

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1025 of 2007

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA No.290/12 (U/S 151 CPC)

16-02-2016

Mr. Shahid Qadeer, Advocate for the plaintiff.

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Through this application filed under Section 151 CPC, the plaintiff has requested this Court to amend/rectify the decree dated 14-01-2011 by directing the Nazir of this Court to specifically enforce the agreement between the parties and to execute the Sale deed in respect of the property in question.

Notice was ordered on this application, however, no one had affected appearance on behalf of the defendants, whereafter, vide Order dated 05.05.2015 substituted service by way of publication in two national newspapers having wide circulation was ordered and on 15-09-2015 service upon defendants was held good.

Counsel for the plaintiff submits that Suits bearing Nos.1025 of 2007 and 1343 of 2007 were disposed of through a compromise Judgment dated 10-12-2010 and Decree dated 14-01-2011 passed in Suit No.1343 of 2007 whereafter the plaintiff filed Execution No.72 of 2011. Counsel submits that vide Order dated 21.11.2011 passed in the aforesaid execution, the Court had observed that there is nothing left in the compromise decree of which the execution was being sought as the payment as mentioned in the compromise decree was already received by the parties and possession was also handed over. Counsel submits that thereafter listed application has been filed for seeking correction/rectification in the judgment and decree. He further submits that since the defendants after satisfaction of the compromised decree are not coming up to contest the listed application, therefore, the same may be allowed and Nazir be directed to enforce the agreement and necessary sale deed.

I have heard the Counsel for the Plaintiff / Decree Holder and perused the record. It appears that both the aforesaid Suits were filed by the parties against one and other, and thereafter by way of an application bearing CMA No.12622/2010 filed under Order 23 Rule 3 CPC, a compromise was reached and the Court was requested to decree the Suit in terms of the settlement so reached between the parties. It would be advantageous to refer to the terms of the compromise placed before this Court through aforesaid application.

- a. That the amount of Rs.500,000/- (Rupees Five Lac only) which has been deposited by the Plaintiffs before the Nazir of this Hon'ble Court alongwith profit thereon may be released to the Plaintiffs immediately.
- b. That the amount of Rs.30,00,000/- (Rupees Thirty Lac only) which has been deposited by the Defendant in Suit No.1025 of 2007 (Muhammad Ghous Khan V/s. Aftab Ahmed and another) before the Nazir of this Hon'ble Court alongwith profit thereon may also be released to the Plaintiffs immediately.
- c. That upon receiving of payment the Plaintiffs shall not have any claim whatsoever over the suit property, nor in the business conducted by the Defendant, and vacate the suit property on 13-12-2010.
- d. That the Defendant shall deposit a postdated cheque dated 01-06-2011 for the sum of Rs.12,00,000/- with the Nazir of Court within one week. The Nazir shall encash the cheque on 01-06-2011 and pay the amount to the plaintiffs.

Perusal of the aforesaid terms and conditions of the compromise as well as the decree passed by the Court reflects that while passing such decree, the Court had accepted the said terms and conditions in its entirety and it is not a case, whereby it could be pleaded on behalf of the decree holder that the Court by passing the decree had erred or made a mistake in respect of the terms and conditions settled amongst the parties. There were four conditions of settlement between them and all four of them were stated in the decree and as per the Statement of the Counsel for the Decree Holder, all these terms of the decree stand satisfied, therefore, this does not appear to be a case, whereby, this Court after passing of judgment and decree on the basis of a compromise reached between the parties and on an objection raised by the Court in the execution application, can come to the rescue of any of the parties to amend the decree. If the case of the decree holder was that some fraud had been committed by the defendants/judgment debtors then the appropriate remedy would have been an Application under Section 12(2) CPC or in the alternative, through an appeal against the compromised judgment and decree, but under no circumstances, the listed application could be termed as maintainable for the simple reason that this Court after passing of the Judgment and Decree on the basis of a compromise, cannot alter the decree and that too without consent of the parties to the decree. Even otherwise, this does not appear to be a case of amending/rectifying the decree as apparently the plaintiff seeks a decree in respect of a prayer clause in the Suit for which the parties had not compromised, whereas, such prayer can only be granted after adjudication of the matter on merits.

In the circumstances, I am of the view that listed application is not maintainable and is hereby dismissed.

J U D G E

Ayaz