

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.88 of 2013

Date	Order with signature of Judge
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For orders on Nazir's report dated 18.9.2014

12.03.2018

Mr. Sibtain, advocate holding brief for
Mr. Muhammad Qutubuzaman, advocate for the plaintiff.

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ORDER

NAZAR AKBAR, J. This disposed of suit is listed for orders on Nazir's report dated **18.09.2014** and perusal of this report has surprised me. I am surprised that how a decree has been satisfied without recourse to the execution proceedings and report of satisfaction of decree has been filed in a disposed of suit. How can Nazir execute a decree when the decree holder till date has not filed execution application in accordance with the following provision of **Order XXI Rule 10 CPC** for satisfaction of decree?

ORDER XXI

EXECUTION OF DECREES AND ORDERS

*10. **Application for execution.**—Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.*

2. Further perusal of the Court File has again pointed towards willful breach of SCCR and practice and procedure in the original side Suit Branch as well as in the NAZIR office. Record shows that decree on compromise application bearing **CMA No.4214/2013** by order dated **15.4.2014** has been obtained in a clandestine manner precisely in connivance with and active involvement of staff in suit branch. The foul played in obtaining the decree is apparent from the following facts on the record:-

- i) The defendants never engaged an advocate and compromise application was presented by the plaintiff's

counsel on **15.4.2013** without supporting affidavit of any of the parties i.e the plaintiff or any of the defendants.

ii) Without submission note and permission / approval of Assistant Registrar / Additional Registrar it was assigned number as CMA No.**4214/2013** and listed for orders in Court on **17.4.2013**.

iii) The same compromise application after almost one year on **28.3.2014** was shown to have been filed in **2014** and instead of **2013**, it was listed again as **CMA No.4214/2014** on **15.4.2014** when it was disposed of.

iv) Again even after one year it was without supporting affidavit and there was no approval / permission of Assistant Registrar or Additional Registrar to place in Court.

3. The application was allowed as the Judges in High Court work on the trust and understanding that the suit branch under the control of a judicial officer of the level of Additional District & Session Judge must have examined and scrutinized the application before placing it in Court. In any case with the orders on compromise application the suit was disposed of. Even a decree was prepared on **20.5.2014**. The suit file was consigned to record but the unscrupulous conduct of both the plaintiff, his real brothers and sister (the collusive defendants) with the unlawful and unfair assistance of their counsel to abuse the process of the Court did not end here.

4. The perusal of title of the suit shows that it was a suit for **Administration** wherein the plaintiff and the defendants are real brothers and sisters inter-se and live at the same residential address. Therefore, even summons and notices to the defendants, if at all served, were served at the address of the plaintiff. In fact they all have planned to employ the Nazir of High Court to overcome legal objection/illegality, if any, in transfer of suit property by way of inheritance and to avoid

possible objection on transfer in official record by inheritance they decided to get the sale deed of the suit property registered through the Nazir of High Court. Therefore with pre-determine mind they inserted the following clause in their compromise application.

“That if defendants failed to execute sale deed in favour of the plaintiff or his nominee(s) within a period of 20 days as aforementioned the Nazir of this Court will execute sale deed in favour of the Plaintiff”.

5. The compromise was entered amongst the legal heirs in a suit for **administration** of the property and before the suit for administration could be decreed, all the legal heirs changed their status to the status of sellers and a purchaser of the suit property without title in their name and filed collusive suit with deceptive description of the title. This was precisely a fraud played by all of them with Court in which staff of suit branch was involved to the extent of by-passing the mandatory procedure and deliberately not raising routine objection on compromise application as detailed in Para 2 above. Thus all the brothers and sister with the help of staff of suit branch of High Court got the compromise decree and despite agreeing to execute the sale deed within **20 days** did not execute it to create an unexplained excuse for the plaintiff to get it executed by the Nazir of this Court on the pretext of the above quoted clause in the compromise decree.

6. Then Mr. **Muhammad Qutubuzaman**, advocate on **20.06.2014** instead of filing execution application under Order **XXI Rule 10 CPC** for satisfaction of even the compromise decree directly approached the Nazir of this Court and filed the following application.

Dated:20.06.2014

The Nazir of Hon'ble High Court of Sindh,
Karachi.

Subject:- **TO EXECUTE SALE DEED ACCORDING
TO ORDER DATED 15.04.2013.**

Respected Sir,

I the Counsel of Plaintiff in Civil suit No.88/2013, between plaintiff and defendant the said suit was compromised against the property / Flat bearing No.06, Kulsum Court, plot No.DC-3, Clifton, Block 09, KDA Scheme 5, Karachi ad measuring 1004.79 sq.ft. Both the parties were entered into compromise application under Order 23 rule 3 in presence of Two advocates Mr. Muhammad Qutubuzzaman Advocate from plaintiff and Mr. Khalid Siddiqui advocate from defendant. According to para-3 that if defendants fail to execute the Sale deed in favor of plaintiff or his nominee within the period of 20 days as afore mentioned the Nazir of this Hon'ble Court will execute Sale Deed in favor of plaintiff. Now 20 days have been elapsed so it is requested to the Hon'ble Nazir to execute Sale Deed in favor of plaintiff.

It is in the interest of justice, equity and good conscience.

Thanking you,

Yours Sincerely

Muhammad Qutubuzzaman
Advocate High Court.

And successfully persuaded the Nazir of High Court to execute sale deed of the suit property in place and on behalf of real brothers and sister of plaintiff in favour of the plaintiff. This is how in a suit for **Administration** of the suit property, a decree of specific performance of a purported contract of sale amongst the purported legal heirs of owner of the suit property valued at only **Rs.40,00,000/-** was obtained from High Court, a Court which lacks pecuniary jurisdiction to entertain a suit for specific performance of contract and even suit for administration of the property worth only Rs.40,00,000/-. The minimum pecuniary jurisdiction of High Court for the relief of Specific Performance of contract or suit for administration is **Rs.15,000,000/-** or more.

7. With little experience on the original side bench, I can safely say without fear of contradiction that most venerable stage of misuse of the process of High Court is the disposal of suit by compromise on the first date of hearing and before filing of formal written statement. One such example of such venerability may be appreciated from the fact on Court record is that on **12.01.2015** I had dismissed a suit for specific performance and compromise application in respect of property bearing **Bungalow NO.43/1/A 9th street Phase-V DHA Karachi, admesuring 450 sq.yds.** It was Suit No.1021/2014 *Muhammad Ali Zubair ..Vs.. Mst. Sabira Khatoon* and judgment is reported as **2017 YLR 138**, I have recently been informed that another set of parties subsequently on **15.07.2015** filed another suit **No.1191/2015** in respect of the same **Bungalow NO.43/1/A 9th street Phase-V DHA Karachi, admesuring 450 sq.yds** and on **06.11.2015** the subsequent suit has been decreed on a compromise application. It is indeed very unfortunate that original side suit branch has been constantly negligent and to some extent facilitating the parties in obtaining the orders which on the face of it appears to be abuse of the process of High Court. Recently I have dismissed execution application **No.102/2017** *Akram Ali Khan..V/s.. Muhammad Moazzam Khan* and also and execution application **No.Nil/2018** *Tariq Gul ..Vs.. Zarar-ul-Yamin Khan*. In both orders I have pointed out grave irregularities and adverse effect of such irregularities is always culmination of proceeding in collusive decrees on compromise to be misused. I have also noticed such irregularities are more frequents in the cases in which **Mr. Qutubuzaman**, advocate, represents the plaintiff or the consenting party. The facts of the case in hand reminds me one of my earlier orders in which **Mr. Muhammad Qutubuzaman**, advocate had attempted to obtain **exparte decree** against real brother of plaintiff and like present suit the defendant / brother was also living at the same address of the plaintiff. I had dismissed his suit No.1575/2010 with cost

of **Rs.50,000/-** and the judgment is reported as *Muhammad Ashfaq Arain...Vs.. Muhammad Ishaq Khan* in **2015 MLD 1133**.

8. In the suit in hand **Mr. Qutubuzaman**, advocate who was instrumental in obtaining decree on compromise application with connivance of suit branch staff, has deliberately misguided/influenced and / or corrupted the Nazir office, whatever, but he was not supposed to file any application before the Nazir for satisfaction of a decree on compromise. In fact from **15.4.2015** he was no more advocate for the plaintiff in the instant suit since on the disposal of compromise application the proceeding of suit had ended so far as his client is concerned. On **15.4.2015** he had ceased to be a pleader for the plaintiff in suit No.88/2013 in terms of **Order III Sub-Rule(2) and (3) of Rule 4 CPC** reproduced below:-

4. Appointment of pleader. (1).....

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(2) **Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client of the pleader as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.**

(3) **For the purpose of sub-rule (2), an application for review of judgment, an applications under Section 144 or Section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.**

The application dated **20.06.2014** (reproduced in para-6 above) filed by Mr. Qutubuzaman, advocate before the Nazir after the compromise decree was even otherwise without authority as the said application to the Nazir of this Court was **not** for any of the purposes mentioned in **Sub-rule(3) of Rule 4 of Order III CPC**. He should have obtained fresh

power from Plaintiff / Decree Holder and filed proper execution application and solicited order for satisfaction of decree from the Executing Court even through the Nazir after satisfying the Executing Court that why and how the defendants (J.Ds) have failed to satisfy the compromise decree and whether the decree was executable through the Court. The executing court should have been apprised of the circumstances in which (the J.Ds) plaintiff's real brothers and sister have failed to fulfill their promised within 20 days when they are peacefully living with the plaintiff.

9. Today, the instant suit is fixed for orders on Nazir's report and in view of the above facts, when it is clear legal position that the Nazir has acted without jurisdiction and on the willful and malafide persuasion of Mr. Qutubuzaman, advocate, the Nazir of this Court has unlawfully executed sale-deed of the suit property, the said sale deed is liable to be cancelled and declared as unlawful. The DECREE does not authorize Nazir of this Court to do anything pursuant to the judgment. The Nazir of this Court is not supposed to act as judicial officer / presiding Judge of Executing Court to entertain an application for satisfaction of decree and pass a judicial order by himself directing unto himself to take steps to satisfy the decree and at his own send a report to the Court for order of satisfaction of decree in the disposed of suit. It is settled principle of law that even if anything is lawful but it has been done unlawfully it becomes unlawful. An illegality committed by the Nazir on whatever pretext cannot be allowed to perpetuate, rather it is the duty of the Court to direct him to reverse the consequence of illegalities committed by him as an officer of the Court.

10. In view of the facts and law discussed above, the Nazir report dated **18.9.2014**, is taken on record with the orders as follows:-

- i) The plaintiff / Decree Holder is put on notice to show cause why the sale-deed, executed by the Nazir of this

Court without lawful authority on the application of a lawyer who had no authority to represent the plaintiff in the said suit once it was decreed and seek further relief in the same disposed of suit on his behalf without following the mandatory requirement of **Order XXI Rule 10 CPC** and even otherwise since it was illegally executed, should not be cancelled. Issue notice to the Plaintiff for **12.4.2018** for his personal appearance.

- ii) In the meanwhile Nazir is directed to immediately collect the original registered sale deed executed by the Nazir on **10.9.2014** from the plaintiff in respect of suit property and also send intimation forthwith to the concerned Sub-Registrar of Properties that no further transaction should be allowed by him on the basis of sale-deed registered through Nazir of this Court in respect of the suit property. The original sale deed may be kept by the Nazir in his custody till final decision that whether it is to be cancelled or not.

11. The incidents of irregularities in following the mandatory procedure in suit branch need to be arrested forthwith to avoid repetitions of miscarriage of justice on account of serious flaws in suit branch as is apparent from the facts of the case in hand. Therefore, the Additional Registrar (O.S) to whom, I have repeatedly pointed out irregularities in the suit branch on original side in different orders is hereby directed to hold comprehensive inquiry to the following effect.

- i. He should obtain complete information from the office of the Nazir regarding the execution of sale deeds by the Nazir on the basis of compromise decrees right from January 2014 till date. This information should be in two categories. First category of the cases should be the cases in which Mr. Qutubuzaman, advocate

has obtained compromise decree and persuaded the Nazir to execute the same without filing an execution application. Secondly all other compromise decrees in which Nazir has executed the documents directly on the basis of compromise decree without recourse to the execution proceeding. The other set of information must also disclose / identify the advocate who has obtained compromise decree and manage to get the transfer of title of immovable property through sale-deed executed by the Nazir in place of consenting party.

iii. Collect information about **exparte decrees** passed by this Court during the said period in the cases in which Mr. Qutubuzaman, advocate has appeared and examine each file from the point of view of proper service on the defendants as discussed in the judgment reported as **2015 MLD 1133**, and also collect information that in how many cases of exparte decree and compromise decree, application under Section 12(2) have been filed and pending.

iv. In each case fix the liability of the concern staff of the suit branch, identify names of the staff who have contributed in passing of orders on compromise decrees and / or exparte orders by neglecting to follow the procedure, inter alia, pointed out in para-2 of this order so that disciplinary actions against the staff be initiated as per law.

Interim report to the above inquiry may be submitted within 15 days from receiving this order in chamber for perusal and further action if needed.

12. This case may be fixed in Court for hearing of Plaintiff on **12.04.2018** in terms of para 10(i) of this order.

JUDGE