ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.33 of 2013

Date	Order with signature of Judge

1. For order on office objection
2. For hearing of CMA No.1204/2013 (stay)
3. For hearing of Main case

22.10.2018

Mr. Abrar Hasan, advocate for the appellant.
Mr. Abrar Bukhari, advocate for Respondent.

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1. This IInd Appeal is arising out of an order dated **15.3.2012** passed in Ex.No.03/2012 whereby the appellant was directed to pay a sum of Rs.23,25,006/- to the respondent towards satisfaction of decree dated **12.11.2009** passed by IV Sr. Civil Judge South, Karachi in Suit No.960/2006. The Respondent / D.H with his execution application has appended an statement containing details of pensionery dues / benefit amounting to Rs.23,25,006/-. The appellant filed objections to the execution that (i) no amount was mentioned in the decree; (ii) D.H was not entitled to monthly pension under certain State Bank of Pakistan Regulation; and (iii) the settlement under VGHS-97 included the pensionery benefit. Learned counsel for the appellant has contended that in terms of **Section 47** of CPC the question raised by the Judgment Debtor in his objection ought to have been examined by the executing Court. The Decree Holder in the plaint has not mentioned the amount and therefore, not a single penny was payable to the D.H under the decree.

2. Learned counsel for the Respondent supported the impugned order. He contended that the appellants have failed to challenge the judgment and decree. The learned Executing Court has rightly accepted the claim raised by the D.H at the execution stage in the statement.

3. I have heard the counsel and perused the record. To be very precise the operative part of judgment & decree sought to be executed is as follows:-

> Therefore, for the above reasons and for the cited case laws so also the judgment of the Hon'ble High Court of Sindh, I hold that the plaintiff also entitled to the reliefs claimed for on the rules of consistency, as such, the suit of the plaintiff is hereby **decreed only to the extent of his pensionery benefits which are to be calculated and determined according to the rules applicable at the relevant time if are not given to the plaintiff till this date of judgment,** however, the plaintiff would not be entitled to any damages as he has failed to prove the same. However, there is no order as to cost. Decree be prepared accordingly.

The above decree was not challenged in appeal and it has attained finality. It is admitted position from the record that the decree holder has not specified the amount of pensionery benefit in his plaint and therefore, the figure given by the applicant for satisfaction of the decree were not to be accepted without cross check or evidence on oath by the D.H and production of the rule and regulations on the basis of which the D.H has claimed the huge amount of **Rs.23,25,006/-** as unpaid pensionery benefits. The J.D in para-3 of the objections has specifically disputed the claim for the first time raised by D.H in execution that the said amount is not payable at all. It is clear from reading of the decree, that the amount of pensionery benefit was "**to be calculated**" by the parties according to the rules. It may be appreciated that the decree was only to the extent of entitlement of pensionery benefit "**to be calculated**" and determined according to the rules applicable at the relevant time with a **qualifier** that if the same has not been given to the plaintiff till the date of judgment. This aspect of the decree has not been appreciated by the trial Court and the Appellate Court and whatever figure has been inserted / calculated in the statement annexed with execution application by the

respondent / D.H has been accepted by the Executing Court as if the same were mentioned in the decree. The appellant / J.D has raised question of facts which were required to be answered by the executing Court in terms of **Section 47** of CPC which reads as follow:-

> **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 passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

4. Since the D.H in his plaint has not claimed any specific amount of pensionery benefit and in terms of judgment it was "**to be calculated**" therefore, in the event of dispute on calculation, it was for the executing Court to calculate the same after recording evidence. This factual controversy has arisen for satisfaction of a decree and therefore, it ought to have been examined by executing Court for which issues had to be framed. The executing Court has not framed any issue from the claim raised by D.H and contested by J.D in its objections and there is hardly any reasoning to accept the figure which was not available in the decree. Therefore, both the judgments were suffering from failure of Court to examine controversy in terms of **Section 47 of CPC**.

5. In view of the above facts, the case is remanded to the trial Court for examining the objections and after framing issues decide each in the same execution afresh within six month of receiving this judgment. This IInd Appeal stand disposed of.

JUDGE

SM