

## IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

### C. P. No. D-645 of 2022

Fresh Case

1. For orders on Misc. No.2981/2022 (urgent)
2. For orders on Misc. No.2982/2022 (exemption)
3. For orders on Misc. No.2983/2022 (stay)
4. For hearing of main case

08.02.2022

Mr. Muhammad Vawda, Advocate for the Petitioner.

### ORDER

**AHMED ALI M. SHAIKH, CJ.**- Petitioner Dar-us-Salam Cooperation Housing Society Limited (the “Society”) has preferred this petition against the order dated 31.08.2021 passed by the V Senior Civil Judge, Karachi East, in Execution No.08 of 2020 (Suits No.1089 of 2014 and 1868 of 2016) and the Judgment dated 22.01.2022 passed by the learned II Additional District Judge, Karachi East, dismissing Civil Revision Application No.121 of 2021 preferred by the Society.

2. Briefly, facts of the case as pleaded are that in respect of immovable property bearing No.C-231, measuring 1000 square yards, Sector 31-F, Dar-us-Salam Cooperative Housing Society Limited, Korangi Road, Karachi, (the “**Plot**”) two suits were filed. Firstly, Respondent No.1/Plaintiff instituted Civil Suit bearing No.1089 of 2014 against Respondent No.2/Defendant No.1 Abdul Razzak Tahir and the Dar-us-Salam Cooperative Housing Society, Karachi (the “**Society**”) seeking specific performance of sale agreement dated 28.8.2014 while Respondent No.3/Plaintiff Mukhtar Ali Babar filed Suit bearing No.1868 of 2016, inter alia, seeking cancellation of documents, etc against the Respondent No.2 and the Society.

3. The Society filed Written Statement in Suit No.1089 of 2014, denying the claim of the Respondent No.1/Plaintiff, who has purchased the Plot from the Respondent No.2, on the ground that title of the latter was dubious as after inquiry it revealed that the CNIC of the Respondent No.3, permanently residing in London, from whom the Respondent No.2 derived his title, was forged and Society’s record was got amended by fraud and misrepresentation. The Society in its written statement further disclosed that the Anti-Corruption Establishment is conducting an inquiry in

respect of the Plot and vide letter dated 07.08.2013 has instructed the Society not to transfer the Plot. Both the suits were consolidated and on 25.5.2019 an Application under Order XXIII Rule 3 CPC was filed on the ground that Respondents No.1 to 3 have given up their claims in the Plot on certain amount to be paid by the Respondent No.1 and that the Petitioner would transfer the Plot in the name of Respondent No.1. The application was also signed by the Counsel representing the Society in the suits while in support of the application only authorized persons of Respondents No.1, 2 and 3 filed their affidavits.

4. The trial Court vide order dated 19.09.2019 dismissed the transfer application, inter alia, on the ground that out of two attorneys appointed by the Respondent No.2 Abdul Razzak Tahir, one, namely, Imran Bukhari, who filed written statement on behalf of the principal, has objected to the compromise. Against said order Respondent No.1 filed Misc. Appeal No.14 of 2019 and the learned IX Additional District and Sessions Judge, (MCAC), Karachi East, vide order dated 22.10.2020, while remanding the matter to the trial Court observed as under:-

“13. After hearing and perusal of record, impugned order dated 19.09.2019 passed by the trial Court, is hereby set-aside and matter remanded back to the learned trial Court with the direction to re-hear the compromise application dated 25.05.2019 by ignoring the objections of respondent No.4/co-attorney and respondent No.2. Moreover, appellant, respondent No.1 Abdul Razzaq Tahir and respondent No.3 are required to appear themselves or through their legal representative before the trial Court to re-endorse the said compromise application before the trial Court. Learned trial court is directed after comply above directions and hearing respective parties, decide the same compromise application afresh in accordance with law. Resultantly, Civil Misc. appeal in hand stands disposed of in terms of order, with no order as to cost. Parties shall bear their own costs. At this final stage, all pending interlocutory applications are also dismissed as infructuous.

5. On remand, the trial Court vide order dated 26.10.2020 allowed the compromise application. In execution proceedings, the Society filed objections but vide order dated 31.08.2021 the execution application was allowed. The Society filed Civil Revision Application No.121 of 2021, but the same was also dismissed vide impugned order dated 22.01.2022.

6. Learned counsel for the Society contended that the fora below grossly erred in endorsing the compromise entered into between the Respondents. He further submitted that the Respondent No.2 has not title to sell the Plot to the Respondent No.1 as during inquiry it surfaced that the Respondent No.3, permanently residing in London was the owner from whom the Respondent No.2 purchased the Plot but during inquiry it reveals that CNIC of the Respondent No.3, produced by the Respondent No.2 was forged and an inquiry to that effect is also pending before the Anti-Corruption Establishment, which has instructed the Society not to transfer the

Plot. He alleged that the Society's record was also got amended by fraud and misrepresentation. Learned counsel submitted that though such points were raised by the Society in their Written Statement and also by the Respondent No.3 in his Suit but the trial and the Appellate Courts under the grab of compromise application overlooked the same. He further contended that even though the Society's counsel signed the compromise application but neither he nor the authorized representative of the Society filed affidavit in support of such plea. According to him, the direction of the Appellate Court to ignore the objections of the Society while hearing the compromise application is misconceived as the Society being custodian of the record has portrayed the correct picture before the trial Court to prevent forgery. He submitted that even before the executing Court the Society raised objections but the same was brushed aside. The learned counsel pointed out that even otherwise after promulgation of the Sindh Cooperative Societies Act, 2020 and Notifications dated 03.08.2021, 07.08.2021 and 09.08.2021, the learned V Senior Civil Judge, Karachi East, has no jurisdiction to pass the impugned order dated 31.08.2021, as all the proceedings emanating from the Cooperative Societies Act were to be transferred to the notified Special Courts. According to him, under Section 47 CPC the executing Court was bound to treat the execution application as a separate suit as important question as to its jurisdiction had arisen.

7. We have heard the learned counsel for the petitioner and perused the material available on record. The learned II Additional District and Sessions Judge, Karachi East, vide order dated 22.01.2022, while dismissing the Revision Application filed by the Society, has observed that:-

“I have carefully considered the arguments advanced by the learned counsel for the respective parties and also have gone through the entire material available on record and impugned order. The Applicant is only formal party being Secretary of Society and he is only custodian of the record while the private judgment debtor has not challenged the impugned order dated 31.08.2021. From perusal of the record it appears that applicant has not challenged the main order of compromise and decree passed by the trial court before the appellate court, which attained finality.

It is matter of record that the order dated 19.9.2019 passed by the VII Senior Civil Judge, Karachi East was set aside by learned IXth Addl. District & Sessions Judge Karachi East vide order dated 22.10.2020 with direction to re-hear compromise application dated 25.5.2019 by ignoring the objection of Imran Bukhari and Judgment Debtor No.2. It is admitted fact that the Judgment Debtor No.2 is the Secretary of Dar ul Salam Cooperative Housing Society, such order is neither challenged by the Imran Bukhari nor Applicant/Judgment Debtor No.2 before the Appellate Forum.

In view of the above circumstances and discussion, I am of the humbly view that the learned counsel for the applicant has not pointed out any illegality or irregularity committed by the trial Court at the time of final arguments in the impugned order. The impugned order is proper and in accordance with law and same does not requires any interference; hence, instant revision application is hereby dismissed.”

8. Besides, the memo of petition itself the Society as to the conduct of his the then counsel has pointed out that:-

“4. That thereafter, both the aforementioned Suits were contested. However, on 25.5.2019, an application for Compromise under Order 23 Rule 3 CPC, 1908, was filed wherein it was stated that the Respondents No.2 and 3 were to give up all their claim in the Suit Property on the payment of certain amounts by the Respondent No.1 and that that the Petitioner would transfer the Suit Property in the name of the Respondent No.1. It is pertinent to note that even though the aforesaid Application bears the signature of the advocate for the Petitioner at the time, the same was only accompanied by affidavits of the authorized persons of the Respondents No.1 to 3, however, no affidavit of the Petitioner, or its authorized person, endorsing the filing of the said application has ever been executed. Moreover, no board resolution of the Petitioner Society has also been passed and there is no document on record either purporting to be an affidavit of the Petitioner to the aforesaid Compromise Application. Furthermore, no authorized person of the Petitioner is a signatory to the said compromise. Hence, in effect, the Petitioner was made a party to a compromise agreement which created certain obligations on it, however, without the completion of the requisite legal formalities, that is, the filing of an accompanying affidavit and a board resolution.”

9. There is nothing on the record that the Society has either challenged the order dated 22.10.2020 passed by the IX Additional District and Sessions Judge, Karachi East, in Civil Misc. Appeal No.14 of 2019, filed by the Respondent No.1 or the order dated 26.10.2020 passed by the trial Court on the compromise application, also signed by the then Counsel representing the Society, but has started raising objections in Execution proceedings nor has it been shown that any steps were taken by the Society to cancel the allotment. Now, at this belated stage the issues/questions required to be agitated in Appeal cannot be raised before this Court that too under the Constitutional Jurisdiction. Even the attorney/vakalatnama authorizing the then counsel of the Society to contest the suits before the trial Court was not brought on record to show that he was not authorized to sign the compromise Application. Be that as it may, a perusal of the Vakalatnama of Mr. Muhammad Vawda, Advocate representing the Society, shows that the Society has authorized him to also compromise the above case and to consent or to submit to any consent Decree/Order herein and also to present any compromise application signed on its behalf and to admit the compromise application signed on its behalf, to file and withdraw all documents from the court and to refer the matters in question herein to arbitration and to take all steps as may be necessary or expedient.

For the foregoing, instant petition being bereft of merits is dismissed.

Chief Justice

Judge