

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Ex. No.25 of 2005

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of Nazir's Report dated 18.12.2017.

13.03.2018

Mr. Muhammad Asandullah Shaikh, Advocate for D.H.
 Mr. Fayaz Ahmed, Advocate for J.D.

Matter is listed for Orders on Nazir's Report dated 18.12.2017. It appears that this Execution Application was disposed of on the basis of a compromise application entered into by J.D. Nos.1 & 2 vide Order dated 13.11.2007, whereas, pursuant to such compromise agreement, Execution was not pressed to the extent of J.D Nos.3 & 4. On 06.05.2015 CMA No.548/2012 was fixed before the Court and through such application revival/reactivation of this Execution Application was sought; however, said application was dismissed by the Court being misconceived and without any merit as the Execution Application already stood disposed of, whereas, the Decree Holder was set at liberty to seek its remedy, if any, in accordance with law.

Subsequently, CMA No.99/2017 was placed before the Court for orders on 27.2.2017 and such application was though filed under Order 23 Rule 3 CPC, however, by consent it was treated as an application under Order 21 Rule 1 & 2 CPC. Through this application the Decree Holder and J.D. No.3 sought modification of the Order dated 13.11.2007 through which the execution application was disposed of, on the basis of a new settlement agreement annexed with the application, in which various terms were settled and agreed upon between the Decree Holder, J.D. No.3 and a Buyer of the property mentioned in para-9(2) of this Execution Application. Such application was entertained by the Court and was allowed on the terms and conditions so stated in the settlement/compromise agreement. Thereafter Nazir, who was given certain directions has

placed his Report dated 18.12.2017 and on 12.02.2018 and 20.02.2018, the learned Counsel for Decree Holder and J.D. No.3 were confronted as to the contents of the compromise agreement as according to the Court, it could not be granted. Today, again I have heard the learned Counsel and confronted them as to how in a disposed of execution, a further agreement or settlement could be reached and the orders so passed earlier can be modified. Both learned Counsel were unable to satisfy the Court except that this Court has inherent powers under Section 151 CPC. However, I am of the view that such powers cannot be exercised in the manner as is being prayed for.

The compromise agreement now entered into is between the Decree Holder and J.D No.3 as well as a prospective buyer of the property, who was neither a party, either in the Suit or in the Execution Proceedings. It further appears that insofar as the J.D. No.3 is concerned, pursuant to Order dated 13.11.2007 to his extent, this Execution Application stands dismissed as not pressed, whereas, as stated, pursuant to such order, original title documents of the property in question have also been released to the J.D. No.3. This Court is unable to understand as to how and under what circumstances, the J.D. No.3 has entered into some fresh settlement/compromise with the Decree Holder Bank in respect of his property, which already stands discharged by return of the original title documents and so also dismissal of the Execution Application as not pressed against him. No satisfactory response has been given to this aspect of the case. It is not easily conceivable as why a person who has been relieved from his liabilities, would enter appearance and offer his property again to satisfy the decree.

Moreover, through Nazir's Report, as above, it is informed that after approaching the concerned authorities including Board of Revenue and Land Utilization Department, it has come on record that the title of the property in question is seriously in dispute inasmuch as initially this property was in the name of Mohammad Ibrahim Malik (late) for 30 years lease for poultry farming and wahi chahi. Thereafter lease was extended for 99 years at the rate of Rs.50,000/- per acre and after payment of such amount on 20.10.1994, the said Mohammad Ibrahim executed an Irrevocable General Power of

Attorney on 31.10.1998 in the name of J.D No.3. Subsequently, the NAB Authorities filed a Reference No.19/2001 against Mohammad Ibrahim Malik (late) as the lease was extended to him on less valuation as compared to the value fixed by the Government and in the reference he entered into a plea bargain, whereafter, his plea bargain was accepted. He was acquitted and land was cancelled and surrendered to the Government of Sindh. This fact is already disclosed in Para-9(2) of the Execution Application and despite this; the Decree Holder Bank has entered into an Agreement with J.D. No.3 as well as new buyer and has come before the Court to get the transfer affected. Such conduct on the part of the Decree Holder Bank as well as the J.D No.3 cannot be appreciated, rather it is to be deprecated that by misleading the Court, Order dated 27.02.2017 was obtained. It further appears from the Nazir's Report that land was never transferred in the name of J.D. No.3 and till such time it was cancelled, it was in the name of Mohammad Ibrahim Malik (Late), whereas, on perusal of the agreement entered into between the Decree Holder, J.D. No.3 and the proposed buyer, it further reflects that the entire exercise of transfer, mutation, regularization, etc. is being sought through orders of the Court by appointment of Nazir, whereas, amendment of orders of the Court is also being sought by way of such agreement. I am afraid such application and agreement at the very outset ought not to have been entertained; but due to non-disclosure of entire facts, the Court has been misled and orders have been obtained.

It is also a matter of record that when this Execution Application was filed in Para 9(2) the Decree Holder Bank has itself informed the Court that the mortgage of the property in question i.e. 15 Acres of land bearing Naiclass-24, Survey No.285, situated at Deh, Dih, Taluka Ibrahim Haidery, Distt. Malir, Karachi, stands cancelled vide letter dated 16.10.2002, issued by the office of the Mukhtiarkar, and such cancellation of land has been entered in the Record of Rights in favor of Government of Sindh. After this, the Decree Holder Bank could not have entered into any settlement agreement in respect of a cancelled land in this Execution Application, and surely, an attempt has been made to hoodwink and bypass the procedure and to obtain orders, which in law could not have been done so. This is highly regrettable on the part of Decree Holder and J.D. No.3.

Accordingly, while taking Nazir's report on record he is further directed to inform all concerned with whom he has made correspondence in this matter, that no orders have been passed by this Court for any transfer and or regularization of the land in question in the name of J.D. No.3, and or any of his nominee or buyer, through the proceedings in hand, whereas, they shall act strictly in accordance with law, and further, if any order is placed before them for any future action, the same shall be got verified through the Nazir's office before acting on it.

In view of hereinabove facts and circumstances, of this case as well as after going through the Nazir's Report, there remains nothing more to be proceeded further in this Execution Application, which already stands disposed of vide Order dated 13.11.2007. Accordingly, Order dated 27.02.2017 stands recalled in view of hereinabove facts of the case. Office is directed to consign this Execution Application to record.

J U D G E

Ayaz