

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J. M. NO. 39 / 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 11368/2015.
- 2) For hearing of main application.

28.11.2016.

Mr. M. Akram Javed Advocate for Applicant along with Mr. Asif Ali Deputy Director NAB.
Mr. Khawaja Shamsul Islam Advocate for Respondents No. 1 to 6, 8,9,11 to 14 and 16

2. Through this application under Section 12(2) CPC, the Applicant has impugned Judgment dated 1.11.2014 and Decree dated 5.12.2014 passed in Suit No. 657 of 2010 by a learned Single Judge on the Original Side of this Court, on a compromise application filed under Order 23 Rule 3 CPC, on the ground that the same was obtained by fraud and misrepresentation.

Learned Counsel for the Applicant has referred to Para 1 and 3 of the Decree and has contended that the matter has even been compromised to the extent that the Applicant cannot lodge a NAB Reference in respect of the Suit property. He submits that the compromise Judgment and Decree has been obtained by misrepresentation, whereas, the Applicant was never impleaded as a party hence, instant J.M be allowed and the Judgment and Decree be set aside.

On the other hand, learned Counsel for private Respondents submits that instant J.M is incompetent as it has been filed by the Deputy Prosecutor General NAB who is not authorized under the NAB Ordinance to file any such application before this Court. He further submits that instant application has not been signed by any authorized

officer of the Applicant therefore, in terms of Section 8 of the NAB Ordinance 1999, read with Article 260 of the Constitution instant J. M being incompetent is liable to be dismissed in limine. He further submits that the Applicant is not an aggrieved party nor does their case falls within the ambit of Section 12(2) CPC therefore, instant J.M may be dismissed. He has also referred to order dated 9.6.2016 passed in J.M. No. 2 of 2015 and has contended that even otherwise, instant J.M has become infructuous in view of the said order.

I have heard both the learned Counsel and perused the record. Insofar as the impugned Judgment and Decree is concerned, it appears that the applicant is aggrieved by certain portion of the impugned judgment and decree as perhaps the matter was even compromised in respect of actions initiated by the Anti-Corruption department and NAB i.e. even criminal proceedings were also compromised. However, it may be observed that the said judgment and decree was also impugned through J.M. No. 2 of 2015 by the Province of Sindh and others and the said J.M after a threadbare examination of the facts as well as law, has been decided vide order dated 9.6.2016 wherein, certain portion of the compromise Judgment and Decree has been modified. The said modification order has been passed in respect of Para 1,3,6,8,10,12 & 13 (except with certain observations) of the Decree in question by which the present Applicant could be aggrieved. The relevant and operative part of the said order reads as under:-

“21. In view of herein above facts and circumstances of the case I am of the view that insofar as the plea of fraud and misrepresentation is concerned the same is not attracted in the instant case, whereas, the compromise was arrived at after decision of the Special Land Committee dated 16.5.2014, on the basis whereof the applicants issued letter dated 18.8.2014 and demanded payment of the differential amount of Malkano which has been paid by the respondents, hence to that extent and on merits of the case, instant J.M. is misconceived. However, since it has come on record that there are certain clauses of the compromise agreement which do not seem to be lawful and void to the extent of

Section 23 of the Contract Act, and are therefore, hit by the provision of Order 23 Rule 3 CPC, the same need to be modified. **In the circumstances, the impugned order is modified, resultantly, the compromise judgment and decree could only be sustained in respect of clause (a), (2), (4), (5), (7)[except the words “including registration of FIR”], (9), (11), (13)[except “hence proceedings initiated either by the Provincial Anti-Corruption Department or by the NAB Authorities has no value in the eyes of law and shall be declared null and void”].**” (emphasis supplied)

Perusal of the above finding reflects that insofar as the grievance of the present Applicant is concerned, the said part of the Judgment and Decree stands modified, whereas, it has been categorically held that the plea of fraud and misrepresentation is not attracted in this case. In fact for all legal and practical purposes instant J.M. has become infructuous. The said order has been passed by me and I am bound by that findings recorded in the said order. Insofar as the objection of maintainability is concerned, since I am of the view that merits of the case as far as the Applicant is concerned, already stands decided in the aforesaid order, therefore, I need not go into the question that as to whether instant J.M. has been filed and signed competently or not and leave the same to be decided in appropriate proceedings as and when it is brought before this Court.

In view of hereinabove facts and circumstances of this case and order dated 9.6.2016 passed in J.M. No.02 of 2015, instant J.M. has become infructuous as the impugned portion of the Judgment and Decree already stands modified vide Para 21 hereinabove. In the circumstances this J.M. has served its purpose and is accordingly dismissed as infructuous along with pending application.

J U D G E

ARSHAD/