

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 Ex. Applications Nos.02, 03 & 04 of 2017

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DATE ORDER WITH SIGNATURE OF JUDGE

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**Ex. No.02/2017.**

**Decree Holder:** **Industrial Management & Investment Company Ltd**

**Judgment Debtor:** **Port Qasim Authority.**

1. For hearing of CMA No.74/2017.
  2. For hearing of CMA No.272/2017.
  3. For hearing of CMA No.510/2017.
  4. For hearing of Ex. Application.
  5. For orders on CMA No.69/2018.
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**Ex. No.03/2017.**

**Decree Holder:** **Aromatic Foods Ltd**

**Judgment Debtor:** **Port Qasim Authority.**

1. For hearing of CMA No.75/2017.
  2. For hearing of CMA No.274/2017.
  3. For hearing of Ex. Application.
  4. For orders on CMA No.70/2018.
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**Ex. No.04/2017.**

**Decree Holder:** **Project Development Corporation Ltd**

**Judgment Debtor:** **Port Qasim Authority.**

1. For hearing of CMA No.76/2017.
  2. For hearing of CMA No.276/2017.
  3. For hearing of Ex. Application.
  4. For orders on CMA No.71/2018.
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**Dates of Hearing:** **25.01.2018 & 22.02.2018.**

**Date of Order:** **14.03.2018**

Mr. Mansoor-ul-Arfin, Advocate for Decree Holder in Ex.No.2 to 4 of 2017.  
 Mr. Munawar Ali Isani, Advocate for J.D. in Ex.No.2 to 4 of 2017.

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**Muhammad Junaid Ghaffar, J.** These are the three  
 Executions Applications arising out of compromise Judgment and  
 Decree(s) passed separately in Suit No.757/2009, 758/2009 &  
 759/2009 dated 14.05.2013.

2. Learned Counsel for the Decree Holder has contended that in all these three matters, a consent/compromise decree was passed, whereby, certain amount was required to be paid in installments, which has been done, but despite that the Judgment Debtor has raised frivolous objections and is demanding charges under different heads, which are not contained in the compromise decree, hence these execution applications. According to the learned Counsel earlier in same Suit bearing No.757 of 2009 in respect of the same compromise decree an Execution Application bearing No.07 of 2014 was filed in respect of 84 Acres of land out of a total of 200 Acres, which was granted vide Order dated 02.10.2014, and therefore the Judgment Debtor be directed to honour the compromise judgment and decree. Per learned Counsel the entire demand of the Judgment Debtor as per Decree has been fulfilled, but various other charges and or documents are being demanded, which are beyond the scope and mandate of the decree, and therefore, are supposed to be overruled. According to the learned Counsel as per decree the conditions required to be fulfilled by the decree holder are the same as were followed in the case of Aromatic Foods Limited, and no more, whereas, the Decree holder has already met such conditions. In support learned Counsel has relied upon **PLD 1998 Lahore 503. (Begum Rashida Nawaz v. Ch. Muhammad Amin and 3 others).**

3. On the other hand, learned Counsel for the Judgment Debtor has contended that insofar as the allotment and transfer of the property to the Decree Holder and/or their nominee is concerned, the Judgment Debtor has no objection but according to the learned Counsel from July, 2015 onwards a transfer

surcharge has been levied by the Judgment Debtor on all properties which is to be paid by the Decree Holder and in this regard there is no exception in the decree itself, therefore, the decree holder is not exempted.

4. I have heard both the learned Counsel and perused the record. Insofar as the dispute between the parties is concerned, the same is confined to a very limited scope and for that I would like to refer to the operative part of the compromise decree which is identical in all three listed Execution Application (except in respect of area in acreage), and reads as under:-

- "4. That the parties M/s Industrial Management & Investment Company Limited and Port Qasim Authority have agreed that the allotment of **200 Acres of land** shall be at the rate of Rs. 2.5 million per as Occupancy Value i.e. half of the prevailing Peripheral Development Charges (PDC), the Defendant has already received Rs.59,240,532/- as mentioned above, leaving a balance amount of Rs.440,759,468/= which is agreed to be paid in three installments as under:-
- (i) First installment of 25% within 18 months from the date of signing of the Agreement.
  - (ii) Second installment of 25% within next six months from the first installment date.
  - (iii) Third installment of 50% within next 12 months from the 2<sup>nd</sup> installment date.
5. The Defendant will give possession / lease of land on payment of 100% Occupancy Value (OV) on same lines / procedure adopted in the case o M/s Aromatic Foods Limited.
6. In case of delay in payment as per above schedule and charges whether demanded legally or not the Plaintiff shall have to pay the penalty as per prescribed rate (3.5% per annum) above Treasury bill rate or as may be fixed by the Authority. Other terms and conditions of the allotment letter will remain the same.
7. That the Plaintiff shall be liable to pay annual land rent and maintenance charges applicable from the date of signing of this Agreement.

5. Perusal of the aforesaid portion of the compromise decree reflects that it has been agreed that allotment of 200 Acres (again the area is different in all Executions) of land shall be made at the rate of Rs.2.5 Million as occupation value i.e. half of the prevailing Peripheral Development Charges and the Judgment Debtor has already received an amount of Rs.59,240,532/- leaving a balance amount of Rs.440,759,468/-, which has been agreed to be paid in three installments. It is not in dispute that the said balance amounts as specified and mentioned in these Execution Applications have been paid. The Decree further provides that the Judgment Debtor will give possession/lease of land on payment of 100% of occupancy value on the same lines/procedures adopted in the case of *M/s. Aromatic Foods Ltd.* Again it further provides that in case of delay in payment as per above schedule and charges whether demanded legally or not, the plaintiff shall have to pay the penalty as per prescribed rate (3.5%) per annum above treasury bill rate or as may be fixed by the Judgment Debtor, whereas, the other terms and conditions of the Allotment Letter will remain the same. Lastly it provides that the Decree Holder shall be liable to pay *annual land rent* and *maintenance charges* applicable from the date of signing of this agreement.

6. Insofar as present dispute, which remains to be settled and adjudicated appears to be only in respect of para-5 of the Decree in question. Admittedly, the balance payment of the occupancy value stands paid; whereas, the Decree Holder has also not disputed any other payments so stated in the compromise decree itself. The only dispute raised by the Decree Holder is in respect of transfer surcharge being claimed by the Judgment Debtor, which as stated has been levied vide 164<sup>th</sup> Meeting of the Board

through Board Resolution dated 4.6.2015. Counsel for Judgment Debtor was confronted as to how this transfer surcharge can be recovered when it is not part of the compromise decree, whereas, the same was levied subsequently, the learned Counsel submitted that there is no prohibition in the Decree regarding levy of such charges, and therefore, it can be levied and collected. However, I am not impressed with such line of argument. The Judgment Debtor has entered into a compromise decree and in furtherance of the said decree has admittedly received the balance payment of the occupancy value and instead of acting further in satisfying the decree, has come up with the demand of transfer surcharge, which on the face of it would not apply on this transaction, which pertains to a period when this surcharge was not even applicable. Notwithstanding, this observation, it may further be observed that parties are bound by the contents of Judgment and Decree. More so, when the same is by way of a compromise. Not only this, when one of the parties has accepted the payment pursuant to such compromise in furtherance of the decree, then perhaps no further deviation can be permitted from the decree itself. Even the Court cannot go beyond the Judgment and Decree as it is by now a settled proposition and do not require any further deliberation. It is well settled that a decree is executed, in the spirit of its terms and conditions and not in derogation to such terms. For the executing court cannot go beyond what decree stands for, nor it can modify those terms or deviate from them in exercise of its power of execution of decree.<sup>1</sup> It would not be out of place to mention here that the Executing Court cannot go beyond decree.<sup>2</sup>

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<sup>1</sup> Allied Bank of Pakistan Ltd v Rashid Hyder Rizvi (1989 MLD 3602)

<sup>2</sup> Habib Bank Ltd., v Dost Muhammad Cotton Mills (PLD 2000 Karachi 186)

It is well settled that an Executing Court cannot go beyond decree. <sup>3</sup> This is an established rule that Executing Court cannot extend its jurisdiction to go behind the decree and question of its correctness except in a case in which decree is silent that what property was subject-matter of execution.<sup>4</sup> The Executing Court cannot go beyond the decree and it must take the decree as it stands, for the decree is binding and conclusive between the parties.<sup>5</sup>

7. Para-5, as above, also refers and states that the Judgment Debtor will give possession/lease of land on payment of 100% occupancy value on same lines/procedure adopted in the case of *M/s. Aromatic Foods Ltd.* and therefore the only condition which is to be met by the Decree Holder is to follow the procedure, which was earlier adopted in respect of *M/s. Aromatic Foods Ltd.* And to that the learned Counsel for the Decree Holder has consented to. Not only this earlier also in respect of the same compromise decree passed in one of the Suits bearing No. 757 of 2009 in respect of part of the area i.e. 84 Acres out of the 200 Acres, an Execution Application No.07/2014 was filed and through Order dated 02.10.2014, the said Execution was allowed in the following terms:-

“I have heard the arguments of learned Counsel for both the parties and taken into consideration the material available on record of the case and relevant provisions of law relied upon by the learned Counsel for the DH and I am of the view that as per the provision of Order XXI Rule 32 sub-rule 5 of CPC whereby a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid direct that the act required to be done may be done so far as practicable by the decree

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<sup>3</sup> Province of Punjab v Ghulam Rasool (1990 SCMR 1106)

<sup>4</sup> Allah Ditta v Ahmed Ali Shah (2003 SCMR 1202)

<sup>5</sup> S. A. Latif v Nadir Khan (PLD 1968 Lahore 144)

holder or some other person appointed by the Court, at the cost of the judgment debtor and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree. The learned Counsel for JD has candidly admitted that the JD has not executed the lease deed in terms of Clause 5 of compromise decree in favour of the DH.

In view of the facts and circumstances, as mentioned hereinabove, I direct the Judgment Debtor to execute the lease deed of 24 Acres in terms of Clause 5 of compromise decree on same lines / procedure adopted in the case of Aromatic Food Limited wherein a period of two weeks from the date of this order and if the Judgment Debtor fails to do so the Nazir of this Court is nominated to execute such lease deed in favour of Decree Holder or its nominee in respect of 24 Acres of land out of 200 Acres land, for the agreed PDC rate of PKR 2.5 million per acre, amounting to Rs.59,240,532/- in total and which amount has already been deposited by the Decree Holder with the Judgment Debtor, within one week. Judgment Debtor is also directed to give vacant possession of the aforesaid such piece of land to the Decree Holder in accordance with Dimension and location, as per sketch attached and enclosed in red and marked as ABC & D. Consequently, CMA No. 244/2014 is allowed and since the only relief claimed in the instant Execution Application is also granted, therefore, the same is also stands allowed and disposed of."

8. In view of hereinabove facts and circumstances of this case, I am of the view that no case is made out for sustaining the objections of the Judgment Debtor as the demand of transfer surcharge is beyond the mandate of the compromise judgment and decree in this case, whereas, in similar circumstances, an Execution Application in respect of same parties has been allowed. Therefore, all these Execution Applications are allowed in the following terms:-

i. The Judgment Debtor to execute the lease deed of 84 Acres in terms of Clause 5 of compromise decree in Suit No.757 of 2009 (Execution No.02/2017), 40 Acres in terms of Clause 5 of compromise decree in Suit No.758 of 2009 (Execution No.03/2016) and 50 Acres in terms of Clause 5 of compromise decree passed in Suit No.759 of 2009 (Execution No.04/2017) on same lines / procedure adopted in the case of Aromatic Food Limited in favor of the Decree Holder and or its nominee within a period of two weeks from the date of this order.

ii. If the Judgment Debtor fails to do so the Nazir of this Court is nominated to execute such lease deed within a week in favour of Decree Holder or its nominee in respect of land as mentioned in Para-1 above as the amount has already been deposited by the Decree Holder with the Judgment Debtor.

iii. Judgment Debtor is also directed to give vacant possession of the aforesaid piece of land as detailed in Para 1 to the Decree Holder and or their nominee(s) in accordance with Dimension and location, as per sketch attached with these Execution Applications.

iv. Consequently, all pending applications stand disposed of whereas; all three Execution Application(s) are allowed in the above terms.

Dated: 14.03.2018

**J U D G E**

Ayaz