

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Execution No.NIL of 2018**

Date	Order with signature of Judge
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For orders on Execution application alongwith  
Office objection & reply of advocate thereon.

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**12.03.2018**

Syed Safdar Ali, Advocate for the Applicant/D.H.

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**NAZAR AKBAR, J.** This execution application is for enforcement of a compromise decree obtained by the parties in a summary suit **No.NIL/2016** for recovery of money. There is no concept of execution of a compromise, as a compromise between the parties is to be treated a fresh agreement between them and in case of any breach of compromise, the aggrieved party is required to file a fresh suit as observed by the Hon'ble Supreme Court in the case of Peer Dil and others vs. Dad Muhammad (**2009 SCMR 1268**), relevant observations of the Hon'ble Supreme Court on page No.1271 and 1272 side note "A" and "C" are reproduced below:-

4. -----*the earlier judgment/decree being a consent decree was obviously passed pursuant to the provisions as enumerated in Order XXIII, rule 3 C.P.C and being a consent decree based on compromise between the parties can safely be equated to that of a contract, breach whereof would give rise to the fresh cause of action and a fresh suit can be filed by an aggrieved person for the redressal of his grievances. In such like eventualities the judicial consensus seems to be that **"a compromise decree is a contract between the parties and its breach would give cause of action to the other party to approach the Court to seek remedy. Compromise decree is but a contract with superadded command of a Judge.***
  
7. -----*The learned Majils-e-Shoora, ignored that the earlier judgment/decree decided on 1.10.1985 was based on compromise executed between the parties on the basis of award given by the arbitrator which was made rule of the Court subsequently. **Admittedly it was a consent***

**decree based on compromise and non-compliance whereof provided a fresh cause of action on the basis whereof a fresh suit could have been instituted to get the compromise implemented in letter and spirit.** In case of any deviation, violation and departure from the judgment/decree based on consent and compromise, the provisions enumerated in Order XXIII, rule 3 C.P.C. can safely be pressed into service. There is no cavil to the proposition that a consent decree or order is nothing but a contract between the parties within command of the Court superadded to it and its force and effect is derived from contact between the parties on the basis where of consent decree was passed and hence it is binding upon the parties until a fraud is alleged in procuring such decree which is not the case of petitioners. In this regard we are fortified by the dictum laid down in case titled *Nazir Ahmad v. Ghulama* 1987 SCMR 1704, *Shah Wali v. Ghulam Din* PLD 1966 SC 983, *Khurshid Akbar v. Manzur Ahmad* 1982 SCMR 824, *Bhai Khan v. Allah Bakhsh* 1986 SCMR 849, *Halsbury's Law of England, Fourth Edn., Vol.37, para.390.* (Emphasize supplied).

2. In view of the above legal and factual position, the execution application is dismissed. The parties may avail remedy available to them under the law for implementation of compromise agreement mentioned in the compromise application.

3. The office is directed that on receiving execution applications in suit disposed of by way of compromise, an objection as to the maintainability of execution application should be raised by referring to the judgment of Hon'ble Supreme Court reported in **2009 SCMR 1268** alongwith any other objection, if any.

4. However, before parting with the order, I have noticed that number of this Execution Application is **NIL of 2018** and the decree also shows that it was a decree in **suit No.NIL of 2016**, therefore, out to curiosity, I have checked suit file attached to the Execution file. On perusal, I have noticed that on **18.8.2016** the suit was placed in Court with an office objection for orders and it was deferred. May be pending orders on office objection, the suit was not registered. But

after **18.8.2016** the office never listed the case for order on office objection, therefore, the suit remained **NIL** of 2016. Probably, not fixing/pointing out office objection on the orders sheet for orders on Office Objection was not without purpose. That is why when the advocate for the plaintiff filed application for urgent hearing bearing CMA No.12866/2016 in **suit No.NIL/2016**, he mentioned Civil Suit **No.-1939/2016** and without approval/permission of Assistant Registrar in connivance with concerned staff got it fixed in Court on **8.9.2016** and the concerned staff who was supposed list the case also for order on office objection did not object to mentioning a Suit Number in suit **No.NIL/2016**. Before another application for urgent hearing, there is an undated "**submission note**" by Assistant Registrar (D-II) soliciting orders of Additional Registrar (O.S) in the same **suit No.NIL/2016** on plaintiff's un-numbered urgent application under Order 110 of Sindh Chief Court Rules supported by personal affidavit of an advocate for fixing it in Court on **28.9.2016** but even on submission note a different **suit No.-1595/2016** has been mentioned in **suit No.NIL/2016**. There is no order of the Additional Registrar on the said "**office note**" submitted by the Assistant Registrar and yet the application was assigned number and placed in Court on **28.9.2016**. Interestingly even on office note instead of **suit No.NIL/2016**, it is numbered as **suit No.1595/2016**.

5. The suit continued to be **NIL of 2016** and suddenly on **5.12.2016** one **CMA No.17059/2016** for urgent hearing and another **CMA No.17060/2016** for compromise under Order XXIII Rule 3 CPC were filed. Urgent application (**CMA No.17059/2016**) was supported with an affidavit of an advocate Mr. Muhammad Imran Ameer for the defendant and compromise application (**CMA No.17060/2016**) under Order XXIII Rule 3 CPC was supported by affidavit of advocate Syed

Safdar Ali for the plaintiff. On **05.12.2016**, both these applications were sent to the Court for orders:-

- (i) without any endorsement or approval of the Assistant Registrar to the effect that the same may be put up in Court for orders.
- (ii) without objection that why both the applications were supported by affidavits of counsel instead of parties.
- (iii) without objection that how Summary **Suit No.-1939/2016** was mentioned on these applications when the same were filed in **suit No.NIL/2016**.

6. On **5.12.2016**, urgency was granted but compromise application was not pressed. After one week two more applications bearing CMA No.17499/2016 and CMA No.17500/2016 again showing Summary **Suit No.1939/2016** for urgent hearing and compromise application supported with affidavit of the plaintiff and the defendant were directly placed in Court without approval or permission of the Assistant Registrar (O.S) on **14.12.2016** and the same were allowed. This how counsel obtained compromise decree in **suit No.NIL/2016** by manipulating in High Court original side branch to bypass all practice and procedure of scrutiny of application at the level of Additional Registrar of High Court before placing in Court for orders.

7. In view of the above, the Additional Registrar (O.S) is directed to hold comprehensive enquiry against the responsible persons in the Original Side D-II Branch at the relevant time and fix the responsibility of the following irregularities:-

- (i) How and why suit No.NIL/2016 continued to be NIL till its disposal and it was not numbered even after its disposal?
- (ii) How and why there is a submission note of Assistant Registrar (D-II) in this file showing **suit No.1595/2016** instead of **NIL/2016** to place an urgent application in Court on **28.9.2016** has gone unattended?

- (iii) Why and how without obtaining orders of Additional Registrar on the submission note the said application has been assigned number and placed in Court?
- (iv) How CMA Nos.13698/2016, 17059/2016 & 17060/2016 supported with **affidavit of counsel** have been placed in Court for orders without any permission of the Additional Registrar or Assistant Registrar in Court on different dates?
- (v) How all these applications filed in suit No.NIL/2016 have shown to have been filed in Summary **Suit No.1939/2016** and were filed for orders in suit No.NIL/2016?
- (vi) Why on office note in the file of a suit **No.NIL/2016** the Assistant Registrar (O.S-II) has mentioned **suit No.-1595/2016** whereas in urgent application **suit No.-1939/2016** was written.

8. The responsible staff of the (O.S) Branch should be identified within one week to the undersigned and enquiry to be conducted against them that in how many cases they have bypassed the Assistant Registrar and the Additional Registrar and without scrutiny they have placed miscellaneous applications in Court for orders. Once identified, immediately start disciplinary action against the relevant staff in terms of Service Law. Report identifying the staff to be placed before the undersigned within one week in Chamber for perusal pending the disciplinary inquiry against the culprits according to law.

JUDGE

A. Gul/PA\*