ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CIVIL SUIT NO.22/2011.

MUHAMMAD SALEEM & ANOTHER **VS.** M/S M.YOUSAF ADIL SALEEM & CO ETC.

Serial No. of Order of Proceedings.	Date or order of proceedings.	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3
13.	13.07.2011	Raja Zafar Khaliq Khan ASC, for the applicants-defendants. M/s Mr. Muhammad Afzal Siddiqui ASC, Mr. Amjad Hameed Ghauri and Mr. Hamid Ahmad, Advocates for the respondents-plaintiffs.

CM No.470-S/2011

This is an application under Section 10 of CPC filed by the defendants stating therein that the same issue which is the subject matter in this suit i.e the dispute regarding the circulars / resolutions and as to whether the plaintiffs / respondents can be suspended or removed and what are the powers of the Board and partners under the partnership deed dated 07.12.2006, is pending before Hon'ble High Court of Sindh, Karachi.

2. According to the applicant, the instant suit has been filed subsequent to Civil Suit No.8/2011 and is hit by principle of Res subjudice because the matter in issue before this Court is directly and substantially in issue between the same parties and since the proceedings before the Sindh High Court were instituted prior to the filing of present suit, the present suit is to be stayed to avoid conflicting judgments.

3. The learned counsel for the defendants-applicants while supporting the CM relied upon the following case laws reported as *"Muhammad Younas Vs. Nargis Sultana"* ***(PLD 1970 Lahore 41),*** *"Ghulam Mustafa Vs. Family Judge / Qazi,*

Kharan and Another" ***(PLD 1984 Quetta 43),*** *"Bashirullah Munshi Vs. Abdul Bari Bepari and Others"* ***(PLD 1969 Dacca 950),*** *"M/s Nigar Pictures, Karachi Vs. M/s United Brothers, Lahore and 6 Others"* ***(PLD 1970 Karachi 770),*** *"Syed Alauddin Ahmed Vs. MDF. Mustafa"* ***(PLD 1971 Dacca 286),*** *"Pakistan Industrial Credit and Investment Corporation Ltd.,Karachi Vs. Modern Embroidery & Textile Mills Ltd. Lahore and 6 Others"* ***(PLD 1976 Karachi 249),*** *"Government of Baluchistan through the Secretary, Irrigation and Power Department, Quetta and 2 Others Vs. Haji Khudai Nazar", "Habib Bank Ltd Vs. Ali Mohtaram Naqvi"* ***(PLD 1987 Karachi 102),*** *"Dr.Haider Ali Mithani and another Vs. Ishrat Swaleh and Others"* ***(PLD 1999 Karachi 81),*** *and Sakhawat Hossain Vs. (i) Ch. Muhammad Sarwar, And (2) the National Bank of Pakistan"* ***(PLD 1968 Dacca 557).***

4. The case laws are on the point that for staying the suit under Section 10 CPC it is necessary that every matter in dispute should be directly and substantially be the same in the two suits. According to the case law reported as PLD 1999 Karachi 81, there are five essential ingredients which must be fulfilled before stay of subsequently instituted suit. These are that matter in both the suits be the same; previously instituted suit must be competent, court must be competent to grant relief, both the suits must be between the same parties and the parties must be litigating in both the suits under the same title.

5. The application was contested by the plaintiffs through their rejoinder wherein the maintainability of the application was challenged and it was submitted that scope of Section 10 CPC is not attracted to the present matter as the two suits turn on different parameters and adjudication of one does not cover the issues likely to arise in the other. It was further submitted that present suit arises out of a fresh cause of action created due to events happened after the institution of Sindh case proceedings and, therefore, there is no likelihood of conflicting judgments.

6. The learned counsel for the plaintiffs relied upon the authorities reported as *"Sakhawat Hossain Vs. (i) Chowdhury Muhammad Sarwar, And (2) The National Bank of Pakistan---Opposite-Parties"* ***(PLD 1968 Dacca 557)*** *and "Muhammad Younas Vs. Nargis Sultan"* ***(PLD 1970 Lahore 41).*** The authorities are on the point that stay of suit can be directed only, when there is identity of entire subject matter and if the reliefs in the suit are different then proceedings cannot be stayed.

7. Heard and record perused.

8. According to the Civil Suit No.8/2011, pending before Sindh High Court, Karachi the dispute is about the circulars resolutions of the Board, the appointment of plaintiff No.3 as Chief Executive of the Firm and the violation of the partnership deed 2006.

9. According to that suit declarations have been sought to the effect that the circulars resolutions be

declared legal and binding on all the parties, with further prayer that Muhammad Yousaf Adil has been lawfully appointed as Non-Executive Chairman of the Board and plaintiff No.3 as CEO, while defendant No.1 Muhammad Saleem has been legally suspended as a partner. On the basis of these declarations, an injunction has been sought restraining the defendants from posing as partners of the Firm or to interfere in the affairs, management and administration of the Firm.

10. On the other hand, according to the present suit, the cause of action accrued when the defendants indulged in conspiracy to oust the plaintiff on the basis of fabricated Board Resolutions which are defaming the plaintiff.

11. The prayer has, therefore, been made that the so called resolutions and notice dated 27.01.2011 calling a meeting of the Board of the Firm be declared as void ab initio and the publication of false information and other acts based on the fabricated Board Resolutions are destructive to the goodwill of the plaintiff and amounts to committing of serious transgression against the plaintiffs' rights, therefore, for their omissions and commissions they are to pay a sum of Rs.100 Crores each to the plaintiffs as damages. Consequently a relief is sought for permanent injunction restraining the defendants from taking any measures on the basis of fictitious resolutions or from making any interference in the business and working of the plaintiffs.

12. A perusal and comparison of these plaints would show that the main controversy between the parties arose after the passing of resolutions, which according to present plaintiffs are fictitious.

13. Second dispute is about the Election / appointment of Non-Executive Chairman and CEO of the Firm as well as ousting of present plaintiff as Board member. Though through the present suit, the damages of Rs.200 Crores have also been sought, yet the fact remains that the real issues between the parties are about the affairs of the Firm on the basis of the Board Resolutions. One party insists about its legality, while the other condemns them as illegal. Therefore, in my view both the suits cannot run concurrently. Section 10 is reproduced as below;

> *"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court in Pakistan having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*

14. It is an admitted fact that Civil Suit No.08/2011 was filed earlier at Karachi than the present one. Since the main disputes in both the suits are between the same parties,

about the same subject matter and the issues would also be the same, the proceedings of present Civil Suit No.22/2011 are stayed till disposal of Civil Suit No.8/2011.

15. The application is accepted.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE.

AMER BAIG.

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