

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Execution No.102 of 2017**

Date	Order with signature of Judge
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For orders on Execution Application.

**19.02.2018**

Ms. Beenish, advocate holding brief for Mr. Usman Tufail Shaikh, advocate for the Decree-holder.

This execution application is for enforcement of a compromise decree obtained by the parties in suit for cancellation of an agreement. There is no concept of execution of a compromise, as a compromise between the parties is to be treated 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 reported as **(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).*

Secondly, according to clause-5 of the compromise decree between the parties, the plaintiff seeks execution of sale-deed of only **first floor** of House No.C-296/A. There is no concept of sale of a portion of a house unless it is being officially partitioned by the KDA and separate title of the said portion of immovable property is registered in favour of the seller. As the portion of the property (1<sup>st</sup> floor only) in compromise decree is not exclusively owned by the party entered into compromise, it is not executable. The compromise decree even on this ground is not executable.

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 reproduced in compromise decree.

However, before parting with the order, it struck to me that I should examine the suit file in which compromise decree has been obtained by the parties. On perusal of file of suit No.1933/2016 I have noticed the following lapses which appears to be criminal negligence on the part of the suit branch of this Court.

- (i) The compromise application (CMA **No.12223/2016**) was not supported by affidavit of defendant as well as plaintiff and yet it was numbered.
- (ii) The compromise application CMA No.12223/2016 alongwith application for urgent hearing (CMA No.12222/2016) was placed in Court for orders on **29.8.2016** without approval or permission of the Additional Registrar or Assistant Registrar (O.S) to place the same in Court.
- (iii) On **29.4.2016** Mr. Zaheer Minhas, advocate for the plaintiff requested the Court to repeat notice on fresh address which was supposed to be provided by him but neither fresh address of defendant was given by the counsel nor any notice was issued to the defendant.
- (iv) The unscrupulous plaintiff then used the order dated **29.8.2016** on compromise in the Court of 1<sup>st</sup> Sr. Civil Judge, Central, Karachi in **Execution Application No.04/2010** Re. Akram Ali Khan (Plaintiff herein) vs. Shariyatullah Siddiqui and others. Court of Civil Judge by letter dated **2.9.2016** required verification of order dated **29.8.2016** and on **8.9.2016** even verification was sent by High Court to the Court of Sr. Civil Judge.
- (v) Timing is very important. Order on compromise was passed on **29.8.2016** and within **three days** it was placed before Executing Court in Execution Application No.04/2010 and 1<sup>st</sup> Sr. Civil Judge, Central, Karachi on same day its verification was sought by the Court from High Court.

In view of the above, the state of affairs in suit branch appears to be pathetic. Some of the official appears to be involved in corruption and they willfully overlook necessary procedure in discharge of their duties resulting in passing of orders by Court which bring reputation of judiciary under criticism. The Additional Registrar (O.S) is, therefore, directed to hold comprehensive enquiry against the concerned staff who sent file to the Court for orders on compromise application in violation of several Rules to be followed before sending the file to Court for order. Such negligence is clear from the record of suit file and initiate disciplinary proceedings.

Copy of this order may also immediately be sent to the District and Sessions Judge Central, Karachi for onward transmission to the Court of 1<sup>st</sup> Sr. Civil Judge, Central, Karachi with reference to

Execution Application No.04/2010 Re. Akram Ali Khan (Plaintiff herein) vs. Shariyatullah Siddiqui and others. If any order were passed in the said execution on the basis of order of the Court on 29.8.2016 in suit No.1933/2016, the same may be recalled after notice and hearing the parties.

JUDGE

*A. Gul/PA\**