

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

**Civil Appeals No.1843 to 1846 OF 2019 and Civil Miscellaneous
Application No.1138 of 2020**

(Against the judgment dated 16.09.2019 of the High Court of Sindh,
Karachi passed in High Court Appeals No.107/2012, 114/2012 and
109/2012)

Sher Asfandiyar Khan	In C.A.1843/2019
Sajida Naeem	In C.A.1844/2019
M/s Ofspace (Pvt.) Ltd., Karachi	In C.A.1845/2019
Alamgir Khan	In C.A.1846/2019
	...Appellants

Versus

Neelofar Shah etc.	
	...Respondents (In all cases)

For the Appellants:	Mr. Haider Waheed, ASC Mr. Anis Muhammad Shahzad, AOR (In C.As.1843 & 1846/2019)
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Mr. Salman Akram Raja, ASC
Syed Rifaqat Hussain Shah, AOR
(In C.As.1844 & 1845/2019)

For Respondents 1-2:	Mr. Wasim Sajjad, Sr. ASC Mr. Shah Khawar, ASC Mr. Muhammad Masood Khan, ASC Mr. Mehmood A. Sheikh, AOR
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For Respondents 4-6:	Barrister Umer Aslam Khan, ASC
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For Respondent 7 (SECP):	Mr. Omer Azad Malik, ASC
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For the Applicant(s):	Mr. Farooq H. Naek, Sr. ASC (In C.M.A.1138/2020)
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Date of Hearing:	11.02.2025
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JUDGMENT

Yahya Afridi, CJ.- These appeals, by leave of the Court, are directed
against the common judgment dated 16.09.2019 passed by the
learned High Court of Sindh, Karachi whereby the High Court

Appeals No.107/2012, 114/2012 and 109/2012 filed by the appellants were dismissed by upholding the judgment dated 05.07.2012 passed by the learned Company Judge of the High Court of Sindh.

Nature of Dispute

2. In essence, the present dispute revolves around the contest over the control and ownership of M/s. Ofspace (Pvt.) Ltd. (the “**Company**”) between the appellants, comprising Sher Asfandiyar Khan, his brother, Alamgir Khan, and his sister, Sajida Naeem (the “**Khan Group**”), and the respondents, comprising Neelofar Shah and her son, Raza Shah (the “**Shah Group**”). Nazeer Shah, the husband of Neelofar Shah, is also a key figure within the Shah Group and has participated in these proceedings in the limited capacity of an intervenor.

Factual Background

3. The Company was incorporated on 17 December 1997, with the objective of developing high-end office spaces (**Tower I and Tower II**), designed to generate revenue through rentals and sales. The Company initially had an authorized capital of Rs. 10 million, divided into 100,000 shares of Rs. 100 each, with a paid-up capital of Rs. 2.5 million, comprising 25,000 shares. The initial shareholding composition of the Company was as follows:

The **Shah Group was allotted 44%** of the issued shareholding of the Company; Raza Shah holding 18% and Neelofar Shah 26%, While the **Khan Group was allotted 56%** of the issued share-capital; Sajida Naeem had 26% and Alamgir Khan was allotted 30% of the total issued shares.

The Dispute

4. The dispute arose when, on 15 January 1999, Alamgir Khan transferred the 30% shares held by him to his brother, Sher

Asfandiyar Khan. The Shah Group contends that this transfer was in violation of the two Shareholders' Agreements (the "**Shareholders' Agreements**"), which, according to them, governed the shareholding structure and management of the Company. The first of these agreements i.e. the Main Agreement, allegedly provided that the Shah Group would retain control over key decisions after an initial period of management by Sher Asfandiyar Khan and that the 30% shares initially allocated to Alamgir Khan were to be held on trust for the benefit of Nazeer Shah. The second, an agreement specific to Tower II, purportedly stipulated that the revenues generated therefrom would be credited directly to Nazeer Shah in recognition of his financial contributions. The Shah Group argues that the transfer by Alamgir Khan not only disregarded the agreed-upon structure stipulated under the Shareholders' Agreements, but also amounted to an act of corporate oppression, as it disrupted the balance of control within the Company and deprived Nazeer Shah of his rightful interest. Conversely, the Khan Group categorically denies the authenticity and enforceability of the Shareholders' Agreements, alleging that they were fabricated by the Shah Group, as an afterthought to unlawfully assert ownership over the disputed shares.

5. Beyond the Shareholders' Agreements, the Shah Group disputes the transfer on the basis that the meeting of the Board of Directors dated 15 January 1999, wherein the transfer was allegedly approved, was not duly convened. They assert that the signature of Neelofar Shah on the minutes of this meeting was forged, thereby rendering the approval invalid. In response, the Khan Group maintains that the Board meeting was properly convened, that

Neelofar Shah was present, and that she signed the minutes, thereby confirming the legitimacy of the transfer. It is also relevant to note that the procedural framework governing share transfers under the Company's Articles of Association was not the subject of any meaningful challenge during the proceedings. Rather, the dispute in this respect centers on factual questions concerning the validity of the meeting of the Board of Directors and the authenticity of the documents relied upon to approve the transfer.

Court Proceedings

6. Against this backdrop, the Shah Group brought the dispute before the learned Company Judge under Sections 290 and 291 of the Companies Ordinance, 1984 (the "**Companies Ordinance**"), which provide statutory remedies against oppression and mismanagement in corporate affairs. The learned Company Judge, after examining the matter, ruled in favor of the Shah Group, holding that the transfer of shares was in contravention of the agreed framework. This decision was subsequently upheld by the learned Division Bench of the Sindh High Court in appeal. The Khan Group has now challenged these findings before this Court.

Contentions of the Parties

7. The learned counsel for the Khan Group contends that the Shareholders' Agreements were neither independently authenticated nor validly executed and that they contain forged signatures. It is argued that the 30% shares in question were lawfully owned by Alamgir Khan, who had full authority to transfer them. It is also argued that the learned Company Judge erred in adopting summary procedure under Section 9 of the Companies Ordinance, and that too, despite the existence of complex and

disputed factual issues. Furthermore, it is submitted that the claim of trust is barred under Section 148 of the Companies Ordinance. It is contended that the dispute at hand could not have been fairly adjudicated without framing issues and recording evidence, and that the summary disposal of the matter resulted in a miscarriage of justice. The learned counsel further assails the findings of the learned Company Judge, contending that secondary evidence was admitted improperly, without fulfilling the requirements prescribed under Article 76 of the Qanoon-e-Shahadat Order, 1984 ("QSO") for the admissibility of secondary evidence.

8. Conversely, the learned counsel for the Shah Group maintains that the Shareholders' Agreements are genuine and represent the true understanding reached between the parties at the time of incorporation. It is submitted that a summary procedure under Section 9 of the Companies Ordinance was the appropriate forum for adjudication. It is also contended that the existence of a trust over the 30% shares is legally tenable under the Companies Ordinance. The learned counsel further supports the discretion exercised by the learned Company Judge, asserting that the decision was rightly based on documentary evidence.

Legal Issues for Determination

9. Having considered the foregoing factual background, we find that the contentions put forth by the parties give rise to the following legal issues for determination by this Court:

1. Whether a summary procedure under Section 9 of the Companies Ordinance provides the appropriate forum for resolving the present dispute.
2. Whether the learned Company Judge correctly exercised his jurisdiction in deciding the disputed facts without framing issues and recording evidence.
3. Whether the claim of trust over the 30% shares is legally tenable given the bar under Section 148 of the Companies Ordinance (now Section 121 of the Companies Act, 2017).

4. Whether the Company Judge erred in admitting secondary evidence without recording formal evidence, and if so, whether the Division Bench correctly upheld this decision despite the conditions under Article 76 of QSO not being met.
5. Whether the discretion of the Company Judge in treating the Shareholders' Agreements as genuine was exercised in accordance with legal principles, and if so, whether the Division Bench correctly upheld this finding or improperly dismissed concerns regarding forged signatures and fabricated documents.

Legal Framework

10. Before determining the merits of the issues arising in the present case, it is necessary to first set out the statutory framework governing the controversies at hand. The resolution of Issues No. 1 to 3 requires an examination of the Companies Ordinance, while Issue No. 4 falls for consideration under the QSO. Issue No. 5, in turn, necessitates a combined assessment of the procedural and substantive considerations addressed in Issues No. 1 to 4.

11. The Companies Ordinance¹, and in particular, Section 9 (*supra*) mandates summary adjudication of company matters, while Sections 290 and 291 provide statutory remedies for oppression and mismanagement. Additionally, Section 148 expressly bars the recognition of trusts over shares, a prohibition that has been carried forward into the Companies Act under Section 121.

12. Similarly, the QSO, which governs evidentiary standards in judicial proceedings, is of particular relevance in the present case. The admissibility of secondary evidence, as regulated by Article 76 QSO, bears directly on the evidentiary basis upon which the learned Company Judge proceeded. Given the challenge of the appellants to the authenticity of key documents, the application of these provisions is central to determining whether the impugned findings rest on legally admissible evidence.

¹ Governed the corporate affairs in Pakistan until its repeal by the Companies Act, 2017, (the "**Companies Act**")

With this statutory framework in view, we now turn to the issues for determination.

Issues No. 1 and 2

Whether a summary procedure under Section 9 of the Companies Ordinance provides the appropriate forum for resolving the present dispute.

Whether the learned Company Judge correctly exercised his jurisdiction in deciding the disputed facts without framing issues and recording evidence.

13. A joint consideration of Issues No. 1 and 2 is warranted, as both pertain to the scope and limits of summary jurisdiction in company matters, and the procedural propriety of adjudicating disputed factual claims without the safeguards of a full-trial. Given the factual complexity of the present matter, particularly the allegations of forgery and fabrication, the question that arises and requires determination is whether the learned Company Judge was justified in resolving the dispute through summary proceedings, or whether the nature of the case necessitated a full-fledged evidentiary inquiry, involving the framing of issues and recording of evidence.

14. In order to address this question, it is firstly essential to set out a conceptual overview of what a summary procedure entails in the context of company law. The statutory basis for the exercise of summary jurisdiction in company matters was initially envisaged under Section 9 of the Ordinance, which read as follows:

"9. Procedure of the Court.-

(1) Notwithstanding anything contained in any other law, all matters coming before the Court under this Ordinance shall be disposed of, and the judgment pronounced, as expeditiously as possible but not later than ninety days from the date of presentation of the petition or application to the Court and, except in extraordinary circumstances and on grounds to be recorded, the Court shall hear the case from day-to-day.

Explanation: In this sub-section, "judgment" means a final judgment recorded in writing.

(2) The hearing of the matters referred to in sub-section (1) shall not be adjourned except for sufficient cause to be recorded, or for more than fourteen days at any one time or for more than thirty days in all.

(3) In the exercise of its jurisdiction as aforesaid, the Court shall, in all matters before it, follow the summary procedure."

Thus, Section 9 of the Companies Ordinance provided that all company matters be adjudicated summarily, encouraging efficiency in corporate dispute resolution. It is noteworthy that by its very nature, a summary proceeding is abundantly distinct from a civil trial, which is structured around a more comprehensive fact-finding process, involving the framing of issues, the recording of detailed evidence, and the examination and cross-examination of witnesses.

15. In Platinum Insurance Company Limited, Karachi vs. Daewoo Corporation, Sheikhpura (PLD 1999 Supreme Court 1), this Court took up the matter of assessing the nature of summary procedure in company disputes and clarified that, while under Section 9(3) of the Companies Ordinance, it is permissible to adopt summary procedure, the procedure adopted should be fair and just, ensuring equal opportunities for the contesting parties. As such, it is clear that Section 9 of the Companies Ordinance is not to be interpreted in a manner that overrides fundamental principles of fairness, particularly where intricate factual disputes arise.

16. This principle was further elaborated in Mian Javed Amir vs. United Foam Industries (Pvt.) Ltd. (2016 SCMR 213), where this Court held that the requirement to follow summary procedure does not impose an absolute bar on the Company Judge from receiving oral or documentary evidence where necessary. The Court reaffirmed that, while summary proceedings are designed for expeditious resolution, they do not preclude a factual inquiry where allegations of fraud, forgery, or misrepresentation arise, provided that such an inquiry is necessary to reach a just conclusion. It was clarified that the reference to 'summary procedure' in Section 9(3) does not deprive

the Company Judge of the authority to receive and assess evidence, where the nature of the dispute so requires. Thus, while efficiency remains a cornerstone of summary adjudication, it cannot come at the cost of fairness and due process, particularly in cases where factual determinations are essential for resolving the dispute.

17. Given that summary procedure does not categorically preclude factual inquiry where necessary, the deliberations of the learned Company Judge in the present case become particularly relevant. While the learned Company Judge correctly noted that the matter fell within the jurisdiction of the Company Court under Section 290 of the Companies Ordinance, the crucial question remained whether the dispute, given its nature, could appropriately be adjudicated through summary proceedings, and that too, without recording of evidence.

18. In the present case, the learned Company Judge, concluded that the presence of disputed facts alone did not bar summary disposal, dismissing the objections of Khan Group and proceeding to adjudicate the case on the merits. This finding was subsequently upheld by the learned Division Bench of the Sindh High Court.

19. However, this approach of the High Court does not withstand scrutiny. Not all factual disputes carry the same weight; while peripheral controversies may be addressed summarily, but those that go to the heart of the claim, and cannot be resolved solely on the record, necessitate thorough evidentiary examination. The present case is not a mere matter of contractual enforcement but one where the very authenticity of the Shareholders' Agreements is in dispute. The Khan Group has not merely challenged the

interpretation or implementation of these agreements; they have challenged their very existence. Such allegations require procedural safeguards, including oral testimony, forensic examination, and cross-examination, none of which were undertaken by the courts leading to the impugned judgment. The omission of these safeguards raises serious concerns regarding fairness and due process, particularly in a case where the validity of the underlying documents is directly contested.

20. Given that the dispute in the present case centered on contested documents and serious allegations of forgery, this omission deprived the proceedings of the procedural rigor necessary for a just determination. The affirmation of the said approach by the Division Bench further entrenched these irregularities.

21. An additional concern arises from the assertion of the Khan Group that the Shah Group invoked Section 290 of the Ordinance to circumvent the limitation period that would have otherwise barred them from filing a civil suit. Whether or not this was the true intent, the concern is valid, as it highlights the risk of using summary proceedings to bypass limitation under general law. Expedited procedures cannot serve as a mechanism to evade substantive legal protections.

22. In view of the serious nature of the allegations, the complexity of the factual matrix, and the procedural deficiencies inherent in a summary proceeding, we find that the learned Company Judge erred in proceeding summarily without framing issues or recording evidence. The procedural irregularities in bypassing these essential

safeguards rendered summary adjudication inappropriate.

Accordingly, both Issue No. 1 and 2 are answered in the negative.

Issue No. 3

Whether the claim of trust over the 30% shares is legally tenable given the bar under Section 148 of the Companies Ordinance (now Section 121 of the Companies Act, 2017).

23. To assess the legal tenability of the claimed trust over the 30% shares, it is first essential to consider the statutory framework that governs the recognition of trusts in corporate shareholding. The relevant provision, originally set out in Section 148 of the Companies Ordinance and later retained verbatim in Section 121 of the Companies Act, is reproduced below:

"148. Trusts not to be entered on register.- No notice of any trust, expressed, implied or constructive, shall be entered on the register of members, or be receivable by the registrar."

The statutory bar under Section 148 of the Companies Ordinance was reflective of a well-established principle in company law that a company shall not take notice of any trust concerning its shares. This principle has its origin in English company law and has been consistently upheld in various legislative enactments of the United Kingdom. A similar provision was first introduced in the UK Companies Act 1862, which formed the foundation for modern corporate regulation in common law jurisdictions, including Pakistan. The UK Companies Act, 1929 and its subsequent successor, the UK Companies Act, 1948, retained this prohibition, reinforcing the principle that trusts over shares were not to be entered into the company's register. This statutory position was continued under the UK Companies Act, 1985, and later under Section 126 of the present UK Companies Act, 2006, which states:

"126. Trusts not to be entered on register.

No notice of any trust, express, implied or constructive, shall be entered on the register of members of a company, or be receivable by the registrar."

The language of this provision mirrors that of Section 148 of the Companies Ordinance and its successor, Section 121 of the Companies Act. This continuity in statutory language across jurisdictions reflects the consistent legislative intent to exclude trusts from corporate shareholding structures.

24. Given the shared legislative lineage between Pakistani and English company law, the interpretation of analogous provisions by UK courts provides helpful insight. A fundamental principle emerging from this jurisprudence is that, while the law does not prohibit the creation of equitable interests in shares, a company is neither obligated nor permitted to recognize such interests. The register of members is conclusive in determining legal ownership², and any assertion of beneficial ownership against the company is legally ineffective. This rule safeguards corporate certainty, ensuring that companies are not embroiled in disputes concerning unregistered interests, which would otherwise compromise the integrity of the register and impede corporate administration. UK courts have consistently maintained that a company's obligations extend solely to those whose names are recorded on the register of members, irrespective of any trust arrangements or equitable claims that may exist privately³. The relationship between a trustee-shareholder and their beneficiary is a matter external to the company's dealings⁴, and permitting companies to take notice of

² See *Enviroco Ltd v Farstad Supply A/S* [2011] UKSC 16

³ See *Bland and Anor v Keegan* [2024] EWCA Civ 934

⁴ See *Perkins etc. v. Mexican Santa Barbra Mining Co.* (1890) 24 QBD 613

such arrangements would fundamentally disrupt the legal clarity underpinning corporate governance. Thus, while trust arrangements may be enforceable *inter-se*, they have no bearing on the company, which is entitled to rely exclusively on its register in determining shareholder rights and liabilities.

25. In the present case, the Shah Group asserts that the 30% shareholding initially allocated to Alamgir Khan was held in trust for the benefit of Nazeer Shah. However, in light of the statutory framework discussed above, such a claim is untenable under Pakistani company law. Section 148 of the Companies Ordinance explicitly prohibited the recognition of any trust; express, implied, or constructive, on the company's register of members. Consequently, even if a private arrangement existed between the parties regarding the beneficial ownership of these shares, the Company Judge could not take cognizance of such a claim. The legal ownership, as recorded in the company's register, must be regarded as conclusive, and any assertion of an equitable interest cannot override the statutory bar. Thus, the claim of the Shah Group of having a trust over the disputed shares is legally untenable and cannot be sustained in these proceedings.

Issue No. 4

Whether the Company Judge erred in admitting secondary evidence without recording formal evidence, and if so, whether the Division Bench correctly upheld this decision despite the conditions under Article 76 of QSO not being met.

26. A crucial aspect of the present dispute concerns the admissibility of secondary evidence relied upon in the proceedings before the learned Company Judge. The Khan Group contends that the learned Company Judge erred in admitting photocopies of key documents without adherence to the strict requirements of QSO,

while the Shah Group maintains that the evidentiary threshold was adequately met.

27. A fundamental principle of the law of evidence is that a fact, to be considered by a court of law, must not only be relevant but also admissible and proved in accordance with the prescribed legal standards. This distinction between relevancy, admissibility, and proof is particularly significant where documentary evidence is concerned, as the evidentiary framework governing the admission of such material is both statutory and well-established in case law.

28. The QSO establishes the foundational framework governing the admissibility and evidentiary value of documents in judicial proceedings across Pakistan. Section 1(2) explicitly states that the QSO extends to the whole of Pakistan and applies to all judicial proceedings before any court. By necessary implication, its provisions also extend to summary proceedings before the Company Court, ensuring that evidentiary standards remain uniform across all judicial fora.

29. In terms of the issue at hand, Article 76 bears particular relevance as it provides the conditions under which secondary evidence may be admissible. The provision states as follows:

"76. Cases in which secondary evidence relating to documents may be given:

Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when after the notice mentioned in Article 77 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative-in-interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when, due to the volume or bulk of the original, copies thereof have been made by means of microfilming or other modern devices;

(e) when the original is of such a nature as not to be easily movable;

(f) when the original is public document within the meaning of Article 85;

(g) when the original is a document of which a certified copy is permitted by this Order, or by any other law in force in Pakistan, to be given in evidence;

(h) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection ;

(i) when an original document forming part of a judicial record is not available and only a certified copy thereof is available, certified copy of that certified copy shall also be admissible as a secondary evidence.

In cases (a), (c), (d) and (e), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (f) or (g), certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (h), evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such document."

A plain reading of Article 76 of QSO makes it clear that secondary evidence, such as photocopies or duplicates of a document, is only admissible in strictly circumscribed situations. The provision sets out a limited set of circumstances in which reliance may be placed on copies or reproductions of documents, including where the original has been lost, destroyed, unlawfully withheld by an adverse party, or is otherwise unobtainable. The principle that emerges is one of necessity; secondary evidence is not an automatic substitute for primary evidence, but rather an exception that must be justified under one of the legally recognized grounds.

30. This principle has been affirmed in Mst. Akhtar Sultana vs. Major Retd. Muzaffar Khan Malik (PLD 2021 Supreme Court 715), wherein this Court held that the admission of secondary evidence is contingent upon strict compliance with statutory conditions prescribed under Article 76 of the QSO. It was emphasized that a mere assertion regarding the loss or unavailability of the original document is insufficient; rather, the party seeking to rely on secondary evidence must first establish, through credible and independent proof, that the original is unavailable due to a reason explicitly recognized under the law. Any

deviation from this requirement, or the admission of secondary evidence without such justification, constitutes a material irregularity warranting judicial interference.

31. In the present case, the learned Company Judge admitted certain documentary evidence despite the fact that the originals were vehemently disputed and their authenticity directly challenged by the Khan Group. It was incumbent upon the Shah Group, as the party relying on secondary evidence, to demonstrate that the originals were unavailable due to a reason contemplated under Article 76; a requirement that was not satisfied in these proceedings. The record does not indicate that any sufficient cause was established for the non-production of the original documents, nor does it reflect any attempt to meet the evidentiary threshold prescribed under the QSO. In the absence of such compliance, the admission of secondary evidence, particularly in a matter where the authenticity of the documents lay at the heart of the dispute, constitutes a material irregularity that undermines the evidentiary foundation of the proceedings.

32. The learned Division Bench, in upholding the findings of the learned Company Judge, similarly bore the responsibility of ensuring that the conditions set forth under the QSO were met. By affirming the admission of secondary evidence without engaging with the evidentiary deficiencies in the record, the appellate forum failed to rectify an error that directly impacted the fairness of the adjudication. This Court finds that the learned Company Judge and the Division Bench exercised discretion in a manner inconsistent with the well-settled legal principles governing the admissibility of

documentary evidence. The failure to ensure compliance with Article 76 of QSO vitiates the evidentiary basis upon which the findings of the courts below were rendered, necessitating intervention by this Court.

Issue No. 5

Whether the discretion of the Company Judge in treating the Shareholders' Agreements as genuine was exercised in accordance with legal principles, and if so, whether the Division Bench correctly upheld this finding or improperly dismissed concerns regarding forged signatures and fabricated documents.

33. The determination of this issue requires a combined assessment of both procedural and substantive considerations, drawing upon the corporate framework governing company proceedings and the evidentiary framework regulating the admissibility and evaluation of documents. As examined and discussed earlier, the statutory scheme under the Companies Ordinance, while providing for summary procedure under Section 9, does not dispense with the requirement of fairness and due process, particularly where serious factual disputes arise. Likewise, the QSO, as the primary legislation governing evidentiary rules, imposes strict conditions for the admission of secondary evidence, particularly in cases where the authenticity of a document is in question. The question before this Court, therefore, is whether the learned Company Judge, in treating the disputed agreements as genuine, exercised his discretion in a manner consistent with these legal frameworks, or whether the absence of procedural safeguards resulted in a material irregularity warranting appellate interference.

34. The learned Company Judge, in his adjudication, proceeded on the basis that the agreements in question constituted binding instruments that had been acted upon by the parties. In doing so, he treated the Shareholders' Agreements as genuine without

subjecting them to the level of scrutiny ordinarily required in cases where forgery and fabrication are alleged. As discussed earlier, under Issue No. 1, the appropriateness of summary procedure is contingent upon the complexity of the dispute and the sufficiency of the evidentiary record. In circumstances where a claim turns on the authenticity of disputed documents, adjudication through summary proceedings, without recourse to a full evidentiary inquiry, raises serious concerns regarding procedural fairness. The decision of the learned Company Judge to accept the Shareholders' Agreements as valid, despite the categorical challenge made thereto by Khan Group to their authenticity, therefore raises the question of whether summary jurisdiction was exercised in a manner that ensured a just and equitable resolution of the dispute.

35. Turning to the evidentiary dimension, as discussed above, under Issue No. 4, courts must exercise strict scrutiny when admitting secondary evidence, particularly where the authenticity of the primary document is in question. Mere assertion regarding the unavailability of an original document does not suffice; rather, the party seeking to rely on secondary evidence must establish, through cogent proof, that the original is unavailable for reasons explicitly recognized under the QSO. The admission of secondary evidence in the absence of such justification constitutes a material irregularity. In the present case, the learned Company Judge admitted and relied upon copies of the disputed Shareholders' Agreements without ensuring compliance with the strict conditions prescribed under Article 76 of the QSO. This departure from established evidentiary principles directly impacts the question of whether the discretion so exercised was in accordance with law.

36. Moreover, the Division Bench, in upholding the findings of the learned Company Judge, proceeded on the premise that his conclusions fell within the ambit of judicial discretion. However, it is well-settled that judicial discretion, while broad, is not unfettered and must be exercised within the parameters prescribed by law. Where a determination is reached without adherence to the procedural and evidentiary safeguards essential to a fair adjudication, it ceases to be a matter of discretion and instead becomes a question of legal propriety. In the present case, the reliance of the learned Company Judge on disputed documents without ensuring compliance with mandatory evidentiary requirements, coupled with his refusal to frame issues and allow the parties to lead evidence, resulted in an adjudication that fell short of the standard required for the determination of claims involving allegations of fraud and fabrication.

37. Accordingly, this Court finds that the exercise of discretion by the learned Company Judge in treating the agreements as genuine was inconsistent with settled legal principles. The failure to subject the documents to the necessary evidentiary scrutiny, particularly in light of the serious allegations raised, rendered the adjudication procedurally deficient. Consequently, the decision of the Division Bench to uphold this finding, without addressing the underlying procedural and evidentiary lapses, is not sustainable in law.

Conclusion

38. Upon careful consideration of the issues at hand, it is evident that the learned Company Judge erred in proceeding summarily in a dispute that required a full evidentiary examination. The nature of the controversy, involving serious allegations of forgery and

fabrication, necessitated the framing of issues and the recording of evidence; procedural safeguards that were improperly bypassed. As a result, Issues No. 1 and 2 are answered in the negative.

39. Regarding Issue No. 3, the statutory prohibition under Section 148 of the Companies Ordinance (now Section 121 of the Companies Act) precluded the recognition of a trust over shares in the company's register, reinforcing the principle that the company was not bound to take notice of any alleged trust arrangement. Accordingly, the claim of trust, as asserted by the Shah Group, was legally untenable.

40. On Issue No. 4, the improper admission of secondary evidence in violation of Article 76 of the QSO further undermined the validity of the proceedings. The failure to establish the preconditions for the admissibility of secondary evidence rendered reliance on the disputed documents unsustainable.

41. Lastly, on Issue No. 5, the discretion of the learned Company Judge in treating the Shareholders' Agreements as genuine was exercised in disregard of established legal principles, given the absence of a proper evidentiary inquiry. The learned Division Bench, in upholding this finding, failed to recognize the procedural and substantive irregularities in the adjudication of the case.

42. In view of the above, the parties may pursue their respective claims in the pending civil suits, wherein all matters in controversy, including the validity of the Shareholders' Agreements and the legitimacy of the Board of Directors meeting dated 15 January 1999, are to be adjudicated. It is clarified that nothing in this judgement

shall prejudice the findings of the civil court regarding the matters in controversy, which shall be determined solely on the basis of the evidence led therein, and that too, in accordance with law.

43. For the reasons stated above, these appeals are allowed and the impugned judgments passed by the learned High Court dated 16.09.2019 and the learned Company Judge dated 05.07.2012 are set aside. Resultantly, the petitions filed before the learned Company Judge are disposed of in the terms noted above.

Chief Justice

Judge

Judge

Announced in Open Court on 8th May, 2025 at Islamabad.

Chief Justice

Islamabad

Approved for reporting.

ORDER OF THE COURT

By a majority of 2 to 1 (Justice Ayesha A. Malik, J. dissenting)
these appeals are allowed.

Chief Justice

Judge

Judge