

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Suit No.1187 of 2006**

Date	Order with signature of Judge
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For further orders.

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**19.02.2018**

Mr. Saleem-uz-Zaman, advocate for the plaintiff.  
Defendant Muhammad Talib present in person.

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NAZAR AKBAR, J. It is stated by the learned counsel for the plaintiff that the Judgment in this suit was passed on **10.1.2018** and the decree was also prepared on **16.01.2018**. However, learned counsel for Decree-holder instead of filing execution application managed to take the suit file to the office of Nazir of this Court and pressurized Nazir to execute the decree and probably forced the Nazir to prepare a report which he did prepare on **25.1.2018**. On the same day counsel for the plaintiff filed an urgent application for orders on Nazir Report dated 25.1.2018 and got the disposed of suit listed for orders on Nazir report on **26.1.2018**. In his report Nazir has specifically pointed out as follows:-

2. *On **20.01.2018**, Mr. Saleem uz Zaman, Advocate for the Plaintiff was present while **none present for defendants side & concerned SHO**. The learned counsel for plaintiff submitted that he has not filed Execution Application for compliance of above Decree. In such circumstances, **matter is referred to the Hon'ble Court for further direction to comply direction mentioned in the decree regarding taking over the subject property without filing Execution Application** or otherwise.*

There was neither any directions for the defendants and concerned SHO to appear before the Nazir on **20.01.2018** nor the Nazir has summoned them, then why and how a report was prepared and the

matter was referred to the Hon'ble Court for "**further direction**" when there was no initial direction to the Nazir. Why the Decree-holder did not prefer an execution application when decree has already been prepared?

2. It is settled law that a Civil Court becomes functious officio after passing judgment and decree and it is for the executing Court to follow the provisions of **Order XXI CPC** for execution of Judgment and Decree, if at all, Execution application is filed by Decree Holder. The plaintiff, once his suit is decreed, ceases to be the plaintiff and he becomes a Decree Holder. A Decree Holder is not supposed to obtain any further order in the disposed of suit. Decree Holder acquires rights under the decree and to enforce his rights under the decree, the Decree Holder has to file an Execution Application. It is not for the Nazir to assume the role of executing Court and prepare a report after examining the judgment and decree at his own or on the request of plaintiff. If this practice is allowed, the execution branch of this Court would become redundant and the provisions of **Order XXI** containing **103 Rules CPC** would stand repealed by conduct of the suit branch and the Nazir office.

3. Therefore, to protect both the Law and relevant Execution Branch of this Court, the Addl. Registrar (O.S) is directed to hold an enquiry against the concerned staff of the suit branch for sending the suit file to the Nazir office when there was no order of the Court for the Nazir to comply with and report back to the Court. There appears to be willful extra service to the counsel/client which is not covered by any procedure for sending the file to the Nazir office. The staff, who has sent the file, if found guilty of inefficiency or corruption, disciplinary action against him should be initiated according to

Service Rules. The Nazir is also directed not to receive and retain any suit file in his office in which there is no direct order of the Court to the Nazir to comply with and to report within stipulated time or otherwise report is needed to be filed. Nazir in particular is not supposed to entertain any written or oral request of the parties to prepare any report/reference in a suit disposed of through the judgment and decree unless the executing Court has been approached through an execution application by the decree holder and in execution proceeding the executing Court has directed the Nazir to act in furtherance of execution of a judgment and decree.

4. In view of the above, no further orders are required in the instant suit and all orders passed subsequent to the judgment and decree stand recalled. This file may be consigned to record.

5. Additional Registrar (O.S) should report compliance of enquiry to this Court in Chamber for perusal.

JUDGE

*A. Gul/PA\**