

PESHAWAR HIGH COURT PESHAWAR
FORM "A"

ORDER SHEET

<i>Date of Order or Proceedings</i>	<i>Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary</i>
2	3
30.5.2025	<u>CM No. 49-P/2023 in Company Case No. 07/2010.</u> Present: M/s Barrister Asad Ul Mulk and Shakir Ud Din, advocate for petitioner. Mr. Aamir Javed, Advocate for respondents. ***** <u>WIQAR AHMAD, J.-</u> On 7th September 2010, Dr. Maqbool Khan filed Company Case No. 07-P of 2010 before this Court against Mir Alam Jan Khan and others, seeking the following relief; That in view of the aforesaid humble submissions, it is earnestly prayed by the Petitioner above named that this Hon'ble Court may graciously be pleased to declare, hold and direct: (a) That immediate provision is made for change in the management of the company U/S 291 (c) of the Companies Ordinance 1984; (b) That the Respondent No. 1 to 3 are directed to render true and accurate accounts of the company [U/S] 230 to 251 of the Companies Ordinance 1984 for the periods of their control over the finances and management of the company. (c) That the conduct of the Directors and Officers of the company is examined for any misapplication/retention of money/property of the company and/or any acts of misfeasance or breach of trust in relation to the company for the purpose of Sections 294 and 412 of the Companies Ordinance 1984; (d) Any other relief which may be deemed fit and necessary in the circumstances of the case, may also be

granted.

This Court dismissed the case on 29th November 2010, ruling it non-maintainable and directing the petitioner to approach Civil Court due to disputed questions of fact. Consequently, petitioner filed Civil Suit No. 155/1 on 2nd January 2011 before learned Senior Civil Judge, Peshawar against Printing and Packages Corporation Private Limited and others. The suit was amended twice with court permission. Defendants submitted written statements, and the Civil Court framed necessary issues. On 8th October 2015, learned Civil Judge-XXII, Peshawar, passed a decree in favour of petitioner. Both parties feeling aggrieved, filed separate appeals (i) Regular First Appeal No. 355-P of 2015 and (ii) Regular First Appeal No. 366-P of 2015, which were transferred to the District Court due to enhanced pecuniary jurisdiction, becoming Civil Appeal No. 90/13 and Civil Appeal No. 91/13. During pendency of these appeals, the contesting respondents filed Civil Revision No. 262-P of 2020 and Civil Revision No. 263-P of 2020 before this Court, challenging the District Judge-X Peshawar's order dated 11th February 2020. This Court dismissed both revisions on 23rd November 2020. On 26th January 2021, learned Additional District Judge-X, Peshawar, dismissed both Civil Appeals, upholding the Civil Court's decree. The

contesting respondents then filed Civil Revision No. 198-P of 2021 before this Court, which was allowed on 9th October 2023. This Court set aside the concurrent judgments in favour of petitioner, ruling that the proper forum was the High Court in its original jurisdiction as a Company Court under the Companies Ordinance 1984 and now the Companies Act 2017. Dissatisfied, petitioner filed instant petition under Section 12(2) and 117 of the Code of Civil Procedure, 1908, seeking to set aside the judgment dated 29th November 2010, alleging it was obtained through fraud, misrepresentation, and error of jurisdiction.

2. Learned counsel for petitioner mainly contended that petitioner had earlier filed a petition before the Company Judge where respondent had raised an objection that the Company Judge, was not having jurisdiction in the matter and the disputed questions should have been decided after recording pro and contra evidence at the forum of civil Court. He stated that when petitioner approached the civil Court his suit was decreed and the appeal was also dismissed there-against. At the forum of revision respondent again raised an objection that the civil court was not having jurisdiction in the matter and that said objection had also prevailed in this court while deciding Civil Revision No. 198-P/2021 on 09.10.2023, whereunder the concurrent

findings of both the courts were set aside on the sole ground that the civil court was lacking jurisdiction. Learned counsel added that in the situation the petitioner remained remediless as both the forums have returned orders that they were not having jurisdiction. Learned counsel also referred to the contents raised in the application filed for condonation of delay and submitted that there was sufficient cause for filing the application at belated stage because the earlier law declared by Hon'ble Supreme Court of Pakistan in case of Lahore Race Club through Secretary (2008 SC 707), (**herein after referred to as "Lahore Race Club case"**) has subsequently been revisited by Hon'ble Supreme Court of Pakistan while giving its judgment in case of **Mian Javed Amir and others..vs. United Foam Industries (Pvt) Ltd Lahore and others reported as 2016 SCMR 213**. He also contended that misrepresentation even if innocent can still be considered as a misrepresentation for the purpose of application under section 12(2) Code of Civil Procedure, 1908, if a court is practically misled and its decision subsequently proves to have been wrong on jurisdictional plan. Learned counsel also placed reliance on the judgments cited as PLD 1974 S.C 139, PLD 1987 S.C 447, 2023 SCMR 1451, 2023 SCMR 334, 2019 SCMR 362, 2022 SCMR 1546, PLD 1998 S.C 161, PLD 2023 S.C 190.

3. Learned counsel for respondents submitted in rebuttal that the application had been filed at much belated stage. He also contended that the requisite grounds provided in 12(2) Code of Civil Procedure, 1908 were not available in the case in hand, because this court had relied on judgment of the Hon'ble Supreme Court of Pakistan rendered in Lahore Race Club Case which was the law declared by then and that the subsequent change of law by Hon'ble Supreme Court of Pakistan in the case of Mian Javed Amir (supra) could not be deemed to have ever been predicted by this court. In continuation learned counsel has submitted that learned counsel for respondents had fairly assisted court in accordance with prevailing law at the time and the court had also decided the matter in accordance with said law where element of fraud and misrepresentation or want of jurisdiction could not be indicated. In response to plea of counsel for applicants that they could not be left remediless, learned counsel for respondent conceded that under our jurisdiction an applicant could not be left remediless but added that applicants could have filed a fresh petition under the newly promulgated Companies Act, 2017 instead of filing application under section 12(2) Code of Civil Procedure, 1908. At this learned counsel for applicants replied that if the bar of earlier judgment dated 29.11.2010 is

removed by this court through this order then petitioners would feel satisfied that they are ready to file a fresh petition under the Act, 2017. He also made a request that the intervening duration be excluded from the limitation period when the petitioner had been vigorously pursuing his remedies before the civil court, appellate court and revisional forum and that same period should not be treating creating a bar of limitation in his way.

4. I have heard arguments of learned counsel for the parties and perused the record.

5. It is important to be noted that this court while holding that the intricate questions raised in the company case No. 07 of 2010 (alongwith CMs) could not have been resolved by this forum (and that same was requiring recording of pro and contra evidence at the forum of civil court) had also kept doors opened for petitioner/applicant by stating that after determination of the disputed question of facts in his favour, petitioner would be entitled to invoke jurisdiction of this court, if a need arised. For ready reference para-7 of the judgment dated 29.11.2010;

“ 7. So, in this view of the matter, it has become crystal clear on the strength of available record before this court, the intricate questions of facts cannot be determined by this court in exercise of summary jurisdiction. Let all such questions alleged by the petitioner be determined by a competent civil court. Needless to say that after determination of such disputed questions of facts in his favour, petitioner would be entitled to invoke the

jurisdiction of this court if the need be. Hence by allowing this CM, main Company Case No. 7 of 2010 with CM No. 37/2010 is hereby dismissed as such being not maintainable."

While rendering said decision and referring the parties to the civil court, this court had relied on judgment of Hon'ble Supreme Court of Pakistan in the case of Lahore Race Club (supra). Relevant observations of Hon'ble Supreme Court of Pakistan are;

"20. Having dealt with the matter in hand, in the manner discussed above, we hold that the High Court being the Court of "original jurisdiction" under the Companies Ordinance, 1984, is empowered under Section 152 of the Ordinance to entertain the application for "correction/rectification of the register of members", in the first instance, and thereafter if reached to the conclusion by taking into consideration the application, reply thereto and the documenters produced before it, that the matter is out of the purview of the summary procedure as provided under section 9 (3) of the Ordinance, it may refer/advise the party to approach the Civil Court for resolution of the disputed controversies."

6. It was clear that the Company bench of this Court was having jurisdiction. Said jurisdiction was also available to the applicant which they had availed in time and same is still available to him under section 5 & 6 of the Act, 2017. In the meanwhile the law changed when Hon'ble Supreme Court of Pakistan subsequently declared in Main Javed Amir's case that civil court would not have jurisdiction in company matters and that all such matters should be decided by Company Benches of High Court. Relevant para of the judgment is also reproduced hereunder;-

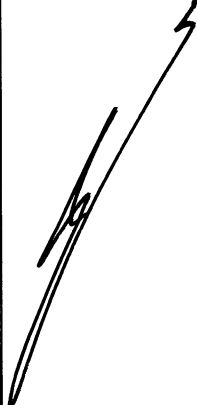
"19. In order to carry out the purposes of the above Section and the Ordinance itself and to determine the factual controversy between the parties, a Court

having jurisdiction under the Ordinance has ample power to record evidence in cases it deems fit. The object of section 152 of the Ordinance, which relates to factual controversy, cannot be achieved without entering into in-depth investigation and recording of evidence. Therefore, we hold that there is no legal bar for a Company Court to enter into factual inquiry, framing of issues for determination and recording of oral as well as documentary evidence in coming to the just conclusion of the case.

20. The learned Company Judge has also erred in law while directing the S.E.C.P. to appoint an Inspector who shall submit a report as to whether a case under section 305 is made out or not. Suffice it to observe that the power to appoint an Inspector under sections 263 and 265, vests with the Commission on an application by a member of the company or the Registrar of the Commission. The areas in which the Inspector was directed to investigate falls within the jurisdiction of the Company Court and can be investigated and booked into by a Company Judge itself.

21. The dictionary meaning of the term "Summary Proceedings" referred to in section 9 of the Ordinance of 1984, is "to be disposed promptly in simple manner out of regular course of the common law". This term by itself does not impose any restriction on the forum from recording evidence to reach a final conclusion. Section 9 of the Ordinance of 1984 does not exclude the jurisdiction of the Court to decide the controversial facts.

22. We, for the aforesaid reasons, are of the considered view that a Court having jurisdiction under the Ordinance of 1984 can record oral as well as documentary evidence in any dispute brought before it for adjudication and the learned Division Bench of the High Court fell in error in holding that the Civil Court would be the appropriate forum for resolving the controversy between the parties."



Subsequently under section 5 of the Act, 2017 jurisdiction of the civil Court was totally excluded under sub section 2 of section 5 of the Act, 2017. Petitioner could neither be left remediless nor their right of access to justice can be deemed abridged or otherwise effected by way of change of law be that through declaration of the new law in

the judgment of Mian Javed Amir's case or through the Act of 2017. Further this court vide its order dated 29.11.2010 have held that after deciding disputed questions by the civil Court in his favour petitioner would be entitled to invoke jurisdiction of this court. Although judgment on factual side had been passed by the court below in favour of the petitioner but this court while exercising revisional jurisdiction had set aside judgment of the court below mainly on question of lack of jurisdiction due to the new declared law in Mian Javed Amir's case. In the situation where the law has also been changed by promulgation of the Act, 2017, petitioner would be deemed to be able to approach the Company Bench of this Court under new law. The connotation "in his favour" used in para-7 of earlier judgment of this Court (para reproduced above) would not be considered a bar in their way. Similarly, their approach to Company Bench of this court afresh shall be deemed to be in continuation of earlier judgment of this court dated 29.11.2010. In such circumstances setting aside of the judgment dated 29.11.2010 of this Court is not deemed necessary under section 12(2) Code of Civil Procedure, 1908 particularly after the well-considered concessional statement of learned counsel for respondents and the way left open for applicant in para-7 of the earlier order of this court

(reproduced above).

7. In such circumstances instant petition under section 12(2) CPC is disposed of with the observations that the applicant shall be at liberty to move a fresh petition before this court under the provisions of the Act, 2017 and that such petition shall be deemed to be in pursuance of earlier order of this court dated 29.11.2010. This order shall be deemed passed by this Court while exercising its powers under section 12(2), 151, CPC read with section 6 (15) of Companies Act, 2017.

CM No. 40-P/2025.

Instant CM for impleadment of legal heirs of petitioner namely, Dr. Maqbool Khan (deceased) is allowed. Office shall make their entries in the case record as well as memo of the petition under section 12(2) CPC.

***Announced on;
30th of May, 2025***

JUDGE

Zarshad

(SB)

Hon'ble Mr. Justice Wiqar Ahmad