

**Ayesha A. Malik, J.-** I have read the opinion of the majority as contained in the judgment authored by the Chief Justice of Pakistan with the concurrence of Mr. Justice Amin-ud-Din Khan. However, I am unable to agree with the reasoning given and the conclusion drawn, for the reasons stated hereunder.

2. The Appellants in all four appeals challenge the judgements of the Company Judge dated 05.07.2012 and the Divisional Bench of the High Court of Sindh (**High Court**) dated 16.09.2019 (**Impugned Judgments**). Leave was granted on 08.11.2019 and the questions of law arising out of the case were framed on 27.10.2021.

3. The basic facts which are not in dispute are that Ofspace Private Limited (**the Company**)<sup>1</sup> was incorporated on 17.12.1997 to construct buildings and properties with high end office spaces which were to be leased or sold to tenants or buyers. The income of the Company would arise from rental payments and/or sale proceeds. There were two subscribers at the time of incorporation being Reza A. Shah and Alamgir Khan, each holding 100 shares. It is not in dispute that the concept of the Company was conceived by Nazeer Hussain, who is the husband of Neelofar Shah, Respondent No.1, and the father of Reza A. Shah, Respondent No.2, or that the Appellant, Sher Asfandiyar Khan, and Nazeer Hussain were friends who decided to do business together. As per the undisputed record,<sup>2</sup> on 19.01.1998 the shareholders of the Company were Reza A. Shah and Neelofar Shah (**the Shah Family**) and Alamgir Khan and Sajjida Naeem (**the Khan Family**), such that the Shah Family held 44% shares and the Khan Family 56% shares in the Company. Sher Asfandiyar Khan remained the Chief Executive Officer of the Company since 1998. On 22.01.1998, the number of allotted shares increased from 800 to 24,000 and on 31.12.1998 the total allotted shares were 25,000. The shareholding changed in 1999 when 7,499 shares were transferred to Sher Asfandiyar Khan from his brother Alamgir Khan. At the heart of the dispute between the parties is this transfer of shares.

Sher Asfandiyar Khan 7,499 shares

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<sup>1</sup> The Appellant in CA No.1845 of 2019.

<sup>2</sup> Form-3, Return of Allotment under Section 73(1) of the Companies Ordinance, 1984, pg. 27-28 of CMA No.5274 of 2024 in CA No.1843 of 2019.

Alamgir Khan	1 share
Sajjida Naeem	6,500 shares
Neelofar Shah	6,500 shares
Reza A. Shah	4,500 shares
Total	25,000 shares

4. The Shah Family claims that Alamgir Khan was to hold 7,500 shares in *safe custody* for transfer to persons who had worked and collaborated with the Company. The Khan Family denies this claim and asserts that Alamgir Khan simply transferred the shares to his brother Sher Asfandiyar Khan as per law. The transfer of shares on 15.01.1999 is the bone of contention between the parties and the basis of all disputes.

5. The Shah Family filed JM 31 of 2007 before the High Court of Sindh being a petition under Section 290 of the 1984 Ordinance<sup>3</sup> (**the Application**). They alleged that the Khan Family had wrongfully and fraudulently taken over the Company in a manner oppressive to its members. They raised several grounds of oppression citing the transfer of shares as one ground of oppression. The Company Judge found that the only ground made out under the Application was with reference to the transfer of the 7,499 shares from Alamgir Khan to Sher Asfandiyar Khan, which the Impugned Judgements termed as unlawful and fraudulent, hence, oppressive to its shareholders, the Shah Family. Consequently, directions were given for holding an EOGM for election of the Board of Directors of the Company on the basis of the shareholding where the Shah Family remains the majority shareholder of the Company. This judgment was challenged by way of appeal before a Division Bench of the High Court which maintained the judgment of the Company Judge.

6. The Company Judge framed the grievances of the parties in the following terms; firstly, whether there has been a violation of the two shareholder agreements both dated 14.01.1998<sup>4</sup> (**Shareholder Agreements**), secondly whether the Shareholder Agreements were acted upon, particularly the Second Shareholder Agreement, and thirdly whether the Shah Family was ousted from the affairs of the

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<sup>3</sup> The Companies Ordinance, 1984 (**1984 Ordinance**).

<sup>4</sup> Main and Second Shareholder Agreements, both executed on the same date i.e. 14.01.1998.

Company with the transfer of shares from Alamgir Khan to Sher Asfandyar Khan. The contention of the Appellants, being Sher Asfandyar Khan (Civil Appeal No.1843 of 2019) and his sister Sajjida Naeem (Civil Appeal No.1844 of 2019), is that the Company Judge while exercising jurisdiction under Section 290 of the 1984 Ordinance was looking at disputed questions of fact which required the framing of issues and the leading of evidence under the Qanun-i-Shahadat Order, 1984 (**QSO**). The counsel for the Appellants argued that Section 9 of the 1984 Ordinance refers to summary proceedings which essentially relates to the expeditious disposal of the case, however, when it comes to deciding disputed questions of fact, the Company Judge was required to frame issues in order to resolve the dispute. In this context, they argued that the QSO was applicable to summary proceedings under Section 290 of the Ordinance such that the Company Judge should have framed issues and allowed evidence to be led under the QSO in order for the controversy to be resolved. Their emphasis was on the fact that the two Shareholder Agreements relied upon by the Company Judge are disputed by the Appellants for being forgeries and fabrication meaning thereby that their authenticity has to be established in the first instance before they can be relied upon. They argued that the reliance on the Shareholder Agreements and the comparison of signatures on these documents is without basis given that the Appellants were unable to establish their case through evidence. They further argued that the transfer of shares from Alamgir Khan to Sher Asfandyar Khan was legal, in accordance with law and the claim of the Shah Family that these shares were held in trust by Alamgir Khan is in contravention to the bar contained in Section 148 of the 1984 Ordinance.

7. On behalf of Respondents No.1 and 2, being the Shah Family, it was argued that the Company Judge while exercising jurisdiction under Section 290 of the 1984 Ordinance can proceed in any manner deemed appropriate in order to resolve the controversy and there is no mandatory requirement that issues have to be framed or that evidence has to be led where disputed questions arise. They argue that Section 9 of the 1984 Ordinance gives flexibility to the Company Judge when it comes to a factual inquiry such that the Company Judge has the discretion to decide on the procedure to be followed, and it is not necessary that issues are framed where disputed

questions are involved. They also argue that the evidence was looked at in its entirety and the Company Judge did not solely rely on the Shareholder Agreements to conclude that the transfer of shares to Sher Asfandiyar Khan was illegal. They also argued that the reliance on Section 148 of the 1984 Ordinance with respect to the holding of shares in trust or safe custody has been totally misconstrued as there is no formal instrument of trust involved in this case and therefore Section 148 of the 1984 Ordinance is totally irrelevant. They claim that they filed the Application on account of the oppression they faced by the Khan Family by being denied their lawful rights as shareholders in the Company.

8. On 27.10.2021, this Court while hearing the Appeals formulated the following three questions of law that required consideration:

“(i) Whether 30% shares held by the Khan Family can be claimed to be under a trust for the benefit of claimant shareholders. This question assumes importance in view of the bar created by Section 148 of the Companies Ordinance, 1984 (which is succeeded by section 121 of the Companies Act, 2017);

(ii) The learned two Courts below have relied on secondary evidence of an agreement dated 14.01.1998 produced by the respondents, although the same is vehemently disputed as a forgery by the appellants. Such reliance is claimed to be unlawful, firstly because it is placed without recording evidence; and secondly because the conditions for admission of secondary evidence laid down in the Qanun-e-Shahadat Order, 1984 have not been complied; and

(iii) Whether the discretion exercised by the learned Company Judge conforms with the requirements of law and fairness.”

On the basis of these questions of law, the thrust of the arguments of the counsel for the Appellants was with reference to *whether the Company Judge was required to frame issues*. They argue that this would have allowed the parties the opportunity to lead evidence with respect to the veracity of the Shareholder Agreements which were specifically relied upon in the Impugned Judgments. The issue therefore becomes whether the dispute between the parties was one which could have been decided in summary proceedings by the Company Judge and if so, if the dispute could have been decided without framing of issues and recording of evidence. For the sake of clarity, the opinion of the majority has framed issues No.1 and 2 pertaining to the exercise of jurisdiction by the Company Judge and

related issues No.4 and 5 which are with reference to the evidentiary value of the documents relied upon. Issue No.3, I will deal with separately.

9. Section 7 of the 1984 Ordinance states that the jurisdiction shall vest with the High Court of the Province where the registered office of the company is situated (**Company Judge**). This provision has been the subject matter of many judgments, in the context of the nature of the jurisdiction vested in the Company Judge, wherein the courts have held that the jurisdiction of the Company Judge under the 1984 Ordinance is civil jurisdiction meaning jurisdiction exercised on the original side in civil matters.<sup>5</sup> Section 7 further provides that the jurisdiction conferred on the Company Judge can be conferred on the civil court or any other appropriate court by the Federal Government by way of notification. Accordingly, if at all any other court is to be given jurisdiction under the 1984 Ordinance, it could only be by way of notification issued by the Federal Government. Section 9 of the 1984 Ordinance provides for the procedure that the Company Judge is to follow while exercising its jurisdiction under the said Ordinance. Section 9(3) of the 1984 Ordinance specifically provides that the proceedings before the court shall be summary in nature. The term *summary procedure* has been explained in the context of Section 9 to be one which is related to the expeditious decision of a case where the procedure adopted should be fair and just, which may ensure equal opportunities to contesting parties.<sup>6</sup> The question that arises in these appeals is whether in summary proceedings the Company Judge can decide disputed questions of fact while exercising jurisdiction under the 1984 Ordinance. This Court has concluded in the *Platinum Insurance* case and the *Javed Amir* case<sup>7</sup> that summary procedure does not debar a court from recording evidence. The *Javed Amir* case specifically concluded that Section 9(3) of the 1984 Ordinance does not in any manner curtail the power of the Company Judge to record oral evidence or receive documentary evidence in the proceedings before it in order to determine the issue relating to the company or its members as covered under the 1984 Ordinance. This Court further explained that factual controversy can be resolved by the Company Judge

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<sup>5</sup> Brother Steel Mills Ltd. v. Ilyas Miraj (PLD 1996 SC 543) (five-member judgment).

<sup>6</sup> Platinum Insurance Co. Ltd. v. Daewoo Corp. (PLD 1999 SC 1) (**Platinum Insurance**).

<sup>7</sup> Javed Amir v. United Foam Industries (Pvt) Ltd. (2016 SCMR 213) (**Javed Amir**).

exercising jurisdiction under the 1984 Ordinance in summary proceedings. Consequently, as per the dicta of this Court, there is no legal bar on the Company Judge to enter into a factual inquiry, framing of issues and recording of oral or documentary evidence.<sup>8</sup>

10. In the context of reading Sections 7 and 9 of the 1984 Ordinance together, it appears that the Company Judge has original civil jurisdiction while exercising jurisdiction under the 1984 Ordinance. For the purposes of processes, the Company Judge is not bound by technical rules of procedure or evidence that govern the civil court while deciding factual disputes. Essentially, Section 7 of the 1984 Ordinance vests jurisdiction with the Company Judge to decide all matters arising out of the 1984 Ordinance and Section 9 thereof authorizes the Company Judge to decide disputes as expeditiously as possible without being compelled to rely on rigid procedural requirements akin to regular civil litigation. The objective of the legislature by requiring summary proceedings is to ensure swift adjudication giving the Company Judge the power to dispense with procedural formalities while deciding company matters. This is evident from the *Javed Amir* case which has categorically stated that the reference to summary procedure is not a bar on the jurisdiction of the Company Judge where factual disputes are concerned rather it is simply a requirement to decide the matter within the shortest possible time. Consequently, the Company Judge can frame issues and record evidence if it deems it necessary, as Section 9 of the 1984 Ordinance gives the Company Judge procedural flexibility to adjudicate on the dispute. This means that the Company Judge can regulate its own procedure provided that it is fair and just while giving equal opportunity to contesting parties. However, with the inclusion of Article 10A in the Constitution of the Islamic Republic of Pakistan, 1973,<sup>9</sup> the right to fair trial is ensured in all disputes even where the procedure is summary in nature. Accordingly, the understanding developed by the courts on summary procedure is that it does not abridge or curtail the power of the Company Judge<sup>10</sup> to enter into any factual inquiry, whatever the issues may be, and similarly that even though the law prescribes a summary procedure under the 1984 Ordinance, the Company Judge can at its discretion record evidence,

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<sup>8</sup> *Supra* note 4.

<sup>9</sup> Article 10A inserted by way of the Constitution (Eighteenth Amendment) Act, 2010.

<sup>10</sup> *Omar Masood v. Amir Hussain Naqvi* (2019 CLD 931).

receive documentary evidence and determine issues relating to the company or its members.<sup>11</sup>

11. This issue has also been examined by the Indian Supreme Court as well as the High Courts. Precisely, they have examined the jurisdiction conferred upon the company court in great detail in matters concerning the rectification of the register of members as provided under Section 155 of the Companies Act, 1956 (**the 1956 Act**). In *Ammonia Supplies Corporation*<sup>12</sup> the Supreme Court of India held that even though jurisdiction under Section 155 of the 1956 Act is summary, it is nonetheless obligatory for the court to adjudicate on the facts and circumstances of each case. Therefore, a company judge must assess whether the issue truly falls within the scope of rectification and if so, proceed to determine it. Allegations of fraud and forgery cannot merely defeat jurisdiction as the court must evaluate whether such claims are *bona fide* or merely raised to avoid adjudication. The court emphasized that statutory requirements explicitly authorize the company court to decide any question necessary or expedient to resolve the petition which includes disputed questions of fact<sup>13</sup>. Similarly, where the company court is to decide questions of title, jurisdiction is not simply ousted due to the complexity or intricacy of the facts, as to do so would simply oust the jurisdiction of the company court contrary to the law. If such questions are automatically excluded due to their complexity, the provision's purpose would be nullified.<sup>14</sup> Hence, these judgments also are clear on the issue that the jurisdiction of the company court is not ousted simply because of disputed questions of fact, rather it falls within the jurisdiction of the company court to resolve such matters by adopting procedures that it thinks expedient and necessary. The courts have gone on to explain that jurisdiction can never be ousted by the conduct of parties by setting up unnecessary pleas and stating that the matter involved complicated questions of fact. This would defeat the very purpose of the specific remedies before the company court under the 1956 Act and by giving that court procedural flexibility while exercising jurisdiction.

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<sup>11</sup> *Supra* note 6.

<sup>12</sup> *M/s Ammonia Supplies Corporation (P) Ltd., v. M/s Modern Plastic Containers Pvt. Ltd.* (AIR 1998 SC 3153).

<sup>13</sup> *Shri Gulabrai Kalidas Naik v. Laxmidas Lallubhai Patel of Baroda* (1978) 48 Comp Cas 438 (Guj).

<sup>14</sup> *E.V. Swaminathan v. K.M.M.A. Industries and Roadways Private Ltd.* (1993) 76 Comp Cas 1 (Mad).

12. In view of the aforesaid, I cannot agree with the opinion of the majority on issues No.1, 2, 4 and 5 which have ultimately given the parties the option to take the matter to the civil court for the reason that the Company Judge should not have exercised jurisdiction under Section 290 of the 1984 Ordinance given that the dispute involved complicated questions of fact. In my opinion, this amounts to ousting the jurisdiction of the Company Judge which jurisdiction is specifically vested with the Company Judge under Section 7 of the 1984 Ordinance. This jurisdiction cannot be ousted merely on the pretext of a factual dispute as Section 7 of the 1984 Ordinance specifically provides that the Company Judge *shall have jurisdiction* which means that the statute has authorized the Company Judge to exercise jurisdiction under the 1984 Ordinance. Jurisdiction vested with the court by way of statute cannot be ousted merely because the parties contend that the dispute involves complicated facts, the law does not provide so. The only way that this jurisdiction can be shared with the civil court is if the Federal Government, by way of notification empowers any civil court to exercise any or all of the jurisdiction under the 1984 Ordinance. Turning to Section 290 of the 1984 Ordinance, the provision allows an application to be filed by members holding not less than 20% of the shares in the company or the company registrar. Such an application can invoke the jurisdiction of the Company Judge on the ground that the affairs of the company are being conducted in an unlawful or fraudulent manner or in a manner not provided under the memorandum or in a manner oppressive to any member(s) or creditor(s) or conducted in a manner prejudicial to public interest. A bare reading of this section indicates that the provision in itself suggests that the issue raised thereunder will involve disputed questions of fact. The language of Section 290 of the 1984 Ordinance requires issues of *fraud, oppression, mismanagement* to be raised before the Company Judge which means that the intent of the legislature was for the Company Judge to decide upon factual issues connected with the dispute of oppression and mismanagement. The language of this provision does not suggest that where disputed questions will arise the jurisdiction of the Company Judge will be ousted. It also does not suggest that questions of fact, which require framing of issues and leading of evidence, are not within the ambit of the powers of a Company Judge. Section 290 of the 1984 Ordinance



requires the Company Judge to decide upon issues of oppression and mismanagement and in doing so it can exercise powers in terms of Sections 291, 292, 293, 294 and 295 of the 1984 Ordinance where required. These provisions read with Section 290 of the 1984 Ordinance give the Company Judge ample flexibility to decide upon disputed questions related to oppression, fraud and mismanagement. So essentially, the Company Judge must decide all matters necessary or in connection with the issues raised under Section 290 of the 1984 Ordinance. If the jurisdiction of the Company Judge were to be ousted simply because the issue raised before it is disputed or require evidence, then by way of a reply to such an Application, the jurisdiction of the Company Judge could be ousted by raising the assertion that the matter involves disputed and complicated questions of fact for which the dispute can be referred to the civil court. In this context, the reference to *summary proceedings* under Section 9 of the 1984 Ordinance would be totally defeated. Consequently, Sections 7 and 9 read with Section 290 of the 1984 Ordinance vest jurisdiction with the Company Judge to decide matters related to oppression and mismanagement, thereby granting the Company Judge the discretion and procedural flexibility on how to proceed with the case. The Appellants rely on case law specifically relating to title disputes, where complex ownership issues justify recourse to civil courts, and rectification cases, where jurisdiction lies with the company judge unless intertwined with intricate title disputes requiring prior adjudication by a civil court. In contrast, proceedings involving oppression, mismanagement, and fraud address the conduct of the company's affairs and fall, by their nature, within the jurisdiction of the company court. Therefore, principles applicable to title disputes must not be extended to matters involving internal governance, where the distinction between ownership and management issues must be maintained. The question now is to ascertain whether the Company Judge was required to frame issues in this case.

13. The factual dispute raised by the Appellants, Sher Asfandiyar Khan and Sajjida Naeem is that the Shareholder Agreements are disputed as they never agreed to the said agreements and further that the signatures on the documents are fake and forged and therefore their authenticity had to be established in the first instance before relying on its content. To substantiate this argument,

the Appellants' counsel argued that the original Shareholder Agreements were never produced before the Company Judge, hence, the court relied on secondary evidence in furtherance of its finding that the Khan Family unlawfully transferred 30% shares in their favour. They argued that the Impugned Judgments rely on photocopies of documents to conclude that the signatures on the documents are similar and further to conclude that the Khan Family was in breach of its obligation under the Shareholder Agreements. On the basis of this factual dispute, the Appellants question the discretion exercised by the Company Judge to decide the factual dispute without framing of issues and leading of evidence. Given that the issue is whether the Company Judge was required to frame issues in this case, what needs to be seen is whether the Impugned Judgements have relied only on the Shareholder Agreements to conclude that the 30% transfer of shares in favour of Sher Asfandiyar Khan was unlawful and oppressive.

14. The Application filed by the Shah Family raised three grounds of oppression. The Company Judge accepted only one ground of oppression being the transfer of the 30% shares in favour of Sher Asfandiyar Khan holding it to be an unlawful transfer of shares which amounted to an act constituting oppression. In this context, the court concluded that the transfer of shares was contrary to the express terms of the Main Shareholder Agreement, which clearly required Alamgir Khan to hold the shares in safe custody for the limited purposes envisioned under the Main Agreement. The Khan Family also provided no explanation as such for the transfer of the 30% shares. Further, the Company Judge noted and relied on procedural irregularities and discrepancies in the Company's record and corporate documents regarding the holding of the two Board of Directors meetings on 15.01.1999 to conclude that on a *balance of probabilities*, the transfer of the 30% shares was done without the knowledge of the Respondents.<sup>15</sup>

15. I have examined the documents relied upon in the Impugned Judgments and come to a similar conclusion that the transfer of shares is dubious on account of non-disclosure, non-compliance and lack of reasonable explanation as to its reasons. This

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<sup>15</sup> Notice of the Board of Directors Meeting, to be held on 15.01.1999 at 11:00 am at House No.59, St. 3, E/7 Islamabad, drawn up in Karachi on 10.01.1999 and Notice of the Board of Directors Meeting to be held on 15.01.1999 at 12:30 am at House No.59, St. 3, E/7 Islamabad, drawn up in Karachi on 15.01.1999.

understanding is based on a consideration of the documents other than the Shareholder Agreements, which makes it clear that even without reliance on the Shareholder Agreements, the documentation points to the transfer being unlawful in nature and therefore, oppressive in effect. The lack of transparency, failure to adhere to proper procedural requirements, and the unexplained deviation from standard practice all contribute to a broader understanding that the transfer of shares in favour of Sher Asfandyar Khan was carried out contrary to compliance standards and the statutory requirements outlined in the 1984 Ordinance.

16. The first set of documents are with reference to the Board of Directors meetings held in Islamabad on 15.01.1999 at two different times; 11:00 am being the time for the first Board of Directors meeting and 12:30 pm being the time for the second Board of Directors meeting. The notice was issued for the first board meeting on 10.01.1999, for which the agenda was the transfer of shares by Alamgir Khan, and for the second board meeting, the notice was issued on the same day 15.01.1999.<sup>16</sup> No explanation has been offered as to why there were two separate board meetings within such a short period of time in Islamabad, the venue being House No.59, St.3, E/7, Islamabad, rather than at the registered office at Karachi. Interestingly, as per the minutes of the first board meeting, Sher Asfandyar Khan, Alamgir Khan, Neelofar Shah and Sajjida Naeem attended the meeting whereas the minutes are signed by Sher Asfandyar Khan, Neelofar Shah and Sajjida Naeem. The minutes of the second board meeting purportedly is signed by Sher Asfandyar Khan and Sajjida Naeem, however, even her signatures are questionable as while the minutes of the first board meeting show a centrally aligned signing section with spaces for each director to sign, the minutes of the second board meeting only show Sher Asfandyar Khan in the signing section whereas Sajjida Naeem appears to have signed in a random corner. Again, no explanation has been offered as to why there is a difference in the way these minutes were signed. Importantly, neither of the minutes of meeting are signed by Alamgir Khan who has transferred the shares in favour of Sher Asfandyar Khan and for whom there appears to be no mention in the signing section. These inconsistencies in venue, notice, attendance

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<sup>16</sup> *Ibid.*

and signatures particularly when seen in the context of transfer of shares raise serious questions as to the integrity of process. It reflects on the conduct of the Khan Family which cannot be reconciled with the standards of probity and corporate governance required under the 1984 Ordinance. What is striking is the fact that Alamgir Khan has offered no explanation in the replies<sup>17</sup> filed to the Application as to why he opted to transfer the 7,499 shares in favour of his brother. Further, there is no explanation or any discussion as to why the Shah Family agreed to this transfer of shares either.

17. The second set of documents are the documents required to be filed with the Securities and Exchange Commission of Pakistan (**SECP**) particularly with reference to the transfer of shares. Despite repeated reminders from the SECP from 2002 to 2006 the Company failed to submit details of the transfer of shares.<sup>18</sup> The SECP in its replies before the Company Judge as well as its concise statement before us has stressed on the fact that repeated letters were issued seeking information on the transfer of the 7,499 shares including the filing of the required share transfer deeds with the SECP. The SECP stated that relevant information pertaining to the transfer of shares has not been provided to it including the date of transfer and the minutes of meeting.<sup>19</sup> For instance, even where attempts at compliance were made, they were marked by selective disclosure and concealment. This is evident from the SECP's letter dated 16.04.2002, which, among other things, specially requested details regarding the transfer of the 7,499 shares to Sher Asfandyar Khan. In response, the Company merely provided a copy of the minutes of the first Board of Directors meeting held on 15.01.1999 at 11:00 am, while omitting the minutes of the second Board of Directors meeting later that same day at 12:30 pm.<sup>20</sup> Similarly, the annual return Form A for the year 1999 did not record the date of the transfer, nor was any record of the transfer deed provided to the SECP of the transfer of the 7,499 shares. Therefore, the basic issue for the Respondents as well as the SECP has been one of disclosure and statutory compliance which would indicate that the

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<sup>17</sup> Reply filed by Alamgir Khan (Respondent No.4) in JM No.31 of 2007, dated 18.12.2007, at page 252, Part-2 of Civil Appeal No.1844.

<sup>18</sup> Letters No. K-07074/Com./02/ dated 16.04.2002, No. K-07074/COM/2003 dated 27.01.2004, No.07074/Com/2005/6856 dated 21.11.2005, No. K-07074/Com/2005/14115 dated 18.02.2005, No. K-07074/Com/2006 dated 07.07.2006 and O10-0938/2006 dated 05.07.2006

<sup>19</sup> The SECP provided an Inspection Report dated 15.11.2006 where it highlighted multiple discrepancies in annual filings and statutory compliance.

<sup>20</sup> Letter of Compliance with the Provisions of the Companies Ordinance, 1984 dated 01.01.2006.

Respondents were fully aware of the transfer of shares in favour of Sher Asfandyar Khan. Given that the shareholding structure changed substantially with the transfer of shares in favour of Sher Asfandyar Khan the standards of disclosure and statutory compliance become relevant. This transfer of shares gave the Khan Family total control over the Company as they became an absolute majority in the Company from being majority shareholders. It is also worth noting that on 03.12.2007, the Shah family filed a complaint before the SECP challenging the resulting control of Sher Asfandyar Khan over the Company, as a result of which the SECP de-registered all annual filings/returns from 1999 till 2006, noting that the dispute should be taken up before the High Court.<sup>21</sup> Subsequently, the Company filed a revision petition under Section 484 of the 1984 Ordinance against such de-registering, acknowledging that the decision was taken *ex-parte* and directed that the Company's returns be placed on record pending the High Court's decision, with liberty to file revised returns thereafter.<sup>22</sup>

18. The third set of facts that are relevant are with reference to why 7,500 shares were held by Alamgir Khan. The Respondents state that these shares were held in *safe custody* as they ultimately had to be distributed amongst different partners of the Company. While the Appellants don't offer any explanation, the Respondents rely upon the suits filed by Respondents No.3 and 6, namely, Saghir A. Qureshi<sup>23</sup> (consultant for financial and banking arrangements) who was entitled to 10% of the same 30% allocation and Syed Khalid Hussain Shah<sup>24</sup> (logistical and financial assistance during the construction and pre-operational phases of the projects) and was entitled to 6% of the 30% professional share. Both individuals instituted suits seeking specific performance of contract, cancellation, permanent injunction, and declaration, which were ordered by the Company Judge to be transferred before the original side of civil jurisdiction of the High Court which are still pending.<sup>25</sup> Similarly, Respondent No.4 being M/s Shuja Raheem Associates (a firm of architects and consultants) were entitled to 4% of the same 30%

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<sup>21</sup> Letter No.K-/COM/2010 dated 27.08.2010

<sup>22</sup> Order of Mr. Muhammad Siddique, Registrar of Companies dated 12.11.2013

<sup>23</sup> Suit for Specific Performance (Suit No.847 of 2008) titled Saghir A. Qureshi v. M/s. Ofspace Private Limited, before the Senior Civil Judge, Karachi (South), at page 1123, Part-8 of CA No.1843 of 2019.

<sup>24</sup> Suit for Specific Performance (Suit No.899 of 2008) titled Syed Khalid Hussain Shah v. M/s. Ofspace Private Limited, before the Court of IXth Senior Civil Judge, Karachi South, at page 1144, Part-8 of CA No.1843 of 2019.

<sup>25</sup> Suits No. 1020/2013 and No. 1021/2013.

allocation. Respondent No.4 subsequently entered into an agreement with the Company to accept Rs.5 million in lieu of their 4% shares and consequently, lost the right to be heard before the Company Judge. These proceedings lend support to the Respondents' assertion that the purpose of the Shareholders Agreements was to allocate 30% of the shares to various professionals in recognition of their contributions toward the successful completion of the projects. These facts when seen in the backdrop of the Shareholder Agreements establish the narrative offered by the Respondents with reference to the business dealings between the parties. The Appellants have offered no explanation whatsoever as to why 7,499 shares were transferred in the name of Sher Asfandiyar Khan to tilt the balance in favour of the Khan Family. One obvious benefit that the Khan Family took from this transfer is that since 1998 until the filing of the Application in 2007, Sher Asfandiyar Khan has remained the CEO of the Company being for more than three terms. While the Respondents do not dispute two terms that is from 1997 till 2001 and then from 2001 till 2004, they do dispute his being CEO from 2004 onwards.<sup>26</sup> It is further worth noting that from 2000 onwards till the filing of the Application by the Respondents, Sher Asfandiyar Khan also serves as a Director of the Company alongside his designation of CEO.<sup>27</sup> As stated above, the Company Judge did not agree with the Respondents when it came to the grounds of oppression taken in the Application that they had disengaged with the Company for some time however that disengagement did not include the transfer of shares which ground stood its weight and was termed unlawful and oppressive.

19. In assessing these sets of facts, the Impugned Judgments relied upon a large number of documents and facts to conclude that the transfer of shares in favour of the Appellants was unlawful and oppressive. It was therefore determined that the standard of proof required in company matters such as this is that of *balance of probabilities* rather than proof beyond reasonable doubt. In civil matters, this standard requires the court to assess whether, on the evidence as a whole, a fact is more likely than not to be true. It is

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<sup>26</sup> Sher Asfandiyar Khan remains the CEO of the Company according to the corporate record of the SECP provided; Form A and Form 29 filed for the years 31.12.1998 and Form A filed for the years 31.12.1999, 30.12.2000, 27.12.2001, 31.12.2002, 31.10.2003, 30.10.2004, 31.10.2005, 31.10.2006 and 18.10.2007.

<sup>27</sup> Sher Asfandiyar Khan is elected and continues to remain a Director of the Company according to the corporate record of the SECP provided; Form A and 29 filed for the year 27.12.2001 and Form A filed for the years 30.12.2000, 31.12.2002, 31.10.2003, 30.10.2004, 31.10.2005, 31.10.2006 and 18.10.2007.

neither necessary nor appropriate to frame formal issues or conduct a full trial to determine the veracity of documents such as the Shareholders Agreements, rather, the court must evaluate the totality of the material, including primary and secondary evidence, where particularly in the context of secondary evidence the documents are reasonably credible, without strict insistence on original proof and reach a conclusion accordingly. Even if the Shareholder Agreements were, for argument's sake, treated as the sole source of evidence for determining oppression, their contents merely reflect a scheme of understanding between the parties and cannot displace or override the mandatory requirements of company law. At best, the Agreements which cannot reflect some understanding between the parties and their proof or disproof, will not cure the numerous lacunas and illegalities in the transfer of shares in the name of Sher Asfandyar Khan.

20. With reference to issue No.3, the question basically is whether the claim of trust over 30% shares is legally tenable given the bar under Section 148 of the 1984 Ordinance. This issue has been framed specifically with reference to the 7,500 shares held by Alamgir Khan in safe custody and the plea raised by the Appellants that the Respondents safe custody argument in effect means *holding the shares in trust* which is not permissible under the 1984 Ordinance. At the very onset, the record shows that this issue was never raised before the Company Judge or the Division Bench by the Appellants. It was raised for the first time before this Court by the Appellants which plea cannot be accepted given that it is a settled law that a party has no right to raise an absolutely new plea before the Supreme Court which it has not pleaded or raised in the lower forum, nor can such plea be allowed to be raised as a matter of course or right on the pretext of doing complete justice.<sup>28</sup> Even otherwise, there is no merit in this argument given that the Respondents contention simply was that the shares held by Alamgir Khan were ultimately to be allotted to certain partners in lieu of their contributions in good will. There is no reference to the creation of a trust or instrument of trust by the Respondents, nor is Section 148 of the 1984 Ordinance relevant to the safe custody argument. The entire plea of the Respondents has been twisted and

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<sup>28</sup> Wali Jan v. Government of KPK through Secretary Agriculture, Livestock Cooperative Department, Peshawar (2022 PLC(CS) 336) and Sarhad Development Authority NWFP v. Nawab Ali Khan (2020 SCMR 265).

misconstrued by the Appellants which is not supported by the record. Therefore, in my opinion, Section 148 of the 1984 Ordinance is not relevant to the dispute between the parties.

21. Ultimately, the Company Judge reestablished lawful balance and reinforced the integrity of the Company's governance. The court ordered an EOGM under the Official Assignee's supervision, strictly reflecting the undisputed shareholding ratios of 44% for the Shah Family and 26% for the Khan Family. The court directed that the chairman come from the Shah Family and the chief executive officer from the Khan Family, fostering shared control. To address the disputed 30% shares, the court placed the original certificates in the Official Assignee's custody, giving the parties one year to agree on a transfer; if no agreement was reached, the shares would revert to the Shah Family, respecting third-party claims. The court ensured transparency by granting directors immediate access to records, and set a one-year transitional governance framework, after which the Company would comply fully with the 1984 Ordinance. These measures ensure fair, transparent governance, protecting all parties' rights.

22. The issues arising in the present matter bring into sharp focus the fundamental role of corporate governance in ensuring that companies act with transparency, fairness, and accountability. The protection of shareholder rights, the obligation of disclosure, and the adherence to ethical governance practices are not optional aspirations; they are indispensable pillars upon which trust in corporate structures is built. It is by steadfast commitment to these principles that corporations earn legitimacy, foster sustainable growth, and contribute to the economic and social well-being of the wider community. Corporate governance is, in its essence, a framework designed not merely to direct corporate conduct but to safeguard the interests of all stakeholders through structured, principled oversight. This Court accordingly reaffirms that transparency, good faith disclosure, and the protection of shareholders must remain at the heart of all corporate endeavors, for it is only through such adherence that confidence in the corporate sector and by extension, in the rule of law itself, can be maintained and strengthened.



23. In view of the above, these Civil Appeals are dismissed with no order as to costs.

'Approved for Reporting'

**JUDGE**

**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 Asfandyar 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
	<b>...Appellants</b>

**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 Asfandyar 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 Ordinance<sup>1</sup>, 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.

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<sup>1</sup> 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 ownership<sup>2</sup>, 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 privately<sup>3</sup>. The relationship between a trustee-shareholder and their beneficiary is a matter external to the company's dealings<sup>4</sup>, and permitting companies to take notice of

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

<sup>3</sup> See *Bland and Anor v Keegan* [2024] EWCA Civ 934

<sup>4</sup> 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 8<sup>th</sup> 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