

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Constitution Petition No. 8784 of 2017

Shahnaz Parveen

Versus

The Additional District Judge-III, Karachi East
& 3 others

For the Petitioner : Mr. Abdul Shakoor
Advocate

For Respondent No.3 : Mr. Sohail Hameed, Advocate

: Ms. Rukhsana Durrani
State Counsel

Date of Hearing : 30.05.2018

ORDER

Agha Faisal, J: Through the subject petition, an order dated 24.11.2015 passed by the Court of the learned IXth Senior Civil Judge, Karachi East ("**Impugned Order**"), in exercise of its civil revisional jurisdiction, has been assailed.

2. A brief upon the facts giving rise to this petition are delineated in chronological order herein below:

i. A dispute was referred to arbitration pursuant to the Cooperative Societies Act, 1925 ("**Act**") and the said arbitration proceedings culminated in an Award dated 04.06.2010 ("**Award**") in favour of the respondent No.3 herein. Even though the present appellant was a defendant in

the aforesaid proceedings, she did not prefer any appeal against the Award.

ii. A certificate of execution dated 24.08.2010 was issued by the Registrar Cooperative Societies Sindh in order to implement the Award. Execution proceedings commenced before the Court of IXth Senior Civil Judge, Karachi East, at the behest of the decree holder / respondent No.3 herein and the said proceedings were allowed vide order dated 24.11.2015 (“**Execution Order**”). It may be pertinent to reproduce the content of the Execution Order:

“Heard the learned counsel for both sides and perused the record. An award dated 04.06.2010 was passed in ABN No.19 of 2010 for which the decree holder filed this execution application. In the award dated 04.06.2010, the decree holder was declared as lawful owner of the suit property. However, in the reasons of award it is mentioned that the case of the plaintiff/decree holder was decreed as prayed for. The learned counsel for the plaintiff filed one statement dated 10.11.2015 along with the copy of ABN case No.19/2010 wherein besides other prayers the plaintiff has also prayed for possession of the suit plot. This is an executing Court cannot go beyond the decree. The executing Court has to execute a decree strictly in accordance with the terms and conditions of the decree passed by the competent Court. The judgment debtor cannot absolve his liability to satisfy the decree. There is neither any stay in operation nor is there anything on record to disallow the execution application.

In the light of above discussion, the execution application is allowed. Let the writ of possession be issued.”

iii. The present appellant preferred a civil revision application before the learned Additional District Judge, Karachi East, being Civil Revision Application No.126 of 2015, wherein the Execution Order was assailed. The said application was decided vide the Impugned Order and the relevant portion therefrom is reproduced herein below:

“The instant Civil Revision has been filed by the applicant against the order dated 24.11.2015 passed by the learned IX-Senior Civil Judge, Karachi East in Execution No.12 of 2011 (ABN Case No.19/2010) whereby the execution application was allowed.

Notices of the instant revision application were served upon the respondents but none appeared on their behalf.

Heard learned counsel for the applicant. He submits that C.P. bearing No.795 of 1993 is pending adjudication before the Hon'ble High Court to determine the actual allottees of M/s. Architect and Engineering Society. Learned counsel submits that in said petition the Hon'ble High Court has been pleased to appoint the Administrator of the Society and he has been directed to publish the list of actual allottees in the newspaper. Learned counsel submits that despite the fact that list of actual allottees has not yet been prepared, decree holder/respondent No.1 approached the office of the Registrar's Nominee, Karachi and obtained an award in his favour in ABN Case No.19/2010 on 04.06.2010. Learned counsel submits that after getting an award in his favour, respondent No.1 filed execution application bearing No.12/2011. Learned counsel submits that applicant/JD No.2 appeared before the learned executing Court and submitted a statement apprising the facts and circumstances of the case as well as about pendency of C.P. No.795/1993. Learned counsel submits that despite having above knowledge, learned executing Court proceeded the matter and passed Impugned Order dated 24.11.2015 whereby the execution application was allowed and writ of possession was directed to be issued. Learned counsel submits that the Impugned Order is bad in law and on facts as during pendency of C.P No.795 of 1993, executing Court was not competent to entertain the execution application. Learned counsel submits that there are more than one allottees of each plot in the society and in the absence of declaration regarding the actual owner of the plot, the award cannot be executed. Learned counsel submits that Section 47 of the Civil Procedure Code prescribes the mode to deal with the issues when the decree/award is un-executable. Learned counsel submits that since there exists dispute in respect of actual owner of the subject plot, the learned executing Court was bound to determine the actual owner of the subject plot prior to passing the Impugned Order. Such argument hardly appeals a prudent mind. Section 47 of the Civil Procedure Code is very much clear in its sense. For ready reference, it is reproduced herein as under: -

47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was assed, or their representatives, and relating to the execution, discharge

or satisfaction or the decree, shall be determined by the Court executing the decree and not by a separate suit.

2)-----

3)-----

Bare reading of Section 47 shows that law authorizes executing Court to take all the measures required to satisfy the decree/award but it has not authority to nullify or set aside and/or even declare the decree/award unlawful. Learned counsel for the applicant has submitted the statement along with copies of certain documents pertaining to the C.P. which are placed on record. He, however, candidly admitted that the applicant has not challenged the award before any competent forum and the same is still in field. He furthermore admitted that that no order restraining the executing Court has even been passed in the said C.P. It is an admitted fact that an executing Court cannot go beyond the decree and it is bound to execute the decree/award in stricto sensu. In these circumstances, I do not find any merits in instant Civil Revision Application, same is accordingly dismissed.”

3. Mr. Abdul Shakoor, learned counsel for the petitioner, argued that the Impugned Order is contrary to the law and hence may be set-aside. It was further argued that the Execution Order and the Award may also be set-aside by this Court in the exercise of its Constitutional Jurisdiction. In support of his contention, he relied upon the judgment in the case of *Syed Ali Suleman Jafri v. Secretary to the Government of Sindh and 3 others* reported as 1986 SCMR 1302 (“**Suleman Jafri**”).

4. In response to the arguments on behalf of the petitioner, it was contended by Mr. Sohail Hameed, the learned counsel for respondent No.3, that the Impugned Order was in due consonance with the law and that it was the petition filed by the appellant, which was prima facie baseless in law and meritless in fact.

5. Per learned counsel, the Award had already attained finality in terms of Section 57 of the Cooperative Societies Act and, therefore,

it was not liable to be called in question. It may be pertinent to reproduce the above cited provision of the law.

“57. Finality of award in certain orders. The award of arbitrators or a decision by the Registrar or his nominee under section 54 or section 54-A or an order passed in appeal by the Registrar under section 56 shall, subject to the provisions of sections 64 and 64-A, be final and conclusive and shall not be liable to be called in question in any civil or revenue Court.”

6. We have heard the arguments of the learned counsel and it appears that the primary question for this Court to determine is whether the Award, Execution Order and the Impugned Order could be collectively and belatedly assailed in the present petition.

7. It is observed that Section 54 of the Act prescribed arbitration as the method of adjudication in disputes referred to therein. It is also noted that in the event that an award has been made by an arbitrator, other than the Registrar Cooperative Societies, recourse was available in the manifestation of an appeal before the Registrar Cooperative Societies under Section 56 of the Act. The order in appeal itself was subject to the revisional jurisdiction of the Provincial Government under Section 64-A of the Act.

8. It is demonstrated from the record, and admitted by the learned counsel for the appellant, that the appellant never assailed the Award in exercise of the statutory hierarchy of appeal provided in the Act. On the contrary, the appellant preferred a civil revision application against the Execution Order and the same was dismissed vide the Impugned Order.

9. The ratio of *Suleman Jafri*, cited by the learned counsel for the petitioner is distinguishable in the facts and circumstances of this case.

10. In the presence of a statutorily prescribed hierarchy of appeals, the proclivity to ignore the same and then eventually and

unjustifiably challenge the orders that have attained finality vide a Constitution petition cannot be appreciated.

11. There is also the issue of the time frame prescribed to exercise the rights of appeal. After the passage of such time vested rights are created in the beneficiary of the said orders and such rights cannot be interfered with in an arbitrary manner.

12. The learned counsel was unable to point out any infirmity with respect to the Execution Order, which appeared to have been rendered lawfully consequent to the issuance of the certificate of execution dated 24.08.2010 by the Registrar Cooperative Societies Sindh.

13. We have carefully considered the Impugned Order, in the light of the record before us, and no apparent irregularity or illegality has been found therein. The Impugned Order is found to be in due consonance with the law and as a consequence thereof the same is hereby maintained and upheld.

14. In view of the foregoing this Court arrived at the conclusion that the present petition is devoid of merit and hence was constrained to dismiss the same vide short order 30.05.2018. Above are the reasons for the aforesaid short order.

Judge

Judge

Karachi.
11.06.2018