

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Ayesha A. Malik and Athar Minallah, JJ**KANWAR ARIF ALI KHAN and another---Petitioners****Versus****DANISH ALI and others---Respondents**

Civil Petitions Nos. 3509 and 1494-K of 2021, decided on 1st December, 2022.

(Against judgments dated 27.05.2021 and 02.06.2021 passed by the High Court of Sindh Bench at Sukkur in Const. Ps. Nos. D-1110 of 2020, D-1538 of 2017)

Supreme Court Rules, 1980---

---O. XXXIII, R. 7---Inherent powers of the Supreme Court---Scope---Application by a person who is not a party in the proceedings before the High Court---Person who is not a party to a suit or a proceeding in the court below (the Supreme Court) should file a separate application for obtaining leave from the appellate court to appeal the judgment, decree or order of which he feels aggrieved, along with the memorandum of appeal filed by him.

Longstanding and consistent practice of the Supreme Court is that any person who challenges the judgment of the High Court through a petition or appeal, but has not been a party to the proceedings before the High Court, first prefers a separate application seeking leave of the Court to maintain such a petition or appeal. The wisdom behind the said practice is; firstly, that it ensures that the Court is put on notice that the petitioner was not a party in the proceedings before the High Court; and secondly, the petitioner, before addressing the merits of the case, has to establish before the Court that he is aggrieved of the impugned judgment. Once these conditions are met and the application is allowed, by the Court, the petition or appeal is duly numbered and fixed to be heard on merits. Such practice has been tacitly a part of Order XXXIII, Rule 7 of the Supreme Court Rules, 1980 for a long time and promotes transparency, openness and good judicial governance. Supreme Court endorsed such practice and reiterated the principle to such effect laid down in the case of H. M. Saya & Co. v. Wazir Ali Industries Ltd. PLD 1969 SC 65.

H. M. Saya & Co. v. Wazir Ali Industries Ltd. PLD 1969 SC 65 ref.

Hassan Rasheed Qamar, Advocate Supreme Court and Muhammad Haseeb Jamali, Advocate Supreme Court (through video link, Karachi) for Petitioners.

Rai Muhammad Nawaz Khan Kharal, Advocate Supreme Court for Respondents.

Date of hearing: 1st December, 2022.

ORDER**SYED MANSOOR ALI SHAH, J.---**

Civil Petition No.3509 of 2021: The main case has been decided by the Sindh High Court vide order dated 02.06.2021, therefore, the instant matter arising out of an interim order has become infructuous and is disposed of accordingly.

Civil Petition No.1494-K of 2021: We have noticed that the petitioner was not a party before the High Court as his application for impleadment was dismissed vide order dated 27.5.2021 and subsequently the main petition was decided on 02.6.2021, which has been challenged before us by the said petitioner.

Application by a person who was not a party in the proceedings before the High Court:

2. This Court in H.M. Saya¹ has held in 1969 that "a person who is not a party to a suit or a proceeding may prefer an appeal if he is affected by the judgment, decree or order of the trial Court provided he obtains leave from the Court of appeal". Since then it has been a longstanding and consistent practice of this Court that any person who challenges the judgment of the High Court through a petition or appeal, but has not been a party to the proceedings before the High Court, first prefers a separate application seeking leave of the Court to maintain such a petition or appeal. The wisdom behind the said practice is; firstly, that it ensures that the Court is put on notice that the petitioner was not a party in the proceedings before the High Court; and secondly, the petitioner, before addressing the merits of the case, has to establish before the Court that he is aggrieved of the impugned judgment. Once these conditions are met and the application is allowed, by the Court, the petition or appeal is

duly numbered and fixed to be heard on merits. This practice has been tacitly a part of Order XXXIII, Rule 7 of the Supreme Court Rules, 1980 for a long time and promotes transparency, openness and good judicial governance. We, therefore, reiterate the principle in H.M. Saya and endorse the said practice of the Court.

3. In the instant case, learned counsel for the petitioner has frankly pointed out that he wishes to prefer such an application. Let the same be done. However, the office shall de-number the petition and first entertain the aforesaid application, which shall be put up before the Court for appropriate orders.

4. Office shall also submit a report for our perusal in chambers as to how the petition was entertained and numbered in absence of any application seeking permission to file this civil petition in the wake of such a long standing practice of this Court.

MWA/K-17/SC Order accordingly.