

# **HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD**

## **R.A No. 221 of 2021**

(P.O Sindh and others v. Ahmed Nawaz and others)

## **R.A No. 224 of 2021**

(P.O Sindh and others v. Ahmed Nawaz and others)

Mr. Rafiq Ahmed Dahri, Asstt: A.G Sindh for applicants

Mr. Arbab Ali Hakro, Advocate for Respondents

Mr. Tariq Ahmed Kehar, XEN Nasir Canal present in person.

Date of Hearing & Decision: 20.12.2021

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.-** The captioned Civil Revision Applications have been directed against the order dated 25.08.2021 passed by learned District Judge / MCAC Tando Muhammad Khan in Miscellaneous Civil Appeal Nos. 03 & 04 of 2021 [Re: Province of Sindh versus Ahmed Nawaz & Others), whereby the said Miscellaneous Civil Appeals stood dismissed by the learned appellate Court.

2. Brief facts of the case are that respondents filed F.C Suits for declaration, permanent injunction, and damages at Rs.1,71,00,800/- , which were decreed vide judgment and decree dated 31.10.2012; applicants/ Government of Sindh being aggrieved by and dis-satisfied with the said judgment preferred civil appeals; however, same were also dismissed vide judgments dated 16.05.2006; meanwhile, respondents filed execution applications before the trial Court and during pendency of the same, applicants/Government of Sindh assailed the judgments of learned appellate Court dated 16.05.2006 before this Court through Civil Revision Application(s) No.166 of 2006, hence execution applications were kept sine-die; later-on the aforesaid Civil Revision(s) were dismissed by this Court vide order dated 04.11.2019; therefore, respondents/ plaintiffs filed application under Section 151 CPC before the learned Executing Court for recalling of order of sine die, while Government of Sindh / applicants filed an application under Section 47 read with Section 151 CPC for discharge of decree, but learned Executing Court vide order dated 01.02.2021 allowed the applications of respondents filed under

Section 151 CPC, while dismissing the application of applicants/ Government of Sindh filed under Section 47 read with Section 151 CPC, which was challenged before the learned District Judge / MCAC, Tando Muhammad Khan through Civil Miscellaneous Appeals; however, the same were also dismissed, hence the instant Civil Revisions Applications.

3. Learned A.A.G., emphasized that both the Courts below have failed to appreciate the basic point of law with regard to the maintainability of the Suit for declaration and permanent injunction against the Government of Sindh on the order of shifting of water supply to plaintiffs' water course 8-R, Zaur Minor in the year 1997, thus all the orders passed by the courts below are perverse, illegal and against the basic spirit of law, as such liable to be set aside.

4. Mr. Arbab Ali Hakro, representing respondents, has placed on record a copy of order dated 04.09.2020 passed by Hon'ble Supreme Court in Civil Petition No.700-K of 2019 arising out of the judgment dated 13.11.2019 passed by this Court in Revision Application No.166 of 2006 between the same parties and submitted that private respondents have been successful in revision application discussed supra, which is maintained by the Hon'ble Supreme Court of Pakistan vide order dated 04.09.2020. Per learned counsel the order dated 22.11.2021 passed by this Court, whereby this Court ordered that no coercive action shall be taken against the officials of irrigation department, who in retaliation have closed the irrigation water to the lands of respondents.

5. Heard learned counsel for the parties and perused the material available on record.

6. It appears from the record that captioned revision applications are the outcome of execution proceedings of the main suit, judgment, and decree whereof has already been maintained up to the Hon'ble Supreme Court of Pakistan, vide order dated 04.09.2020 passed in Civil Petition No.700-K of 2019. If this is the position of the case, the judicial propriety demands that the matter in hand cannot be stretched further for the simple reason that the applicants have called in question the order dated 25.08.2021 whereby the learned appellate Court dismissed the Civil Miscellaneous Appeal No.04 of 2021 preferred by the appellants/applicants and maintained the order dated 01.02.2021 passed by learned Senior Civil Judge-I,

Tando Muhammad Khan on application under Section 151 CPC and Section 47 read with Section 151 CPC. Since the earlier lis has been set at naught by the Hon'ble Supreme Court in Civil Petition No.700-K of 2019, therefore, I am of the considered view that the applicants cannot circumvent the decision of Hon'ble Supreme Court through collateral proceedings arising out of F.C Suit No.16 of 2009.

7. In view of the above, these revision applications are not maintainable. Accordingly, both the captioned revision applications stand dismissed with no order as to cost.

JUDGE

Karar Hussain/PS\*