SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Justice Irfan Saadat Khan

Civil Petition NO.4906 OF 2025
(On appeal from the judgment dated 20.10.2025 of the High Court of Sindh, Circuit Court, Hyderabad in Revision Application No.130/2025)

C.M.A. NO.9026 OF 2025
(Stay Application)

Mst. Arshi and another …Petitioners

Versus

Mst Nissa Farhan Memon and others …Respondents

For the Petitioners:	Mr. Salahuddin Ahmed, ASC.
For Respondent-1:	Mr. Mushtaq Ahmed A. Memon, Sr. ASC a/w Mrs. Nissa Farhan
For Respondents 3-4:	Syed Hassan Ali Raza, ASC
Date of Hearing:	05.08.2026

Judgment

Muhammad Ali Mazhar, J . This Civil Petition for leave to appeal is brought to challenge the judgment dated 20.10.2025, passed by the High Court of Sindh, Circuit Court, Hyderabad in Revision Application No.130/2025.

2. According to the short and snappy facts, the petitioners filed Civil Suit No.129/2025 for declaration and permanent injunction in the Court of VIIth Senior Civil Judge, Hyderabad. The injunction application moved under Order 39 Rule 1 & 2 of Civil Procedure Code 1908 **(CPC)** was dismissed by the Trial Court vide Order dated 30.5.2025. Being aggrieved and dissatisfied by the injunction refusal Order, the petitioners filed Miscellaneous Appeal No.09/2025 under Order 43 Rule 1 read with Section 104 CPC in

the Court of VIIth Additional District Judge, Hyderabad. By means of the Order dated 05.08.2025, the aforesaid Misc. Appeal was allowed and as a consequence thereof, the order of Trial Court was reversed and Pakistan State Oil **(PSO)** (respondent No.2 before us) was directed to de-seal the Pump Site "Koh-e-Noor Petrol Pump" and to not disturb the dealership for six months or till the disposal of Suit No.129/2025 whichever is earlier. However, the injunctive order was passed by the Appellate Court subject to deposit 29.17/% share of Mrs.Nisa Farhan (respondent No.1) from gross commission/savings with the Nazir of Trial Court; the petitioner No.1 was allowed to operate the business but at the same time, PSO was also directed to submit accounts of all supplies and commission in the Court for ultimate calculation and distribution of shares.

3. The respondent No. 01 challenged the Order passed by the Appellate Court by dint of Civil Revision No. 130 of 2025 in the Sindh High Court, Hyderabad Circuit. The learned High Court while exercising the revisional jurisdiction observed in paragraph No. 17 of the impugned judgment that the order of the VII th Additional District Judge, Hyderabad, in Civil Miscellaneous Appeal suffers from material irregularity and legal infirmity and also exceeded its lawful authority by tentatively determining shares of the legal heirs and by permitting continued operation of the dealership under the control of one party. While setting aside the appellate order dated 05.08.2025, by the High Court, the Nazir of the Trial Court was directed to assume charge as Receiver of "Kohinoor Petroleum Service Hyderabad", Plot No. 224/1, Survey Nos. 223 and 224, Unit No.VII, Shah Latifabad, Hyderabad to oversee day-to-day business affairs with certain terms of reference **(TORs)**.

4. Mr. Salahuddin Ahmed, learned ASC for the petitioners, contended that neither any application for the appointment of a Receiver was filed by the respondent No.01 in the High Court along with memo of revision application nor any such application was filed in the Courts below. It was further contended that the learned High Court exceeded the bounds of its jurisdiction by

appointing a Receiver instead of confining itself to the question whether the appellate order rightly decided the question of injunction or not. He further averred that the appointment of a Receiver is the harshest order but the learned High Court failed to appreciate the entire controversy between the parties and allowed the relief beyond the scope of revision petition and the parameters of Section 115 CPC.

5. Mr. Mushtaq Ahmed A. Memon, learned Sr. ASC representing respondent No.01, argued that renewal of dealership/franchise was obtained by suppressing the legal heirs of the deceased, Abdul Nabi Memon and in the past also Mrs. Arshi and one other legal heir filed a declaratory suit with the prayer that they are the sole survivors and legal heirs of the deceased Abdul Nabi Memon. However, subsequently, Mrs. Nissa Farhan Memon, respondent No.1, filed an application under Section 12(2) CPC, which was allowed and by consent, the decree was passed whereby Mrs. Nissa Farhan Memon was included in the list of surviving legal heirs of Abdul Nabi Memon. He further argued that though the petitioners admit the share of Mst. Nissa Farhan Memon to the extent of approximately 29.17% but according to the actual and fair calculation, the respondent No.1 is entitled to 58.33% share approximately and for that purpose, a suit for administration is already pending adjudication before the competent Court. He further argued that the High Court could appoint receiver on the pump site on its own motion and there was no necessity of filing application for that purpose.

6. Syed Hassan Ali Raza, ASC, the learned counsel representing the official respondents No.3 & 4 argued that due to private dispute of inheritance between the parties, PSO is suffering and smooth running and operation of pump site is seriously disturbed, therefore, he requested that the family dispute should be resolved as soon as possible so that the “Dealership License Agreement for Company Financed Site” shall be implemented effectively without causing any disturbance to the business of PSO.

7. Heard the arguments. Upon a careful appraisal of the record, we are of the view that the principal question before the learned Additional District Judge, Hyderabad, was whether the Trial Court had rightly declined to grant the interim injunctive relief. The learned Appellate Court ought to have confined itself to determining whether, in the facts and circumstances of the case, the appellant was entitled to the grant of injunction. However, while disagreeing with the findings recorded by the learned Additional District Judge, the learned High Court went a step ahead and appointed a Receiver. What we have found is that the judgments of the two fora below are at variance. It appears that the real controversy between the parties was not properly addressed by either of the courts below whether the case of injunctive relief is made out or whether in the set of circumstances, the appointment of receiver was indispensable or inescapable or the disputed share for which matter is already pending in the Trial Court could be decided or directed to be deposited while hearing appeal against the rejection of injunctive relief by the Trial Court in the main suit? At present, the two orders are poles apart, with a clear divergence in their viewpoints which warrants further consideration and reconciliation for just and proper conclusion of controversy.

8. It is a well-settled exposition of law that while allowing or disallowing relief of temporary injunction as articulated under Order 39 Rule 1 & 2 CPC, the prime consideration or basic ingredients which co-exist and require consideration of the Courts are i) prima facie case, the applicant has to demonstrate a legal right with evenhanded prospect of succeeding in the lawsuit; ii) balance of convenience which signposts that if the relief of injunction is declined, inconvenience or disadvantage to the applicant should be greater than the inconvenience to the opposite party if it is granted and iii) irreparable loss or injury which accentuates that the applicant should put on view that if injunctive relief is not allowed or extended, he will suffer injury that cannot be adequately and effectively compensated or

recompensed even by granting damages to him. The expression “prima facie” is derived from Latin language which pragmatically means "at first sight" or "on the face of it". In fact, this catchphrase performs as a gatekeeping role in our judicial equilibrium regime to weed out frivolous or undeserved lawsuits to save the precious time and resources of the Court. The terminology “balance of convenience” is indeed a litmus test which the Courts apply to make a decision that who will suffer vaster hardship or injustice on dwelling the incidence of probable harm to the claimant/applicant if the order is denied and the potential harm to the defendant if injunctive relief is granted by the Court but it cannot be evaluated in vacuum. It is an equitable doctrine to pick and choose the rational pathway when a party entreats an interlocutory relief of injunction before final conclusion of trial and decision. A judge acts as an arbitrator of fairness for judiciously assessing and cautiously balancing the competing and conflicting interests. By the same token, the clear-sightedness of the expression “irreparable injury” puts in plain words that analogous to the rules of the prima facie case and the balance of convenience, the tenet of irreparable injury is also an essential and unavoidable pillar of equity law. In case the plaintiff/applicant can be abundantly compensated by money, the Court may reject the relief of injunction. It is a keystone perception in the law which explains in simple terms that the injury should be of such nature for which no fair-minded, levelheaded, or good enough reparation can be afforded in consequence of monetary compensation and/or the injury or harm is legally irremediable and unsalvageable by money, irreplaceable or possessing some sentimental values attached to the property or right. In the case of Sayyid Yousaf Husain versus Pakistan Defence Officers' Housing Authority **(2010 MLD 1267),** (authored by one of us in the Sindh High Court), it was held as under:-

> “The term "prima facie case" is not specifically defined in the Code of Civil Procedure. The Judge- made-law or the consensus is that in order to satisfy about the existence of prima facie case, the pleadings must contain facts constituting the existence of

right of the plaintiff and its infringement at the hands of the opposite party. Balance of convenience means that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that would be caused to the defendant, if the injunction is granted. It is for the plaintiff to show that the inconvenience caused to him would be greater than that which may be caused to the defendant. Irreparable loss would mean and simply such loss, which is incapable of being calculated on the yardstick of money.

It would be useful to quote Jeremy's Equity Jurisprudence 307 (C.M. Row, Law of Injunction, Seventh Edition 1994) which says that an injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience. An injunction as is well known is an equitable remedy and accordingly is to conform to the well-known maxim of the law of Equity, that "he who seeks equity must do equity". The law as contained in the Specific Relief Act is governed by the aforesaid principle, therefore, a plaintiff who asks for an injunction must be able to satisfy the court that his own acts and dealings in the matter have been fair, honest and free from any taint or illegality and that if in dealing with the person against whom he seeks the relief, he has acted in an unfair or un-equitable manner he cannot have this relief.

According to Pomeroy's Equity Jurisprudence, section 112, (C.M. Row, Law of Injunction, Seventh Edition 1994), equitable remedies are distinguished by their flexibility, their limitless varieties, their adaptability to the exigencies of case and the natural rules which govern their use. According to their essential nature they may be classified into (1) Declaratory remedies, are those whose main object is to declare, confirm and establish the right, title, property or estate of the suit or (plaintiff) whether it be equitable or legal. (2) Restorative remedies, are those by which the plaintiff is restored to the full enjoyment of the right, title, property or estate to which he is entitled, but which use and enjoyment have been hindered, interfered with, prevented or withheld by the wrong-doer. They are often granted in combination with other kinds of relief such as cancellation of instruments or remove a legal obstacle to the full enjoyment of plaintiff's right and to render them efficient in restoring him to that enjoyment. The mandatory injunction belongs to this class of restoratory remedies. (3) Preventive remedies, are those by which the violation of a primary right is prevented before the apprehended injury is done, or by which further violation is prevented after the partial infliction of injury so that some other relief for the wrong actually done can be granted. The injunction whether final or preliminary belongs to this class. (4) Remedies of specific performance, are those by which the party violating his primary duty is compelled to do the very acts which his duty and the plaintiff's primary right required from him. (5) Remedies of reformation, correction or re-execution are those by means of which a written instrument, contract, deed or other muniments which for some reason or other does not conform to the actual rights and duties of the parties thereto, is. reformed, corrected

or re-executed, (6) Remedies of rescission or cancellation, are those by which an instrument, contract, deed, judgment and even sometimes a legal relation itself subsisting between the parties is, for some cause, set aside, avoided or annulled or rescinded. (7) Remedies of pecuniary compensation are those in which the relief consists in awarding a sum of money for the damage caused to the plaintiff. (8) The remedy of accounting is analogous to the remedy of compensation, and is generally used in connection with an auxiliary to some forms of it. It has to be a great extent become an equitable remedy though it partakes of the character of a legal remedy.

9. So far as the appointment of receiver is concerned, it is considered as a harsh and extraordinary remedy and cannot be granted as a matter of right unless instantly recognizable and egregious facts are proven by affidavit or documentary evidence. The appointment is governed and regulated by Order XL, Rule 1 of the CPC. By and large, the receiver is appointed where it appears to the Court to be just and convenient *pendente lite* to protect, manage, and preserve property under litigation when there is an imminent danger of being wasted, dissipated, or lost whether before or after decree. The Court may remove any person from the possession or custody of the property; commit the same to the possession, custody or management of the receiver; and confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

10. The word "just" communicates that the appointment must be fair to both parties and necessitated and commanded by fair play and "convenient" does not only mean convenient or opportune to one party, rather it must be a realistic, commonsensical, efficacious and prosperous solution to preserve the property for whoever eventually is declared victorious by the Court. The perquisites of exercising this jurisdiction are commonly structured on certain stringent benchmarks such as that the plaintiff must put on a display the likelihood of succeeding in the lawsuit; the property is in danger of being wasted, damaged,

alienated, or lost; the harm caused to the plaintiff by not appointing a receiver must heavily outweigh the disruption caused to the defendant by the appointing one; the applicant must come to the court with absolute honesty, concealing no material facts and the applicant must also show that if the court does not step in immediately, the resulting financial or structural damage cannot be adequately compensated with money. The order is discretionary and the discretion must be exercised in accordance with the principles on which judicial discretion is exercised. The distinction between a case in which temporary injunction may be granted and a case in which a receiver may be appointed is that while in either case it must be shown that property should be preserved from waste and alienation, in the former case, it is sufficient that if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged while in the latter case a good prima facie title to the property over which the receiver is sought to be appointed is to be made out, the party should set forth persuasive whys and wherefores to catch hold of property into custodia legis.

11. The jurisdiction conferred under Section 115 CPC is predominantly envisioned to rectify jurisdictional errors and oversights of lower courts which is a supervisory apparatus rather than a mechanism for rehearing a case. The preconditions of this jurisdiction envisages that the High Court may call for the record of any case which has been decided by any Court subordinate to that High Court and in which no appeal lies thereto, and if such subordinate court appears (a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit. The foremost intent is to keep an eye on the administration of justice by lower courts being a discretionary remedy premeditated to hold onto subordinate courts within the bounds of legal and jurisdictional authority. According to the

code of belief, the exercise of jurisdiction not vested by law means the assumption of powers that is not legally possessed by the Court or unequivocally barred by special law including pecuniary or territorial limits; failing to exercise vested jurisdiction means that though the Court possesses the legal authority to decide or act but refuses or fails to do so and last but not least, acting illegally or with material irregularity enlightens that the Court possesses jurisdiction but exercises it by violating a law or procedure which may be breaching an explicit provision of a statute or binding precedent or commit a procedural error that causes a gross miscarriage of justice. According to the "Principle of Congruence", the Court cannot step outside the precincts of the pleadings to grant a relief that was not prayed and cannot replenish gaps to reprieve a negligent litigant. At this juncture, the doctrine of “Ultra petita” “Intra petita” and “Extra petita” are also quite significant. Ultra petita means “beyond what was asked; intra petita means, “within what was asked”, decision within the limits of the relief implored by the parties and extra petita means “outside what was asked,” meaning thereby, the court granted a diverse relief from what was the party actually entreated.

12. In the wake of foregoing discussion, this Civil Petition is converted into an appeal and allowed. Consequently, the impugned judgment dated 20.10.2025 passed by the learned High Court in Revision Application No.130/2025, as well as the judgment dated 05.08.2025 passed by the VII th Additional District Judge, Hyderabad, in Civil Misc. Appeal No.09/2025 both are set aside. As a result, Civil Miscellaneous Appeal No.09/2025, shall be deemed to be pending before the learned VII th Additional District Judge, Hyderabad, who shall decide the same afresh, strictly in accordance with law, after affording adequate opportunity of hearing to all the parties, within a period of forty-five (45) days from the date of receipt of a copy of this judgment. In the meantime, the parties shall maintain the status quo, subject to the condition that the petitioners shall maintain

proper and verifiable accounts of earnings from all business activities and operations being conducted at “Kohinoor Petroleum Service Hyderabad”, Plot No. 224/1, Survey Nos. 223 and 224, Unit No. VII, Shah Latifabad, Hyderabad, including the sale of fuel and lubricants and the provisions of non-fuel services, such as car wash service unit, tyres/puncture mending shop, tuck shop and any other allied services. The petitioners shall submit the accounts before the learned Additional District Judge, Hyderabad with advance copy to the respondent No. 1, 3 and 4 for their knowledge and consideration. Since the main case has been disposed of, therefore C.M.A. No.9026-K of 2025 (stay application) is also disposed of accordingly.

Judge

Judge

KARACHI
5th August, 2026
Mudassar
Approved for reporting