JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1339 OF 2025

SAQIB ALI KHAN

VS

SHUJA MUKHTAR KIYANI AND OTHERS

Petitioner by	**:**	**Mr. M. Zafar Khokhar, Advocate for the Petitioner.**
Respondents by	**:**	**Malik Shaukat Nawaz Awan, Advocate for Respondent No. 1.**
Date of hearing	**:**	**17.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, read with Section 24 of the Code of Civil Procedure, 1908 **("CPC")**, the Petitioner seeks the transfer and consolidation of two Civil Suits presently pending before two separate courts falling within distinct territorial jurisdictions in Islamabad.

2. The brief facts as per the Memo of Petition are that Respondent No. 1 has instituted a suit titled *"Shuja Mukhtar Kiyani vs. Saqib Ali Khan"* under Order XXXVII, CPC for recovery of an amount of Rs. 61,000,000/- before the learned Additional District Judge IX, Islamabad (West), based on Cheque No. 20687055 dated 14.06.2022, drawn on MCB Islamic Bank Ltd. The Petitioner has been granted leave to appear and defend, and the matter is currently pending adjudication.

3. In parallel, the Petitioner has filed a suit titled *"Saqib Ali Khan vs. Shuja Mukhtar Kiyani"* under Section 39 of the Specific Relief Act, 1877 before the learned Civil Judge-XVIII, Islamabad (East), seeking cancellation of the same cheque (Cheque No. 20687055) and related agreements dated 18.04.2022 and 14.06.2022. This suit also remains pending and involves substantially identical factual and legal issues.

4. Both suits allegedly revolve around the same parties, the same negotiable instrument, and a common set of facts and agreements. It is further mentioned in the Memo of Petition that given that the two courts fall under distinct administrative

jurisdictions namely Islamabad (East) and Islamabad (West) the District & Sessions Judges, Respondents No. 2 and 3, lack the authority to transfer or consolidate the matters *inter se*, under either Section 24 CPC or Section 12(2) of the West Pakistan Civil Courts Ordinance, 1962, creating a procedural impasse that necessitates intervention by this Honourable Court.

5. The learned counsel for the Petitioner contended that the present situation presents a textbook case for consolidation of proceedings, as both suits are intimately connected through their subject matter, documentary evidence, witnesses, and legal issues, all centring around Cheque No. 20687055 and the agreements dated 18.04.2022 and 14.06.2022; that upon the grant of leave to defend in the summary suit, the proceedings assume the character of a regular civil suit under Order XXXVII, Rule 7, CPC, making its consolidation with a civil suit for cancellation legally permissible and procedurally viable; that no alternative remedy is available to the Petitioner in light of the territorial division between the two Courts, and that constitutional jurisdiction under Article 199 is the only forum available to cure the procedural deadlock and ensure judicial consistency; that both suits are at preliminary stages, and their consolidation would not only avoid duplication of evidence and proceedings but would also uphold the principles of fair trial, equality before law, and due process as enshrined in Articles 4 and 25 of the Constitution; and that consolidation would further the objectives of judicial economy, prevent fragmented litigation, and eliminate the intolerable risk of contradictory judgments, which would otherwise compromise the rule of law and substantive justice. The learned counsel placed reliance on the judgment of the august Supreme Court of Pakistan in *Zahid Zaman Khan and others v. Khan Afsar and others* (**PLD 2016 SC 409**), where it was held that courts are vested with inherent jurisdiction to consolidate suits when the interests of justice demand it, and that procedural formalism must yield to substantive fairness. Further reliance was placed on *First Women Bank Ltd. v. High Court of Sindh* (**2004 SCMR 108**), in which the apex Court upheld the consolidation of a banking suit and a civil suit for cancellation originating from separate courts, emphasizing the need to avoid conflicting decisions where matters are closely intertwined.

6. On the other hand, the learned counsel for Respondent No. 1 vehemently opposed the maintainability of the present petition and the relief sought therein,

contending that the invocation of constitutional jurisdiction under Article 199 is wholly misconceived in the present circumstances, as the Petitioner has an adequate and alternative remedy available under the ordinary civil procedural law. It was submitted that no violation of any fundamental right or exceptional legal wrong has been established that would justify interference by this Honourable Court in its writ jurisdiction. It was further argued that the suit filed by Respondent No. 1 under Order XXXVII of the Code of Civil Procedure, 1908 is a special summary proceeding, governed by a distinct legal regime intended to ensure the swift enforcement of negotiable instruments. According to the learned counsel, even though leave to defend has been granted, the proceedings retain their special character and should not be treated at par with an ordinary civil suit, thus making consolidation with the Petitioner's cancellation suit procedurally inappropriate and legally impermissible. The learned counsel emphasized that the two suits are not entirely identical in character: the summary suit is for recovery of a specific liquidated amount, while the Petitioner's suit seeks declaratory and injunctive relief relating to cancellation of the underlying instrument and agreements. Therefore, the respective legal thresholds, evidentiary burdens, and procedural frameworks applicable to both suits differ, and their joinder would cause procedural confusion, delay adjudication, and compromise the streamlined purpose of summary proceedings under Order XXXVII CPC. It was further submitted that each court is competent to adjudicate the matter before it, and the risk of conflicting decisions, if any, is not sufficient justification to override the independence of parallel proceedings under distinct causes of action. The counsel relied on the principle that consolidation is not automatic and should only be permitted in exceptional cases where complete factual and legal identity exists, which, in Respondent No. 1's view, is not the case here. The learned counsel also pointed out that the Petitioner's choice to institute the cancellation suit in a different Sessions Division, despite being fully aware of the pendency of the recovery suit, appears to be a tactical maneuver to delay proceedings and frustrate the expeditious disposal of the recovery suit. Thus, the Petitioner cannot now claim consolidation as a matter of right merely because the suits involve overlapping issues. Lastly, the learned counsel submitted that consolidation of proceedings may unduly prejudice Respondent No. 1's case by subjecting it to additional procedural delays and potentially diluting the enforceability of a negotiable instrument, which enjoys statutory presumptions under the Negotiable Instruments Act, 1881, unless rebutted by strong evidence.

7. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

8. Upon careful examination of the record and the submissions made by learned counsel for the Petitioner, it appears that although the present Petition has been filed under Article 199 of the Constitution read with Section 24 of the CPC, the Petitioner has not demonstrated any violation of fundamental rights or exceptional circumstances warranting interference under the Constitutional jurisdiction of this Court. However, the grounds raised in the Petition, particularly relating to the apprehension of bias and inconvenience in the continuation of proceedings before the current fora, do fall within the scope and intent of Section 24 CPC. In the interest of justice, and to prevent multiplicity of proceedings, this Court is of the view that the present Petition may appropriately be treated as an Application under Section 24, CPC. Accordingly, the Petition is converted into a Transfer Application under Section 24, CPC and is decided on merits in terms of the powers conferred upon this Court to transfer or withdraw proceedings from subordinate courts.

9. On merits, the record demonstrates that both civil suits *"Shuja Mukhtar Kiyani vs. Saqib Ali Khan"* pending before the learned Additional District Judge-IX, Islamabad (West), and *"Saqib Ali Khan vs. Shuja Mukhtar Kiyani"* pending before the learned Civil Judge XVIII, Islamabad (East) involve the same parties**,** pertain to the same negotiable instrument (Cheque No. 20687055 dated 14.06.2022)**,** and arise from a common factual and legal matrix concerning related agreements dated 18.04.2022 and 14.06.2022**.**

10. The Petitioner's suit seeks cancellation of the very cheque and agreements forming the basis of the summary suit filed by Respondent No. 1. Thus, both suits are interdependent, and the outcome of one will have a direct bearing on the other. This creates a substantial risk of conflicting or irreconcilable findings should they be adjudicated separately. The situation is aggravated by the fact that the suits are pending in courts falling under different Sessions Divisions, where neither the District & Sessions Judge (East) nor (West) has jurisdiction under Section 24 CPC to order such transfer or consolidation, rendering intervention by this Court not only appropriate but imperative.

11. The petitioner has placed reliance on the principles enunciated in *Zahid Zaman Khan v. Khan Afsar* (**PLD 2016 SC 409**) and *First Women Bank Ltd. v. High Court of Sindh* (**2004 SCMR 108**), both of which support the proposition that courts possess the inherent and procedural authority to consolidate suits when they are so intertwined that separate trials would defeat the ends of justice. This Court finds these precedents fully applicable to the present case.

12. It is also noteworthy that leave to appear and defend has already been granted in the summary suit pending before the Learned Additional District Judge-IX (West), Islamabad thereby converting it into a regular civil suit under Order XXXVII, Rule 7, CPC, and removing any procedural impediment to its consolidation with the connected civil suit for cancellation.

13. Furthermore, both suits are at a nascent stage, involve overlapping evidence and witnesses, and share identical legal and factual questions, making their joint adjudication not only permissible but indeed necessary to ensure judicial efficiency, avoid duplication of proceedings, and protect the parties' constitutional rights to due process**,** equality, and fair trial under Articles 4 and 25 of the Constitution.

14. In view of the foregoing, and in exercise of powers under Section 24, CPC, the instant Transfer Application is allowed. Resultantly, the Civil Suit titled "Saqib Ali Khan vs. Shuja Mukhtar Kiyani" under Section 39 of the Specific Relief Act, 1877**,** presently pending before the learned Civil Judge-XVIII, Islamabad (East)**,** be withdrawn and transferred to the court of the learned Additional District Judge-IX, Islamabad (West)**,** where the suit titled *"Shuja Mukhtar Kiyani vs. Saqib Ali Khan"* under Order XXXVII, CPC is pending. Both suits shall be consolidated and tried jointly by the learned Additional District Judge-IX, Islamabad (West) in accordance with law.

15. Office is directed to communicate this order to the concerned District and Sessions Judges for compliance.

(MUHAMMAD AZAM KHAN)
JUDGE

Adnan