

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-795 of 2012

Date

Order with signature of Judge

Present

Mr.Justice Muhammad Ali Mazhar

Mr.Justice Adnan Iqbal Chaudhry

Shakeel Mehdi.....Petitioner

V E R S U S

Syed Absar Raza Rizvi & others.....Respondents

Date of hearing: 09.08.2018

Mr. Muhammad Ali Waris Lari, Advocate for
the Petitioner.

Syed Hasan Jafri, Advocate for the
Respondent Nos.1(2) to (4).

Muhammad Ali Mazhar, J: Through this Constitution Petition, the petitioner has challenged the order dated 08.12.2011 passed in Civil Misc. Appeal No.02/2011 by the learned Vth Additional District Judge, Karachi, East. The petitioner moved an application under Section 47 CPC against the order dated 04.03.2011 in Execution Application No.18/2010 (Suit No.522/2009) which application was dismissed by the executing court. In pursuance of the order dated 07.03.2012 passed in this petition, the petitioner had furnished security in the sum of Rs.300,000/- through Behbood Saving Certificates but subsequently vide order dated 14.05.2013 he was allowed to substitute surety. The endorsement of Nazir shows that the petitioner had furnished surety in lieu of earlier security in the sum of Rs.400,000/- and deposited registration book of Car AFM-330 and also executed surety bond No.61368 on 08.09.2014. On 07.03.2012, subject to furnishing security for the decretal amount, the execution proceedings were

stayed by this court which interim order is in field. During course of arguments, the learned counsel for the petitioner pointed out that in Civil Suit No No.522/2009, an application moved under Section 12 (2) CPC is pending which was deferred on the basis of statement filed by learned counsel for respondent Nos.1(2) to (4) on 06.10.2012 whereby he communicated to the trial court the factum of pendency of this petition in this court. The learned counsel also intimated that execution proceedings have been stayed. Apparently on the basis of this statement, the learned trial court stopped the proceedings. When this fact was confronted to the learned counsel for the respondent Nos.1 (2) to (4), he admits to have moved this statement and acknowledges that the application filed under Section 12 (2) CPC by the petitioner is pending in the trial court.

2. This petition is pending since 2012 but decision of 12 (2) application is crucial which is pending in the trial court through which the judgment and decree have been assailed and unless this application is decided by the trial court, the rights of the parties present in this petition cannot be determined. After arguing at some length, both learned counsel agreed for the disposal of this Constitution Petition in the following terms:

- (i) The learned Vth Senior Civil Judge, Karachi-East shall dispose of the application pending under Section 12 (2) CPC in Civil Suit No.522/2009 preferably within a period of 45 days. The application shall be decided after providing ample opportunity of hearing to all the parties.
- (ii) Both learned counsel undertake that they will make their first appearance in the trial court on 18.08.2018 at 11:00 a.m. Office is directed to

communicate this order to the learned trial court in advance.

- (iii) The surety furnished by the petitioner with the Nazir of this court shall remain intact till such time the application under Section 12 (2) CPC is decided by the trial court and till such time the executing court shall not finalize the execution proceedings. Immediately upon deciding the 12 (2) application, the learned trial court shall transmit a copy of the order to the Nazir of this court and the Nazir shall place a reference for further directions.

The petition is disposed of in the above terms alongwith pending applications.

Judge

Judge

Asif