

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J.M No.33 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Applicant: Dr. Pehlaj Mal,
Through M/s. Abdul Sattar Pirzada, Sameer
Ghazanfar and Mamoon Chaudry, Advocates.

Respondent No.2 Seetal Das Through Mr. Taimur Ali
Mirza, Advocate.

Respondent No.3&4: Pakistan Hindu Council and Purshotam
Lal Ramani Through Mr. Salahuddin
Ahmed, Advocate.

Respondent No.5: Dr. Ramesh Kumar Vankwani.

1. For hearing of CMA No. 6663/2018.
2. For hearing of Main Application.

Dates of Hearing: 02.05.2018, 03.05.2018, 07.05.2018 & 08.05.2018.

Date of Order: 08.05.2018.

ORDER

Muhammad Junaid Ghaffar J. Through this J.M, under Section 12(2) CPC, Applicant has impugned Orders dated 03.04.2018 and 10.04.2018, whereby, on the basis of a compromise application under Order 23 Rule 3 CPC, Suit No.19/2017 was decreed.

2. The Applicant, as stated, is Doctor by profession and life member of Respondent No.3, which is a social and non-political organization, namely, Pakistan Hindu Council, registered under the Societies Registration Act, 1860. Learned Counsel for the Applicant submits that Suit No.19/2017 was filed by Respondents

No.1 & 2 being aggrieved by Letter dated 17-12-2016 issued by Respondent No.4, whereby, they were suspended from acting as General Secretary and Member Managing Committee of Respondent No.3, respectively. Per learned Counsel, on 03.04.2018, a hand written application was placed before the Court under Order 23 Rule 3 CPC, through which the Suit was compromised and the contents of the compromise decree were beyond the scope and the corpus of the Suit, whereas, it was only signed by Respondent No.1 and Respondent No.4, who were Plaintiff No.1 and Defendant No.2 respectively in the Suit. According to the learned Counsel, the main party to the Suit i.e. Respondent No.3, The Pakistan Hindu Council, was not a party to such compromise, whereas, the compromise decree was entirely against Respondent No.3 as the elections of the Hindu Council were agreed to be held through the Nazir of this Court. Per learned Counsel, the Respondent No.3 was never represented in the compromise through any Resolution of the Managing Committee, and at the most, the compromise signed by Respondent No.4 was in his personal capacity. Learned Counsel further submits that on 10.04.2018, the entire election schedule was further amended and the same was done merely on the basis of an application filed by the Counsel for the parties and not even by the parties, who had signed the compromise. He further submits that when the applicant got information of the compromise, Nazir was approached to file certain appeals by various contesting candidates and they were informed that in the election schedule, though there is a provision of an appeal; but he is not authorized in this regard. He further submits that another member filed High Court Appeal No.112/2018, against the compromise decree, and on 26.04.2018,

a notice was ordered subject to maintainability of the appeal, whereas, to the extent of the grievance of the appellant, Nazir was directed to act in letter and spirit of the compromise decree, however, Nazir once again failed to accept any appeals against the candidature of various candidates. Learned Counsel has referred to the Memorandum and Articles of Respondent No.3 and submits that it comprises of 15 members of the Managing Committee, and officer bearers, whereas, Respondent No.5, who is patron of the Council, has got nothing to do with the management of the Council, however, despite this, he is the person, who is controlling the entire Council overriding the elected members of the Managing Committee. Learned Counsel has further submitted that under the garb of the compromise decree, various ineligible members have been included in the list of voters provided to the Nazir of this Court, and the Applicant as well as other members of the Council are remediless as against such disqualified members. This according to the learned Counsel has been done to benefit the parties to the compromise and to rig the elections through the Court procedure. Per learned Counsel the bye-laws of the Council requires that a solemn declaration is to be given to the effect that the Member is not affiliated with any political party, whereas, even such solemn declaration has been changed and amended in the Nomination Form without any lawful authority. He submits that after passing of orders in this J.M, the High Court Appeal filed by another member stands withdrawn vide Order dated 30.04.2018. According to the learned Counsel, the compromise decree is an outcome of fraud and misrepresentation as the Suit was never challenging any elections schedule, as the Plaintiffs were only aggrieved by suspension orders of their memberships, and even

when the Suit was filed, the election schedule had not been announced, and therefore, it could not have been a part of a compromise decree. This according to the learned Counsel has deprived the applicant as well as the members of Pakistan Hindu Council from participating in a fair and transparent elections and so also from raising objections to the very memberships of disqualified members. In support he has relied upon **2013 CLC 1561** (*Muhammad Ramzan v. Muhammad Akbar Bhatti*), **PLD 2005 SC 705** (*Muhammad Yousuf Siddiqui v. Haji Sharif Khan through L.Rs and others*), **2003 MLD 1626** (*Mst. Nasrin Akhtar and 2 others v. Muhammad Aamer and 8 others*), **PLD 2017 Supreme Court (AJ&K) 1** (*Noor Alam v. Muhammad Latif and 3 others*), **2005 YLR 2896** (*Pakistan through Ministry of Defence v. Ch. Fazal Muhammad and others*), **2002 SCMR 1838** (*Mst. Bibi Shiba and 9 others v. Mustaqir Shah and others*), **1987 CLC 250** (*Muhammad Khalid v. Municipal Committee*) and **1988 CLC 1318** (*Mst. Afroz Jehan v. Mst. Noor Jehan and others*).

3. Counsel for Respondent No.2/Plaintiff No.2 in Suit has supported this J.M and has adopted the arguments of the Applicant's Counsel. He further submits that Respondent No.2 admittedly was not a party to the compromise application, and therefore, the Suit could not have been compromised in its entirety and should have been kept pending to the extent of Plaintiff No.2 and dismissed in respect of the Defendants, who were not party to such an Agreement. He further submits that no instructions for compromise were ever accorded or given to any one, including the Counsel, whereas, the impugned order in fact operates against his client, and therefore, is liable to be set-aside. He further submits that it was only the suspension of the memberships, which was

impugned, whereas, the compromise is beyond the scope of the Suit and has no nexus with the prayer in the Suit. Per learned Counsel not only this, even the compromise decree was further modified, which is impermissible in law, whereas, he further submits that even the compromise application was not supported by any affidavit of the parties and in fact the application itself is hand written and ought not to have been entertained by the Court. In support he has relied upon **2008 SCMR 896** (*Abdul Shakoor and others v. Haroon and others*), **PLD 2015 Sindh 336** (*Abdul Hafeez through Attorney and another v. Pakistan Defence Officers Housing Authority through Secretary and another*) **PLD 2010 Karachi 400** (*Muhammad Akram Shaikh v. Messrs Pak Libya Holding Company (Pvt.) Ltd. Through Authorized Officer and 14 others*), **2013 CLC 1561** (*Muhammad Ramzan v. Muhammad Akbar Bhatti*), **PLD 1998 Lahore 539** (*KALU and 4 others v. The State and another*), **1993 SCMR 251** (*Muhammad Yar and 2 others v. Mst. Sawan Mai and 7 others*), **1980 CLC 967** (*Mst. Hashmat Bibi v. Muhammad Rafi and another*) and **1992 SCMR 1109** (*Ashfaq Zai and others v. M. Abdul Quddus Bihari and others*).

4. Counsel for Respondent Nos.3 & 4 and for Defendant No.1 in Suit submits that there were in fact two different Suits pending before the Court including Suit Nos.19/2017 and 2664/2016 and according to his information both were compromised. He submits that insofar as the Applicant as well as other Members of the Pakistan Hindu Council are concerned, in fact the compromise decree is for their benefit as during pendency of the Suit in question, the election schedule was announced on 10-02-2018 and when the Suit was taken up by the Court, a suggestion was given that since elections are due, a compromise be reached to resolve

the controversy, therefore, per learned Counsel, the Application was prepared in Court and presented, to which there could be no exception. He submits that elections are being conducted by the Nazir of this Court, and this does not prejudice the rights of any member and are being held in a transparent manner, therefore, the J.M is misconceived and is liable to be dismissed. He submits that after passing of the compromise decree another member filed a fresh Suit bearing No.887/2018 and High Court Appeal No.112/2018 and after failing to get relief in these proceedings, instant J.M was filed by concealing proper facts. As to the objection regarding absence of Plaintiff No.2 and The Pakistan Hindu Council (Defendant No.1) in the compromise, he submits that they were represented by their Counsel, who had all the authority to compromise the proceedings. He further submits that both plaintiffs in the Suit are beneficiaries of the compromise decree as their memberships were under suspension, which is no more in existence, and they could now compete in the elections, therefore, the compromise decree does not affects, rather benefits them. As to the objections regarding the conduct and manner, in which, the Hindu Council is being run, and so also the objections against Respondent No.5, learned Counsel has contended that this is beyond the scope of present proceedings and the Court cannot look into such aspect of the matter. He submits that this is not a case of any fraud or misrepresentation and all arguments pleaded on behalf of the Applicant as well as Respondent No.4 do not fall within the contemplation of Section 12(2) CPC. Per learned Counsel present proceedings are only causing delay in the timely conduct of the elections to which serious notice is to be taken by the Court as it will not benefit the process of democratic elections.

As to the alleged non-cooperation by the Nazir, learned Counsel submits that the proper course was to file a contempt application in the main Suit, which could have been entertained by the Court. Insofar as the objection in respect of compromise extending beyond the scope of the Suit, he submits that there is no bar under Order 23 Rule 3 CPC in this regard and it is like an agreement, which could be entered into by the parties. Per learned Counsel in fact the elections and its conduct has a connected cause for the plaintiffs and they have not been deprived from contesting elections. He further submits that if the objections of the applicant are sustained, then perhaps no compromise could go any further in any Suit and this would defeat the very purpose of law. Learned Counsel has also referred to Letter dated 28.04.2018 annexed with the Counter Affidavit of the Respondent No.5, and submits that subsequently the Managing Committee has owned the compromise in question, and therefore, the objections that the Hindu Council was not a signatory to the compromise application is no more valid. As to the solemn declaration regarding not being affiliated with any political party, learned Counsel submits that this is not mandatory and so also inconsequential as to the present proceedings. Learned Counsel in support has relied upon the cases reported as **2015 CLC 1278** (*National Bank of Pakistan and 5 others v. Sultan Ali Lakhani*), **2009 SCMR 1268**, (*Peer Dil and others v. Dad Muhammad*), **PLD 1968 Karachi 115** (*Messr Country Products Export Ltd. V. Messrs Bawany Sugar Mills Ltd.*), **PLD 1966 Dacca 234** (*Muhammad Idris Mia v. Abdul Matleb Mia and others*), **2008 SCMR 896** (*Abdul Shakoor and others v. Haroon and others*), **PLD 1996 SC 213** (*Messr Azhar Asia Shipping Agency*

and another v. Ghaffar Corporation), 1971 SCMR 634 (Dr. Ansar Hassan Rizvi v. Syed Mazahir Hussain Zaidi and 3 others).

5. Respondent No.5 has appeared in person and has relied upon his counter affidavit. While exercising the right of rebuttal, learned Counsel for the Applicant as well as Respondent No.4 have submitted that reliance on Letter dated 28-04-2018, which is a *post facto* affirmation of the compromise, in fact supports their case that at the relevant time, the Pakistan Hindu Council was not a party to the compromise, and the Vice President had only acted on his behalf as an individual, whereas even this letter is not signed by the entire Managing Committee, but by only a part of the Managing Committee. They further submitted that as to the compromise being beneficial, it is only to the extent of removal of suspension of their memberships, whereas, the remaining part of the compromise is not only detrimental to their interest, but so also to the interest of the entire Council Members, and therefore, the contention in this regard is not sustainable.

6. I have heard both the learned Counsel and perused the record. The facts have been discussed briefly hereinabove and it appears that Respondent No.1 and 2 had filed Suit No.19/2017 being primarily aggrieved by letter dated 17.12.2016, issued by Respondent No.4 (Defendant No.2 in Suit), whereby, their status as General Secretary and Member Managing Committee of Hindu Council was suspended. It would be advantageous to reproduce the prayer clause in Suit No.19/2017, which reads as under:-

- a) Declare that the impugned letter No. PHC/MC/LTR/35/16 dated 17.12.2016 is illegal, malafide and against the law especially against the terms of memorandum & Articles of Association of Defendant No. 1, having no legal value / effects under the applicable laws.

- b) To suspend the operation of letter No. PHC/MC/LTR/35/16 dated 17.12.2016 issued by Defendant No. 2 till final decision of instant suit.
- c) Declare that the acts of the Defendants No. 3 viz. interfering in the affairs of Defendant No. 1 /PHC, issuance of letters, press release, holding press conference and / or using the platform of PHC for his personal political gain are illegal, against the Memorandum & Articles of Association of PHC.
- d) Declare that the Defendant No. 3 can only enjoy the powers of Patron, if any, strictly in accordance with memorandum & Articles of Association of Defendant No. 1/PHC.
- e) Suspend the operation of five Notifications bearing Nos. letter No. PHC/ADV/01/16 to PHC/ADV/05/16 dated 5.4.2016 (Annexure P/33 to P/38) regarding appointment of advisors.
- f) Declare that the Managing Committee of the Defendant No. 1/PHC is required / bound to run the affairs of the Defendant No. 1/PHC strictly Defendant No. 3 can only enjoy the powers of Patron, if any, strictly in accordance with Memorandum & Articles of Association and not otherwise.
- g) Grant mandatory injunction thereby directing the Defendant No. 1 to run its affairs strictly in accordance with Memorandum & Articles of Association of PHC. Of PHC and Societies Registration Act, XXI of 1860.
- h) Permanently restrain the Defendant # 2 & 03, their officers, men, attorney, agent, servants or anyone else acting directly or indirectly from interfering / creating obstruction in the smooth running the affairs of Defendant No. 1/PHC, creating any hindrance, harassment and / or interfering in the Managing Committee meetings or acting in violation of Memorandum & Articles of Association of PHC in any manner by any means.
- i) Cost of the proceedings.
- j) Any other relief(s) this Honourable Court deem fit under the circumstances of the case."

7. During pendency of this Suit on 03.04.2018, a hand written application bearing CMA No.5197/2018 was placed before the Court and such application was signed by Plaintiff No.1 and his Counsel and Defendant No.2 and his Counsel. It was admittedly not signed by Plaintiff No.2, Defendant No.1 as well as Defendant No.3. The Court passed the following Order on such application:-

“Today an application in terms of Order XXIII Rule 3 C.P.C. has jointly been filed by the plaintiffs and defendants, duly signed by the plaintiff No. 1 and defendant No. 2 as well as their counsel, seeking disposal of this suit on the terms and conditions mentioned therein vide paragraphs “1 to 7”, which are reproduced as under:-

1. *That the Nazir of this Court be appointed as Commissioner to hold the election of the Pakistan Hindu Council on such terms as the Court deems fit and the constitution of the Council. The Nazir may associate any person he considers fit, including member of Election Commission, for his assistance.*
2. *That the Schedule of Election announced on 13.03.2018 shall be modified as follows:-*

<i>Final Date for nomination:</i>	<i>07.04.2018 till 5:00 p.m.</i>
<i>Final Date for Scrutiny :</i>	<i>09.04.2018.</i>
<i>List of Candidates:</i>	<i>10.04.2018 at 5:00 p.m.</i>
<i>Appeal:</i>	<i>11 to 12.04.2018.</i>
<i>Withdrawal of Candidature:</i>	<i>13 to 16. 04.2018.</i>
<i>Final List of Candidates :</i>	<i>17.04.2018.</i>
<i>Election Date:</i>	<i>29. 04.2018.</i>

3. *That the nomination form already filed with Election Commission shall remain intact and would be subject to scrutiny by Nazir.*
4. *That in pursuance of the order passed by this Hon'ble Court the Pakistan Hindu Council and its Election Commission shall handover the requisite election material to the Nazir till 5.4.2018 by 12:00 p.m.*
5. *That no one will interfere in the election process conducted by the Nazir and all the parties shall cooperate with him.*
6. *That the plaintiffs' suspension shall stand withdrawn and now they shall also be allowed to contest election.*
7. *That the contempt notices issued to parties shall stand discharged and suits be disposed of in the above terms.*

The compromise application appears to have been filed by the parties without any compulsion, coercion and pressure; hence, the same is allowed and the suit is decreed in terms of the compromise arrived at between the parties. All pending applications are disposed of having become infructuous.

At this juncture the learned counsel for the parties state that the Nazir may be empowered, if deems appropriate, to obtain assistance of law enforcing agencies for maintaining law and order situation while conducting the process of election. Order accordingly.

Application stands disposed of. Office also is directed to assign CMA number to this application.

8. It further appears that subsequently another CMA No.5570/2018 was placed before the Court under Section 151 CPC on 10.04.2018 and following order was passed:-

"10.04.2018

Mr. Shaikh Javed Mir, Advocate for plaintiff.
Mr. Nadeem Ahmed, Advocate for defendants

1. Urgency is granted.

2&3. This application (CMA No. 5570/18) has jointly been moved by the parties under Section 151 C.P.C. for the modification of order dated 3rd April, 2018 in the following terms:-

"1. That the paragraph No.2 of the said order be modified as follows-

<i>Final Date for nomination:</i>	<i>17.04.2018</i>
<i>Final Date for Scrutiny:</i>	<i>19.04.2018.</i>
<i>List of Candidates:</i>	<i>20.04.2018</i>
<i>Appeal :</i>	<i>23 to 24.04.2018.</i>
<i>Withdrawal of Candidature:</i>	<i>25 to 27. 04.2018.</i>
<i>Final List of Candidates:</i>	<i>30.04.2018.</i>
<i>Election Date :</i>	<i>13.05.2018.</i>

2. That the date of 05.04.2018 mentioned in paragraph No.4 be modified to 14.04.2018"

The learned counsel for parties state that on 3rd April, 2018 an application under Order XXIII Rule 3 C.P.C. filed jointly by the parties was allowed by this Court, whereby Election Schedule of defendant No.1 was announced, modifying the earlier schedule dated 13.03.2018 issued by the defendants, and the Nazir of this Court was appointed as Commissioner to conduct the Election; however, compliance of the said order could not be made as 4th April, 2018 was declared as holiday; therefore, the requisite election material could not be handed over to the Nazir of this Court within time i.e. up to 05.04.2018; as such, this application has been moved jointly by the parties for the modification of the Election Schedule. The Nazir has also filed his report in this respect.

The application has been filed jointly by the parties; therefore, there is no impediment in allowing the same. Accordingly, this application is allowed by modifying paragraphs No.2 & 4 of the order dated 3rd April, 2018 as prayed.

At this juncture the learned counsel for the parties point out that by consent the fee of the Commissioner was fixed at Rs.200,000/- which is to be paid by the defendant No.1 i.e. Pakistan Hindu Council; however, the same could not be made part of the order dated 3rd April, 2018.

The contention of the learned counsel for the parties appears to be correct as they had recorded their consent of fixing fee of the Commissioner, for conducting the election, at

Rs.200,000/-; hence, order dated 3rd April, 2018 stands modified to that extent also.

Application stands disposed of. Nazir's report is taken on record."

9. Admittedly this application was only signed by the Advocate for Plaintiffs and Defendants. It is also a matter of record and not in dispute that no supporting affidavit to any of these applications was filed before the Court. It is also not in dispute that the issuance of election schedule for the period 2018 to 2020 was not a subject matter of the suit in question. The Suit was only to the extent of suspension of membership of the plaintiff as well as their status as General Secretary and Member Managing Committee of the Hindu Council. It is also noteworthy that in the Suit the Vice President of the Council was arrayed as a Defendant by his name and designation and the Hindu Council was independently arrayed as a registered Society. The compromise in question in fact has no concern with the status, conduct and interest of the Vice President i.e. Defendant No.2 in the Suit, who entered into the compromise on his own behalf. He could not have acted on behalf of the Hindu Council. This fact that he was not acting on behalf of the Hindu Council is not in dispute, rather admitted by subsequent proceedings including Letter dated 28.04.2018, which is termed as a Resolution signed by certain Officer Bearers and Members of the Managing Committee. In fact the signatories are 8 in number, whereas, the Managing Committee consists of 15 members. Even the resolution itself is sketchy and evasive. It does not disclose as to when the meeting of Managing Committee was called for such purposes. Notwithstanding this, even otherwise, the Managing Committee is not empowered to act in such a manner, affirming the compromise which was never signed before the Court on behalf

of the Hindu Council, therefore, as per settled law, the compromise judgment and decree cannot be enforced or executed against the Defendants, who are not parties to the compromise. In fact the law is that the Suit ought to have been dismissed against such a Defendant. The appropriate course before the Court was to keep the Suit of Plaintiff No.2 pending and to dismiss the Suit of Plaintiff No.1 against remaining Defendants and decreed only against the Vice President/Defendant No.2 and if that was the proper course then neither the elections could be held by the Nazir of this Court, nor the schedule could have been part of the compromise decree. In fact the signing of the compromise by the Defendant No.2 is meaningless as he has no authority in his personal capacity, or for that matter as a Vice President, to compromise the Suit on behalf of the Hindu Council.

10. Secondly, it is also not disputed that the terms of compromise are beyond the scope and corpus of the Suit. The Election Schedule was never in question, nor could have been, as the cause of action accrued to both the Plaintiffs was much prior in time and was only to the extent of their suspension. If time had come for fresh elections, then the only thing which could have been compromised, (but only in a proper manner on behalf of the Hindu Council) was removal of their suspension, and to permit them to contest in the elections being held. The Court had never restrained conduct of any fresh elections for which a compromise was needed by the Hindu Council to proceed further. If this compromise would have been to the extent of removal of suspension, then perhaps no further objections would have been raised; but the manner in which the compromise is entered into, and the Nazir of this Court has been dragged in conducting the elections, does not appear to

be justified. When the Elections were never in dispute, why then Nazir of this Court be involved into such matter. The Courts have always been reluctant in entering into the conduct of Elections of private parties, and it is only in the remotest of situations that inference is made. Here in this matter, entire election is assigned to the Nazir of this Court, and the same is on the basis of material, which has been provided by the Hindu Council and Defendants on their own. The terms of compromise are not clear and specific as to on what list of members, the elections are to be held; nor there is any provision in the compromise as to raising objections on the very memberships of the Voters. This definitely deprives a contesting candidate from raising such objections, which is his lawful right to do so.

11. It is also a matter of record that the compromise application was in fact a hand written application and was not so simple in its terms and conditions that it could have been entertained by the Court, whereas, on further perusal it reflects that there is even overwriting and cutting in its contents. At the very first instance, the Court ought not to accept such an application as it is against the very rules of the Court to entertain applications without a supporting affidavit, and that too in respect of a compromise of a Suit. This was not a simplicitor withdrawal application; but a compromise application requesting, passing of a decree having far reaching effects. The decree is by the Court, entitling (with certain exceptions though), a decree holder to seek execution, therefore, the Court is bound to examine such compromise application(s), with a higher degree of care and vigilance. In this matter, it is in fact a self-executing decree, and without any execution application, it has been acted upon by the Nazir of this Court as directed.

Secondly, the subsequent Application under Section 151 CPC, whereby, the entire schedule of the elections as recorded in the compromise decree was requested to be modified and such application was not even signed by the parties, but only by the Advocates. It is also a big question mark as to how a compromise decree can be modified by the Court on an application under Section 151 CPC. Once a decree has been passed, the Court becomes *functus officio* and it is only a correction or mistake within the parameters of Section 152 CPC, which could be entertained and an application under Section 151 CPC, presented with signatures of the Counsel and that too without any affidavit, perhaps cannot be entertained to modify a decree of the Court. This is also not understandable as to why the Court was not approached in a proper manner by the parties.

12. A learned Division Bench of this Court in the case of **Abdul Hafeez (Supra)** as relied upon by the learned Counsel for Respondent No.4, had the occasion to deal with a situation wherein, execution of a compromise decree was being sought against a party who had not entered into such compromise or signed the same before the Court. The Court held as under;

Lastly, the submission of Mr. Dhoon that since the respondent No.1 was not a party in the suit, therefore, is not bound by the decree obtained by the appellant against respondent No.2 through concession is also not without substance. A Division Bench of Peshawar High Court in the case of Syed Kamal Shah v. Sher Baz Khan (1994 MLD 2334) held that any person who was not a party to the suit would not be bound by the ultimate decree. In our opinion even otherwise, a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the Court super-adding its seal to a contract and since the compromise even after it is super-added with the seal of the Court has almost all the ingredients of a contract, therefore, it can be set aside on any of the ground on which a contract could be attacked such as fraud, mistake or misrepresentation. Beside, since only the parties who are signatory to the contract are bound by the terms and conditions so recorded and agreed upon between them, likewise, the Court would not while enforcing the terms and conditions so agreed between the parties to the contract notwithstanding that such contract is superadded with the seal of the court and turned in a consent

decree would compel a third party to obey unless a fiduciary relationship between the judgment debtor and such third party is established.

13. Similar view has been expressed by a learned Single Judge of this Court in the case of **Muhammad Akram Shaikh** and **Muhammad Ramzan (Supra)**.

14. Insofar as the contention of the learned Counsel for Respondent No.3 & 4, that in terms of Order 23 Rule 3 CPC, even the matters which were beyond the pleadings or corpus of the Suit, can also be comprised is concerned, I may observe, that it is only partially permissible, and only when the parties have done so for the matter of convenience, and secondly, there is no dispute as to its execution thereafter. But as and when there is some objection to that effect, then perhaps this can't be executed by the Court, and for that a separate Suit for enforcement of the agreement or compromise is the only alternative. Whereas, in this matter, not only the compromise is beyond the scope and corpus of the Suit, but so also is against those who were not party to such an agreement or compromise. And to add, the same is being executed against their interest through the Nazir of this Court. In such a situation, the execution as pleaded by the learned Counsel can't come to the rescue of his clients. The case law relied upon in this context as reported in the case of **Messrs Country Products Exports (Supra)** and **Muhammad Idris Mian (Supra)** is also on the same line and does not rule out such exceptions. In fact the operating part of the opinion in the case of **Muhammad Idris Mian (Supra)** forcefully relied upon by him goes against the very genesis of his argument and reads as under;

It is patent that all that the Court is required to do is to satisfy itself that the suit has been adjusted either wholly or in part

by a lawful agreement or compromise. Where the defendant satisfied the plaintiff in respect of the whole or part of the subject-matter in suit, it is incumbent upon the Court to pass an order to the effect that an agreement which has been set out by the parties has resulted in such satisfaction. **The Court is required to pass a decree which should be confined to the subject-matter of the suit. The order passed by the Court can operate as a decree only in so far as it relates to the subject-matter of the suit.** There is, however, nothing to prevent parties from entering into any lawful agreement with regard to matters extraneous to the suit. Such an agreement can also be incorporated in a petition of compromise filed in the suit. **An agreement extraneous to the suit can be enforced, if legal, in a manner other than by way of execution for the simple reason that the agreement in so far as it is extraneous to the suit, cannot operate as a decree....**

15. In view of hereinabove facts and circumstances of this case, on 08.05.2018 this J.M was allowed with pending applications in the following terms and above are the reasons of the same:-

- 1 Impugned Orders dated 03.04.2018 and 10.04.2018, whereby Suit No.19 of 2017 was decreed by way of a compromise, and subsequently amended, are hereby set aside.
- 2 Nazir of this Court who was appointed as Commissioner to conduct the elections is directed to return and handover the Election material etc. to the persons from whom he had received the same.
- 3 Consequently, Suit No.19 of 2017 stands reverted to its position prevailing before 03.04.2018. Office to list the same according to roster on the next date and shall place copy of this order in the file of Suit No.19 of 2017.

Judge