

ORDER SHEET**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR****Civil Revision Application No. S-24 of 2019**

Date of hearing	Order with signature of Judge
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Applicant : Mst. Antonia widow of Kamran Louis Bhatti,
through Mr. Safdar Ali Bhatti, Advocate.

State: Mr. Muhammad Aslam Jatoi, Assistant Attorney General.

Date of Hearing: 20.03.2023.

ORDER.

ZULIFQAR AHMAD KHAN. This Revision Application has challenged order dated 12.11.2018 passed in Summary Execution Application No. 08/2018 on an application moved under Order 26 Rule 9 read with section 151 CPC wherein it was prayed by the Decree Holder that while Judgment and Decree (available at page 57) concluded that the decree holder be paid a sum of Rs. 18,53,563/- along with interest since 20.04.2016, the Judgment Debtor while having paid the principal amount, however, has only paid interest for the period between 19.04.2018 to 11.09.2018 therefore, balance of interest which the applicant has chosen to calculate under the instant application made under Order 26 Rule 9 read with section 151 CPC being Rs. 2,94,003/- which has become as short fall of interest be paid by the Judgment Debtor. When this application was moved, the impugned order was passed. The operative part of the impugned order is re-produced hereunder :-

“ Heard learned counsel for applicant and perusal the material available on record, which reveals that this Court has passed decree dated 23.04.2018 amounting of Rs.1853563/- being the amount of cheque issued by JD Mrs. Delphine and subsequently execution application filed by decree holder which was allowed by this Court. The Advocate for decree holder filed application that amount of JD is lying with National Saving Centre Sukkur on that this Court called report wherein it is submitted by Officer Incharge National Saving Centre-IV Sukkur that amount of Rs.45,00,000/- in Regular Income scheme are lying in the joint name of Dr. Attia Nasreen and Madam Delphine. Resultantly this Court vide letter dated 19.4.2018

directed the Officer Incharge of the said Saving Centre to attach the 50% share of J.D. Mrs. Delphine, who in compliance of the letter of this Court has informed this Court that he has kept such necessary entry in respect of attachment of property of J.D/Delphine. Record further reveals that Officer Incharge of NSC-IV Sukkur deposited cross Cheque No.C-935924 dated 11.9.2018 amounting to Rs.1889860/-towards decretal amount along with interest/profit in compliance of the orders of this Court, hence execution application was disposed of being satisfied vide order dated 11.09.2018, Record further reveals that decree holder has herself obtained cross Cheque No. 98593380 on dated 2.10.2018 amounting to Rs.1889860/- being Principal amount of Rs.1853563/- so also amount of interest Rs.36297/- total Rs.1889860/- from Accountant District Court Khairpur and remained satisfied but after lapse of 29 days of the final disposal of the execution application instant application has been filed by Decree Holder. Further more the decree holder has got no concern with the interest amount per rate of National Saving scheme when the decree Holder has already received the principal amount along with regular interest per Bank rate thereon. However, if the decree holder had any grievance in respect of interest amount_she would not have obtained the principal amount including amount of interest as deposited by the Incharge National Saving Centre-IV, Sukkur in compliance of the directions of this Court. Under such circumstances instant application is not maintainable in my view the same stands dismissed accordingly.”

Learned counsel for applicant admits that while the execution application has been satisfied upon his own calculation made in the application dated 18.09.2018 (page 83) wherein J.D remitted the sums held with National Saving Centre where account of J.D was attached to the tune of the principal amount as well as interest accrued thereon, however to a question that could such an application be agitated once the decree has been satisfactorily executed as the provisions of Order 26 Rule 9 CPC clearly indicate that such order of enquiry can only be made during the pendency of the “suit” when Court intends to appoint a Commissioner to ascertain certain facts, whereas case in hand is that the shortfall of the decretal amount is attributable solely to wrong calculation made by the Decree Holder herself.

To my understanding the relevant provision of C.P.C that deal with such situation are Order 21 Rule 34 CPC, wherein decrees

pertaining to negotiable instruments are to be executed, where the decree holder has first opportunity to put forward his own calculated claim, which is exposed to the Judgment Debtor and if there is no objection, such claim is satisfied. The impugned order clearly suggests that the subject application under Order 26 Rule 9 was made after the lapse of 29 days once the decree has already been satisfied as per the own calculation of the Decree Holder, therefore, the case of counsel for the applicant that the mistake has been committed by the respondent No.2/ Incharge National saving Centre as it ought to have calculated the correct amount, in my humble view is not tenable in the first go, as well as, the application is also hit by laches as the decree has already been executed and if there is some error in calculation made by the Decree Holder herself, no such application could be entertained at this belated stage since the J.D after making the payment of Rs. 18,89,860/- to the D.H has already been given the balance sums available in the account since she was also one of the claimants. As the calculation error is made by the Decree Holder herself with regard to calculation of interest, it cannot be rectified under Order 26 Rule 9 CPC.

In these circumstances, there is no merit in this revision application which is **dismissed**, whilst observing that there may be legitimate claim of the balance interest payable to the decree holder but since in her own claim she has failed to put forward the accurate number under Order 21 Rule 34 CPC and since the money has already been flown out of the accounts of National Saving Centre, then how the short fall which as per learned counsel for the decree holder amounts to Rs. 2,94,003/- could be made good in these post-execution proceedings that too through a revision application.

In case there is any alternate remedy available to the applicant, she may though avail the same if she desires as such.

J U D G E

