 18.05.2007.

Subsequently, Respondent No.1 challenged the said order by filing an application under Section 12(2) of the Code of Civil Procedure, 1908 (“CPC”) in the Court of 1<sup>st</sup> Senior Civil Judge Malir Karachi which was dismissed vide order dated 08.04.2017. It is also pertinent to note that a subsequent registered lease deed dated 20.04.2019 was executed by the Nazir of the District and Sessions Court Malir, Karachi, on behalf of Respondent No.2 (the Society) in favor of the petitioner, without taking into consideration the fact that Respondent No.2 had already leased the disputed property to Muhammad Hasan, son of Ghulam Farid, through a registered lease deed dated 13.03.1989. Muhammad Hasan, acting through his registered attorney, Syed Sultan Ali, later transferred the

property to Mrs. Raunaq Ara Afridi by a registered conveyance deed dated 04.09.1997. Thereafter, Mrs. Raunaq Ara Afridi entered into an agreement of sale dated 10.02.2003 with Respondent No.1, who consequently acquired ownership rights in the disputed property.

Being aggrieved and dissatisfied with the arbitration award and the execution proceedings, Respondent No. 1 filed constitutional petition before the High Court, which was decided in favor of Respondent No. 1 *vide* impugned judgment. Consequently, the award dated 27.03.2003 was set aside, the writ of possession issued in pursuance thereof was quashed, and the subsequent lease deed dated 20.04.2019 was declared to be of no legal effect. Hence, this petition.

3. Learned counsel for the petitioner submits that impugned judgment suffers from illegality and infirmity; that petitioner purchased the disputed property from one Dr. Kamran *vide* sale agreement dated 22.03.1985; that disputed property was transferred in name of petitioner by the Respondent No.2 *vide* transfer letter dated 25.04.1995; that petitioner has installed electricity and gas connections in his name; that present respondent No.1 being a total stranger to the proceedings had no *locus standi* to file constitutional petition and prays that impugned judgment may be set aside.

4. We have heard the learned counsel for the petitioner and perused the material available on the record.

5. Primary legal issue in the present case is whether Registrar while exercising powers under section 54 of the Act can decide the question of title or ownership?

6. Pursuant to section 54 of the Act, if any dispute touching the business of a society (other than a dispute regarding disciplinary action) arises between the society and any present member of the society, it has

to be referred to the Registrar for decision by himself or by his nominee, or if either of the parties so desires, to the arbitration of three arbitrators. For the sake of clear understanding, said provision is reproduced hereunder:

“54. Arbitration.- 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 any 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 not a member of the society, [or]

[(e) between a financing bank authorised under subsection (1) of section 34 and a person who is not a member of a society], [or] [(f) between two societies,] it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned]

A dispute shall include [the question whether a person is or was a member of a society and also] claims by a society for debts or demands due to it from [a member, past member or non-member] or the heirs or assets of a past member [or non-member] whether such debts or demands be admitted or not: Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceeding, in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings, the Registrar shall take action as laid down in paragraph 1 of this section.”

Thus, bare perusal of the section 54 of Act reveals that the following two conditions have to be fulfilled before a dispute could be entertained by the Registrar, namely:-

- (i) the dispute must be one "touching the business of a society" and
- (ii) it must arise between certain specified parties such as the society or its members on the one side and the members of the society or any officer, agent or servant of the society on the other side.

7. The phrase "touching the business of the society" under Section 54 of the Act is a jurisdictional prerequisite that determines whether a dispute falls within the Registrar's domain. In the case of Syed

Ghulam Moin-ul-Haq Gillani v/s Province of Punjab and others [2021 CLC

1286] learned Lahore High Court has held that:-

“16. Section 54 of the Act provides for resolution of dispute 'touching business of a society' by the Registrar himself or his nominee, or through arbitration if the parties so desire. The nature of disputes covered by Section 54 of the Act has been specified in Clauses (a) to (f). They all relate to disputes regarding internal affairs of a Society in between its members or of members with the society or its committees. The only provision in the Act of 1925 empowering the Registrar to resolve disputes is Section 54; and the Registrar has been conferred a pivotal role in implementing the obligations cast upon the Society and its members including hearing complaints and implementing his decisions.” **[Emphasis supplied]**

Indian Supreme Court in the case of Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain & Ors., [[1969] (1) SCR 887] has held that the word "business" in the expression 'touching the business of a society' in section 91 (1) does not mean affairs of the society. It has been used here in a narrower sense and means the actual trading or commercial or other similar business activity of the society which the society is authorized to enter into under the Act and the Rules and its bye-laws.

This court in the case of Defence Housing Authority Lahore v. Builders and Developers (Pvt.) Ltd. (2015 SCMR 1799) has observed as follows:-

“10. The above provision provides for resolution of dispute 'touching business of a society' by the Registrar by himself or through arbitration if the parties so desire. The nature of disputes covered by section 54 of the Act of 1925 has been specified in Clauses (a) to (e). They all relate to disputes regarding internal affairs of a Society in between its members or of members with the society or its committees. Both sections 54 and 70 of the Act of 1925 are limited to disputes regarding 'business of the society'. As the phrase appears in different provisions of the same statute as a rule it is to be assigned the same meaning. Though section 70 does not make reference to section 54 of the Act of 1925 but without relating it to the latter the issuance of notice would be meaningless. The two months wait period provided under section 70 is to enable the Registrar to resolve the dispute. The only provision in the Act of 1925 empowering the Registrar to resolve disputes is section 54. The proviso to the Section provides for suspension of the proceedings if the Registrar is of the opinion that the dispute involves complicated question of law and facts, which can be decided only through a regular suit. That is precisely what the Registrar did in the present case. After the notice was delivered by the respondent to the Registrar, the latter sought reply of the appellant and filed the same when he found that the matter was one which could only be decided through a civil suit. Restricting the provision of section 70 to only those disputes covered by section 54 is consistent with the scheme of the Act of 1925, providing for regulating registration, working and

business of the cooperative societies. The Registrar has been conferred a pivotal role in implementing the obligations cast upon the Society and its members including hearing complaints and implementing his decisions. Section 70 of the Act of 1925 does not apply to all suits instituted against the Society or any of its officers. It is restricted to suits in respect of any act 'touching the business of the society'. If, as held in some of the judgments of the High Court and canvassed by the learned counsel for the appellant, the 'business of the society' should be given an expanded meaning so as to include any business dealing by an outsider with the Society is accepted, then perhaps barely any suit filed against the society would be excluded from the application of section 70 of the Act of 1925. The only reasonable construction consistent with the scheme and purpose of the Cooperative Societies Act would be to limit the application of section 70 to matters falling under section 54 of the Act."

**[Emphasis supplied]**

8. Thus, it is settled law that not all disputes arising between a society and its members, officers, or employees fall within the ambit of Section 54 of the Act. Had it been the legislative intent to confer jurisdiction upon the Registrar in all such disputes, the qualifying condition that a dispute must "touch the business of the society" would have been superfluous and devoid of any meaningful effect. The presence of this qualification necessarily implies a distinction between disputes that are intrinsically related to the business of the society and those that are not.

9. Accordingly, the fundamental question that arises for consideration is whether the dispute between petitioner and respondent No.1 is one that touches the business of the society. If it does not, the Registrar would lack jurisdiction to entertain the matter, and any proceedings initiated under Section 54 would be without lawful authority.

10. The dispute in the present case pertains to ownership rights of the property, which is a question of title. Title disputes are civil in nature and cannot be adjudicated by the Registrar under the Act. The Society had already transferred ownership through duly executed and registered legal instruments, as mentioned in the preceding paragraphs. Once property rights have been transferred the society no longer retains

an interest in the property, and subsequent ownership disputes must be settled by a civil court of competent jurisdiction. Disputes relating to ownership, title, and possession of immovable property do not fall within the purview of the society's business. The mere fact that the disputed property was once allotted or transferred through the registered lease deed by the co-operative society does not automatically render the dispute one that "touches the business of the society".

11. Similar position has been adopted in the foreign jurisdictions as well such as United Kingdom and India. In the case of Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain & Ors.,[[1969] (1) SCR 887]], Indian Supreme Court referred the judgment of House of Lords where similar point was raised. It is reproduced below:-

“24. This was the line of reasoning adopted by the House of Lords in *E.C Mulkern v. James Lord* in holding **that "proceedings in respect of accounts under a mortgage and sale of the property, which might include title to redemption or a judgment of foreclosure, were not such disputes, between the society and a member, as the statutes** [Friendly Societies Act (10 Geo. 4, c. 56) read with Section 4 of 6 and 7 Will, 4, c. 32] had contemplated.”

**[Emphasis supplied]**

Reference in this regard may also be made to the case of The National Co-Operative Consumers' Federation Ltd, New Delhi vs Delhi Administration, Delhi And Ors. on 5 March, 1970 [AIR 1971 Delhi 141] wherein it was ruled that:-

“8. The Co-operative Society is formed with certain objects. The objects of the petitioner-society are set out above. In achieving these objects, the society has to do certain incidental things. For instance, the society must have premises in which its office would be housed. The society must also employ servants to carry on the office work and other work of the society. Therefore, while the society would carry out its objects, at the same time it would be owing or possessing its premises and would also be employing servants to do its work which may be either to carry out its objects or to do other work which is not connected with the objects of the society. The relevant question, therefore, would be whether the "business of the society" would be confined to the objects for which the society was formed or would include everything that the society has to do in order to carry out its objects including the possession of premises and the employment of servants as stated above.

In *Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain*, MANU/SC/0214/1968 : [1969]1SCR887, the appellant society owned certain premises which were occupied by the respondents. The society called upon the respondents to vacate



the premises which the respondents refused to do. The society, therefore, applied to the Registrar of Cooperative Societies that the dispute between itself and the respondents be referred to arbitration. The Registrar entertained the dispute. Thereupon the respondents filed a petition under Art, 226 of the Constitution in the Bombay High Court submitting that the said dispute was not covered by Section 91 of the Maharashtra Cooperative Societies Act, 1961, inasmuch as it was not a dispute "touching the business of the society".

The Bombay High Court dismissed the writ petition relying on the Full Bench decision of that High Court in Farkhundali v. Potdar, in which the following view of the meaning of "business" was expressed:-

"The nature of business, which a society does, is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. The word "touching" is also very wide and would include any matter which relates to, concerns or affects the business of the society". In allowing the appeal, the Supreme Court, however, observed in paragraph (22) of the report as follows:

"While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word "touching" is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word "affects" should also be used in defining the scope of the word "touching".

**The Court further observed that another limitation on the word "dispute" was that it should be capable of being resolved by the Registrar or his nominee. A dispute between a landlord and a tenant was properly the subject-matter of the various Rent acts and it would be difficult to say that such a dispute was intended to be referred to the Registrar. Such a result may also follow from the interpretation of the Rent Acts and the Cooperative Societies Act....**

...10. The Supreme Court has thus held that a dispute between a society and its tenants was not a dispute "touching the business of the society" though the dispute must be said to be touching the premises of the society. For, the possession of the premises was not itself the business of the society. Similarly, the Supreme Court has held that the dispute between a society and its employees demanding various service benefits was not a dispute touching the business of the society. For, the mere employment of the servants was not itself the business of the society. Applying the ratio of these decisions to the present case, it must be said that the business of the petitioner society is to be found in the object for which the society was formed. Such objects do not include the employment of servants as such is not the business of the society. Therefore, every dispute between the society and its employees will not be dispute touching the business of the society."

**[Emphasis supplied]**

12. Thus, it is settled that the powers of the Registrar can in no case exceed the powers of Civil Courts under the Code of Civil Procedure, 1908. As to the specific powers the Registrar may exercise in deciding disputes under Section 54, the Act remains silent. However, the Registrar has been granted the power to order the attachment of a party's property

before the making of an award under Section 55. Similarly, Section 59 empowers the Registrar to recover money directed to be paid under an award by signing a certificate, which shall be deemed to be a decree of a civil Court and shall be executed in the same manner.

13. The award made by the Registrar, therefore, is void, as the dispute between the petitioner and Respondent No.1 did not "touch the business of the society" within the meaning of Section 54. Moreover, the Registrar had no authority to determine the title or ownership of the disputed property when a valid judgment passed by a competent court of law was already in existence and no appeal had been preferred by the petitioner. The requirement that the dispute must be one "touching the business of the society" goes to the very root of the jurisdiction of the Registrar or the arbitrators acting under Section 54.

14. A perusal of the record reveals that a registered lease deed was executed by Respondent No. 2 (Society) in favor of Muhammad Hassan, who subsequently transferred the disputed property to Mrs. Raunaq Ara Afridi through a registered conveyance deed dated 04.09.1997, executed by his attorney. Thereafter, Mrs. Raunaq Ara Afridi entered into a sale agreement dated 10.02.2003 with Respondent No. 1. The civil proceedings instituted by Mst. Raunaq Ara Afridi against the present petitioner attained finality on 25.05.2000 upon the dismissal of the review petition filed by the petitioner.

15. Subsequently, the petitioner invoked the jurisdiction of the Registrar under the Co-operative Societies Act, 1925, resulting in an award being passed in his favor on 27.03.2003. It is significant to note that the said award was rendered subsequent to the conclusion of the civil proceedings. Furthermore, a perusal of the award reveals that neither Respondent No. 1 nor his predecessor-in-interest, Mst. Raunaq Ara Afridi, were impleaded as parties to the arbitration proceedings. The

award, therefore, adversely impacted the conveyance deed executed in favor of Mst. Raunaq Ara Afridi and the subsequent sale agreement in favor of Respondent No. 1, without affording them any opportunity of hearing. Moreover, the award is non-speaking in nature, as it fails to disclose or discuss the fact of previous civil litigation wherein the petitioner was a party concerning the same disputed property or the decree passed in favor of Mst. Raunaq Ara Afridi. No reasons have been provided as to why the arbitration proceedings culminated in favor of the petitioner. It is a settled principle of law that civil courts have the ultimate jurisdiction to adjudicate upon matters of a civil nature. Consequently, it cannot be contended that the judgment and decree rendered by the civil court in Civil Suit No. 219 of 1997 was a nullity in the eyes of law. The consequences and effect of the decision of a civil court cannot be diluted, either directly or indirectly, through subsequent proceedings before the Registrar under the Act. Matters relating to title and ownership of immovable property fall within the exclusive jurisdiction of civil courts. The arbitration proceedings under the Act cannot override or nullify the judgment and decree passed by a competent civil court, particularly when the dispute pertains to ownership rights. The decree passed in favor of Mst. Raunaq Ara Afridi attained finality on 25.05.2000 after the dismissal of the petitioner's review petition. The existence of registered legal instruments, namely the lease deed dated 13.03.1989, conveyance deed dated 04.09.1997 and Agreement of Sale dated 10.02.2003 establishes a valid chain of ownership. The arbitration award failed to take these into account, thereby undermining legally recognized property rights.

16. The arbitration award adversely affected the vested rights of Respondent No. 1 and his predecessor-in-interest without providing them an opportunity of hearing. This omission is in clear violation of the

principles of natural justice and due process of law. It is also interesting to note that Mrs. Raunaq Ara Afridi (*predecessor in interest present respondent No.1*) impleaded the petitioner in her civil litigation whereas the petitioner did not implead Mrs. Raunaq or respondent No.1 in the proceedings before Registrar hence it clearly shows the *malafide* on the part of the petitioner. An award by the registrar under Act cannot directly or indirectly adversely affect or overrule a civil court's judgment and decree.

17. In view of the foregoing, it is evident that the arbitration proceedings were initiated in a manner that contravened established legal principles, and the award passed therein cannot override a final judicial determination by a competent civil court. Accordingly, the High Court was justified in setting aside the arbitration award and the subsequent lease deed dated 20.04.2019 executed in favour of the petitioner by the Nazir of District and Sessions Court Malir at Karachi on behalf of the Respondent Society.

18. In view of the above discussion, we find that impugned judgment is well-reasoned and has considered all the material aspects of the case. Learned counsel for the petitioner has failed to point out any illegality or infirmity in the impugned judgment.

19. Consequently, this petition is dismissed and leave refused.

**JUDGE**

**JUDGE**