



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of
Appeal No. 1 of 2009

1. Mrs. Bushra Ehsan
2. Malik Imtinan Elahi

Sultan Soap Factory (Pvt.) Limited
Small Industrial Estate IV
Sialkot

Appellants

Versus

1. Registrar of Companies
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad.
2. Additional Registrar of Companies
Company Registration Office
Lahore.
3. Ms Humera Ehsan
283, E-1 Block
Wapda Town
Lahore.....

Respondents

Date of Hearings

13-10-09, 23-10-09, 17-11-09 and 31-12-09

ORDER

Present:

Appellant

Malik Imtinan Elahi

For the Appellant:

Muhammad Ejaz

Advocate

For the Respondents:

Humera Ehsan

Departmental representative

Muhammad Musharraf Khan

Additional Registrar



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1. This order will dispose of the appeal No. 1 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Appellants against the order dated 7-11-08 (the "Impugned Order") passed by the then Executive Director (Registration).
2. The facts leading to the case are that Ms Humera Ehsan (the "Complainant") daughter of the late Malik Ehsan Elahi (the "Complainant's father") made a complaint dated 26-3-08 wherein it was stated that her father was the Chief Executive of the M/s Sultan Soap Factory (Pvt) Ltd (the "Company") and held 5,094 shares out of 6000 total shares of the Company at the time of his death on 05-05-04. The Complainant was a minor at the time of her father's death. The mother of the Complainant namely Ms Bushra Ehsan (the "Appellant 1") in connivance with her son Mr. Imtihan Elahi (the "Appellant 2") maliciously managed to transfer the shares of Complainant's father in their own names. The Complainant contended that she was deprived of her right in inheritance and was wrongfully kept out of the affairs of the Company.
3. As a result of the complaint the record and returns filed by the company were perused. Form A showing the status of the shareholdings in the Company up to 22-7-03 was examined, from the record available with Company Registration Office ("CRO"), and it was found that Complainant's father at the time of his death was the Chief Executive and held 5,094 shares, whereas Appellant 1 held 906 shares of the Company. The Company filed i) form 29 dated 10-5-04 showing death of Complainant's father on 4-5-04; ii) another form 29 dated 28-7-04 was filed on 31-1-05 which shows the appointment of Appellant No 1 as the Chief Executive and Appellant No 2 as a new director to fill in the casual vacancy occurring as a result of death of the Complainant's father ; iii) form A updated till 28-7-04 filed on 31-1-05 showed transfer of 5000 shares of Complainant's father in the names of Appellant 1 (4000 shares) and Appellant 2 (1000 shares).



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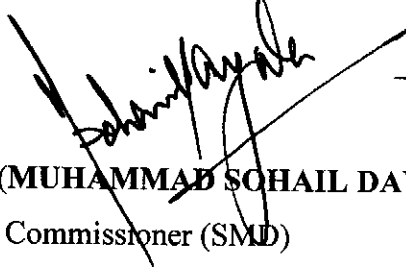
4. The Additional Registrar, CRO Lahore sought further information and documents under section 261 of the Companies Ordinance 1984, (the "Ordinance") including original transfer deeds, copy of minutes of the board meetings along with attendance register, copy of succession certificate duly certified by the Court, an extract of register of members showing transfer/ transmission of shares in order to ascertain the veracity of the transfer. The Appellants, however, failed to provide the requisite information. Show cause notice ("SCN") was therefore issued to the Appellants, despite which the Appellants failed to provide the requisite documents, neither could they give satisfactory response to the allegations made in the complaint. The Respondent 1 passed the Impugned Order and de-registered form A and form 29 dated 28-7-04 filed with the Additional Registrar, CRO Lahore and all subsequent filings under section 468 of the Ordinance.
5. The Appellants have preferred to file the instant appeal against the Impugned Order. The Appellants' counsel appeared before us and stated that :
- a) The share transfer deeds and iqrar nama was signed by Complainant's father on 28-4-04. Form 29 and form A were submitted at a later date due to death of Complainant's father. The witness column were left blank, which were filed in later by the witnesses.
 - b) The Appellants' legal advisor wrongly entered the date of transfer of shares as 05-05-04 in form A dated 28-7-04. The mistake was clerical as the legal advisor was shown the share transfer deed and iqrar nama. The mistake cannot be attributed to the Appellants.
 - c) The share transfer deeds and iqrar nama were executed on 28-4-04 and should be deemed to be operative from that date and not from the date of registration of the documents with CRO. Reliance was placed on 2002 SCMR 1821 where it has been held that the title of the document is




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determined from the date of execution and not from date of registration of that document.

6. The Complainant along with her husband appeared before the Appellate Bench (the "Bench") on 17-11-09 and contended that the Appellants have made forged share transfer deeds and iqrar nama after the death of Complainant's father in order to deprive the Complainant of her share in inheritance. The Appellants are benefiting from the Company to the exclusion of other legal heirs and are denying the Complainant her legal right in the property. The Complainant has been harassed and pressurized by the Appellant to leave her share in the property. The Complainant argued that the Impugned Order be upheld as it establishes the malafide of the Appellants. The parties were again called for hearing on 31-12-09 and the Appellants were asked to clarify certain facts to the Bench.
7. We after hearing the parties, uphold the Impugned Order is to the extent of de-registering of form A and form 29 dated 28-4-04. The parties may approach the civil court for declaration as to the correctness or otherwise of the transfer deeds and the iqrar nama as this issue does not fall within our jurisdiction. Until otherwise held by the court, form A dated 22-7-03 shall be considered as a final document to determine the share holding of the parties.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 18-3-10