

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

52/25

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PRESENT:

Justice Shahid Waheed
Justice Musarrat Hilali
Justice Ali Baqar Najafi

Civil Appeal No. 209 of 2025 & CMA No.2936 of 2025

[Against the judgment/decreed dated 10.03.2025
passed by the learned Single Judge of High Court
of Balochistan, Quetta in Civil Revision
No.583/2023]

Muhammad Zaffar Khan and another
Versus
Syed Shumaila Zaidi and others

...Appellant(s)

...Respondent(s)

For the Appellant (s) : Mr. Kamran Murtaza, Senior ASC
Syed Rafaqat Hussain Shah AOR

For the Respondent(s) : N.R.

Date of Hearing : 08.05.2025

JUDGMENT

CMA No.2936 of 2025

For the reasons mentioned therein, this application to place
on record certain documents is allowed.

Main Case

ALI BAQAR NAJAFI, J.- Through this appeal under Article
185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973,
the impugned judgment has been challenged whereby the learned
Single Judge had reversed the findings given by both Civil
Court/trial court as well as Additional District Judge/Appellate
Court.

2. Brief facts giving rise to the filing of this appeal are that the predecessor of respondents No.1 to 6, namely, Altaf Hussain and respondents No.7 to 9 filed a civil suit on 19.12.2016 against the petitioners claiming to be the legal heirs of Khizar Hussain who had an immovable property measuring 6800 sqft in Ward No.12 Mouza Urban Tehsil and District Quetta. After his death the subject house devolved upon them vide inheritance mutation No.428 dated 16.03.2001. Respondents No.7 to 9 along with their mother, namely, Salma Sultana had executed a general power of attorney in favour of respondents No.1 to 6. However, it stood terminated on the death of their mother on 13.01.1999, but while acting as an attorney, the predecessor of respondents No.1 to 6/Talib Hussain rented out the house in question to the Election Commission of Pakistan vide rent agreement dated 23.05.2015 on monthly rent of Rs.55,000/-. Since respondent No.4 was carrying on business of real estate with the name and style of "Dosti Estate Bashira Town, Rawalpindi" and respondent No.5 was studying in a Medical College Islamabad and both had enjoyed good relations with the petitioners being their neighbourer in Quetta. The petitioners No.1 & 2 had purchased an immovable property in Bahria Town, Rawalpindi for a consideration of RS.20,000,000/- but due to some management problem the payment was made through respondent No.4 having close interaction, had facilitated the payment. But later Bahria Town Scheme failed and after about half a year, the petitioner approached respondents No.1 to 6 and demanded their money with a profit of Rs.70 lacs for every six months. The predecessor of respondents No.1 to 6 namely, Talib

Hussain had agreed to negotiate and it was agreed that the property purchased by the petitioner would be purchased by respondent No.4 for a consideration of Rs.1,60,00,000/- which would be paid in two instalments. In order to arrange the payment, the predecessor of respondents No.1 to 6 proceeded to Islamabad. However, on his back the respondents got registered FIR No.161/2015, dated 14.11.2015, under section 406, 417, 419, 420, 424, 109, 465, 468, 471, 34, 504, 506 PPC at police station Industrial Area, Quetta against Talib Hussain and respondents No.4 & 5. The predecessor of respondents No.1 to 6; Altaf Hussain was arrested on 02.12.2015 in Islamabad and brought to Quetta and he was admitted to bail on 07.12.2015 and during the custody Khalid Mehmood Investigating Officer allegedly tortured him and forced him to execute a contract with the petitioners in respect of the said house on 04.12.2015 which was authenticated by a Notary Public. During police custody, the female family members were also compelled to produce the power of attorney and then Altaf Hussain the predecessor was brought before the Assistant Collector Grade-I Quetta where he had to execute mutation No.926 of the subject house in the name of the petitioners and then on 16.05.2015 the predecessor of respondents No.4 & 5 was acquitted by the Magistrate Quetta under section 249-A Cr.P.C. The petitioner, meanwhile, issued a notice to the Election Commission of Pakistan, Balochistan to deposit the rent in the account of Muhammad Jamshed. Because of this episode, unfortunately Altaf Hussain, had died.

3. After hearing the learned counsel for the petitioner and perusing the record, we have straightaway observed that, admittedly, Altaf Hussain, the predecessor of respondents No.1 to 6 remained in police custody in FIR No.161/2015 (supra) from 02.12.2015 to 07.12.2015 and during this period an agreement was got signed on 04.12.2015. It has been so admitted in written reply submitted by the petitioner in the suit filed by the respondents. Besides, Arshad Khan (DW-5) identified the thumb impression on the agreement (Exh.D-4) who had also admitted that the Iqrarnama was executed after Juma prayer which means that on 04.12.2015 Altaf Hussain was in police custody and was brought before the said Magistrate. Even otherwise, the petitioners through their attorney admitted in cross-examination the transitory remand by the Judicial Magistrate Islamabad to Quetta for 02 days and then the production of Altaf Hussain to the Magistrate on 04.12.2015, before the grant of post arrest bail on 07.12.2015.

4. Under the law a transaction or an agreement executed under custody or detention could potentially be considered as having been made under coercion, duress or undue influence, if the free consent is not given or the expressed will was the outcome of such circumstances.¹ A person in custody or detention may be particularly vulnerable to coercion or duress as his freedom or liability to resist is severely limited. A person under the custody of the law enforcement agencies having control over the situation if enters into an agreement against best interest has an option to

¹ *Mst. Hamida Begum Vs. Mst. Murad Begum and others* (PLD 1975 Supreme Court 624)

avoid it hence can be challenged in the court as voidable.² A legally binding contract requires several elements i.e. an offer, acceptance of that offer, consideration, the parties having legal capacity to contract but not for an unlawful purpose, surely with a free consent (meeting of the minds or consensus *ad idem*). If the consent is procured by coercion, undue influence, fraud, misrepresentation or mistake, the consent is not free.³ An undue influence is a demonstration of controlling the will of the other party because of the prevailing situation of the main party. While coercion is an act of enforcing a will but the undue influence or duress are the consequence of coercion. A contract procured under duress by one party over the other is void and any benefit received therefrom must be restored and the loss be made good to such party.⁴

5. Duress in its more extended sense means that the degree of constraint or danger either actually inflicted or threatened which creates sufficient insecurity or an apprehension to overcome the mind and will of a person of ordinary fairness. It does not necessarily imply that the means used should be in themselves unlawful, but includes the use of lawful means in an unlawful manner or for an improper purpose. A duress by imprisonment, both lawful or unlawful, to force the party into executing a contract is illegal.

6. In such circumstances, the contract would be deemed to be void under section 2(g) of the Contract Act, 1872 since it lacked

² *Lahore Stock Exchange Limited Vs. Pedrick J. Whyte Group (Pakistan) Ltd. and others* (PLD 1990 Supreme Court 48).

³ *Dilber Hussain Hashmi and another Vs. Muslim Commercial Bank, Shahra-e-Iqbal Branch, Quetta* (2001 SCMR 265)

⁴ *Pakcom Limited and others Vs. Federation of Pakistan and others* (PLD 2011 SC 44)

consent as defined under section 13 of the said Act and free consent under section 14 of the Act *ibid*. The complainant of the FIR was obviously in a position to dominate the will of accused Altaf Hussain and therefore, the burden lied upon the petitioner to prove that he had not exerted any influence to strike a bargain/deal. It has not come on record that respondents' predecessor or respondents No.4 & 5 have received any single penny from any transaction of Bahria Town project. The predecessor of respondents No.1 to 6; Altaf Hussain was the co-owner of the house and that executant Salma Sultana had died on 13.01.1999 which terminated the agency (Exh.P-3). Obviously, the transaction so made were based on the agreement which was void therefore the learned High Court had declared the agreement dated 04.12.2015 as void and consequently mutation No.926 was cancelled and mutation No.428 was restored.

7. We have not been able to find ourselves in agreement to the learned counsel for the petitioner that after the release of Altaf Hussain the mutation was sanctioned and that it took one year to challenge the said mutation which ought to have been challenged immediately after the transaction. However, we are not impressed with the said argument since the suit was filed within time and the petitioner was under heavy burden to prove that the transaction so made was without any duress and was made with free consent. We have not been able to find such evidence to support the case of the petitioner and that is the reason that the High Court has dealt the question extensively and had rightly held that the transaction made consequent to the agreement in police custody was void.

8. For the foregoing reasons, we do not find any ground to interfere into the findings given by the High Court and **dismiss** this civil appeal.

ISLAMABAD

08.05.2025

APPROVED FOR REPORTING

A.Qadoos

