

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
SMA No.27 of 2004

Date	Order with signature of Judge
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1. For orders on CMA No.605/2016.
2. For orders on CMA No.1227/2015.

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**3<sup>rd</sup> May, 2016.**

Mr. Ghulam Mustafa Phull, advocate for applicant a/w  
applicant Ghulam Qasim.

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- 1). Urgency granted.

The contents of CMA No.605/2016, are that: -

- “1. That Mst. Irshad Begum widow of late Iqbal Husain assassinated at Lahore on 03.11.1999.
2. That the deceased Irshad Begum at the time of her death left the following surviving legal heirs: -

- a. Mst. Rubina Daughter
- b. Afzal Hussain Son (Petitioner)
- c. Mst. Nagina Daughter
- d. Ghulam Qasim Son
- e. Sajjad Ali Son

2. Learned counsel for the applicant namely Ghulam Qasim *inter-alia* contends that the instant SMA was filed by the petitioner in the year 2004 for obtaining succession certificate before the District court and in pursuance of order of that Court lockers of the deceased, *murdered in Lahore*, was opened and inventory was prepared, whereby it is was disclosed that deceased was having many properties, exceeding the limits of that Court; accordingly instant SMA was filed before this Court. During pendency of instant SMA, in the year 2008, petitioner Afzal Hussain was murdered in the territory of *District & Sessions Court **Lahore, Punjab***, whereon he was attending his mother's case, where-after, in the year 2012 one Sajjad Ali younger brother of applicant was also murdered by the same party at Syed Pur Chattan, ***District Gujranwala***. And the applicant who is present, contends that many times criminal assaults have been made upon him but survived hence it is difficult for him to approach this Court as he is receiving

continuous threats by the same party, who are in possession of subject matter land.

3. The above *facts* are nothing but a complete failure of the *State* which is not only *legally* obliged rather *bound* not only to ensure protection to *guaranteed fundamental rights* which, *undeniably*, shall include an *easy & safe* access/passage to an *individual* (citizen) to **'justice'** (proper legal forums). I can't help in insisting here that the *'Pillars'*, fulfilling the terms of the **'State'** if indulge in jotting down reams in name of **'rights, interests and obligations'** of individuals but *fail* in enforcing the same then whole *pain* and process shall be nothing but a labour with no **'value'**. I would refer the relevant portion from the case of *MFMY Industries Ltd. v. Federation of Pakistan* (2015 SCMR 1549) wherein, while describing the state, it was observed:

3. .... A State, as understood today, constitutes three foundational organs i.e Legislature, Executive and Judicature. In ordinary parlance, these (*organs*) are also known to be the three pillars of the State. The political philosophers, jurists, constitutional experts and even judicial opinions pronounced all over the world (*specially in the countries having the democratic system / set up for governance*) are unanimous in their views that the entire structure of the State is founded, built upon, and secured only on account of the said pillars. And due to lack/absence or imbalance in respect of any of these organs / pillars, the very concept of State is periled and its existence is put at risk.

In the said case of *MFMY Industries Ltd* supra, the importance of the *Executive* has been insisted/emphasized as:

Whereas the object of executive is to not only carry out and run the affairs of the State in accordance with the laws made by the legislature and any policy / direction given to it, but also comply with law, follow the established rules, norms and standards expedient and necessary for the due administration of the State. Thus, it (executive) is responsible for the governance of the State and for carrying out its affairs in consonance with the **Rule of Law**.

There is no denial to the well established principle of law that the Courts are ultimate guardians of the rights of the individuals hence *even* mere technicalities should not operate against *legal rights* rather the Courts should come forward to rescue the *aggrieved* but

within *limitations* of the law. In said case honourable Court of Pakistan also held that:

*“E’ ..It is in the aforementioned circumstances that where the legislature or the executive branch has erred in the exercise of its jurisdiction or the executive branch has erred in the exercise of its jurisdiction and is responsible for any of the deviations indicated above, that an affected person for the purposes of seeking redressal of his grievance against such wrong and / or for enforcing his rights under the law, including his fundamental rights as enshrined in the Constitution, comes forth to the judicature by knocking at its door (note: in the contest of above, I am purposely not making reference to any private litigation between two individuals). This is the last resort for a beleaguered and aggrieved person. It is thus that the judicature is conceived, perceived and is meant to act as the final arbiter not only vis-à-vis the interpretation of the Constitution, the statutory law (s), but is to also ensure that RULE OF LAW is adhered to and the rights of the citizens / persons approaching the courts are determined and enforced against the Might of the State. It is commonly and jurisprudentially known all over the republican and democratic world that the courts are the guardians of the Constitution and are responsible for preserving and securing the rights of the aggrieved citizens / persons as against the State.*

4. The perusal of the record shows that letter of administration was not issued by this Court, however, the instant SMA was allowed by order dated 19.04.2004. The purpose and object of **‘letter of administration’** needs not be defined again as is already explained. The object thereof *however* is to recover / collect the properties; protection thereof and distribution thereof amongst entitled. This *however* does not confer any title.

**In the case of Aisha v Mah Gul 2015 CLC 1719**

*“A person may apply under section 372 of the Act, 1925 for issuance of a certificate for the purpose but the application must be in described form with required details. On receipt the court has to adopt the procedure , summary in nature, provided to deal with the application filed for the purpose. While section 381 of the Act , 1925 described the effect of the certificate issued by a court on such application. The logic behind section 381 of the Act, 1925 is to enable a person to recover the debts on estate of a deceased, but the certificate issued for the purpose neither declared the rights of the persons interested, nor determined their shares in the recoverable debts. Rather issuance of the certificate is with sole purpose to protect the party*

paying the debts to holder of the certificate. However, a duty imposed on the holder of the certificate to disburse the **amount realized under the certificate among the persons entitled in accordance with their respective rights.** It is clear in view of the above discussion that a certificate issued under the Act, 1925 does not confer any title upon a person, but only enables him to recover the debts.

(Underlining is supplied for emphasis)

hence, I am of the clear view that appointment of **'administrator'** shall not necessarily require a *blood-relation*. The scope of **'Probate & Letters of Administration'** is not limited to provincial boundaries as is evident from explanation, provided in Section 273 of the **Succession Act, 1925** which reads as:

**(The said proviso shall also apply in (Pakistan) after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or on or after that date in proceedings pending at this in any of the territories which on that date were comprised in India).'**

5. The petition *already* stood allowed vide order dated 19.04.2004 but since no **'letters of Administration'** is issued hence keeping in view the series of murder (s) of number of sharers; attempts of abduction of present applicant showing his incapacity to access in this Court or within territory of Punjab, I find it in all fairness, equity and *justice* to appoint Nazir of this Court as **'administrator'** for purpose of collection/recovery of properties of deceased and distribution of amount amongst *legal entitled* persons. Since, *prima facie* it appears that a *risk* is involved in personal movement for recovery/collection of properties hence the Nazir of this Court shall write to Commissioner Gujranwala to take over the control of properties, within its jurisdiction, within capacity of Court of Ward Act but after resorting to legal course, provided by Courts of Wards Act itself as the Court of Wards Act also provides remedy for those who *themselves* cannot maintain/manage their properties. The Nazir shall also be competent to call for market

value and dispose of properties, as per inventory of locker, after verification.

6. The Nazir shall continue with status of '**administrator**' till the purpose and object thereof is served.

Office shall communicate this order to Deputy Commissioner, Gujranwala for compliance forthwith. Nazir shall complete this exercise within 15 days and submit report.

**JUDGE**

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Sami.