

IN THE HIGH COURT OF SINDH AT KARACHI

Execution No.20 of 2020

[Metropolitan Steel Corporation *versus* Multan Electric Power Company and another]

Date of hearing : 09.02.2023.

Decree Holder : Metropolitan Steel Corporation, through its Chairman Muhammad Mehmood Ali Mehkri.

Judgment Debtor No.1 : Multan Electric Power Company [MEPCO], through M/s. Dr. Irfan Ahmed Chattha and Nayer Ziauddin, Advocates.

Judgment Debtor No.2 : Summit Bank Limited, Nemo.

ORDER

Muhammad Faisal Kamal Alam, J: By this order, I intend to dispose of an Application [C.M.A. No.506 of 2022] filed under Section 47 of Civil Procedure Code, 1908 (“CPC”). On the last date of hearing, following Order was passed_

“ *Learned counsel for J.D. No.1 states that execution proceeding is to be transferred to learned Civil Judge, Multan, because J.D. No.1 – MEPCO is in Multan. He states that it is mandatory that precept be issued and this execution application be transferred to the other Court. He has cited the following case law_*

- i. *P L D 2001 Supreme Court 131 [Fakir Abdullah and others versus Government of Sindh through Secretary to Government of Sindh, Revenue Department, Sindh Secretariat, Karachi and others];*
- ii. *2011 C L C 1450 [Muhammad Bachal versus Province of Sindh through Home Secretary and 12 others]; and*
- iii. *2017 C L C Note 9 [Allah Bakhsh versus Allah Yar and 4 others].*

Decree Holder has opposed the above line of arguments.

Reserved for announcement of Order / Judgment.”

2. The above reported judgments are perused. They can be referred to as FAKIR Case, BACHAL Case and ALLAH BUX Case, respectively, (according to Parties names); summary whereof is _

In Fakir Case, it was held that Judgment and Decree passed by the First Senior Civil Judge, Mirpurkhas, has become in-executable, because of new development in the matter, as the official respondents have de-notified the Taluka of Sindhri. The plaintiffs (of the reported case) obtained an *ex parte* Judgment and Decree, to the effect that Sindhri Taluka should not be abolished by official respondents. The legal character of plaintiffs under Section 42 of the Specific Relief Act, was also questioned, on the ground, that in effect the Suit was in the representative capacity, but only few plaintiffs have filed it, claiming to be representing the area people of Sindhri Taluka. In this context, it is held that under Section 47 of CPC, an executing Court can question the executability of a Decree, if it is satisfied that a Decree is a nullity in the eyes of law or it is passed without jurisdiction, or if it is not executed, it will not infringe the legal rights of the decree holder.

In Bachal case (*supra*), there was an office objection about land in dispute, which was situated in District Naushero Feroze and the Suit was filed in this Court on its Original Side. Plaintiff's counsel (of the reported case), *inter alia*, attempted to justify the facts and circumstances, under which the suit was filed in this Court. After considering case law and the statutory provisions, *particularly*, about the Original Jurisdiction of High Court of Sindh, it was held that provisions of Order VII Rule 10 of CPC are mandatory and a Court lacking pecuniary or territorial jurisdiction if decides a matter, it will be a *coram non judice* and not binding. Consequently, the plaint was returned for institution before the Court of appropriate jurisdiction.

In Allah Bux case (*ibid*), the learned Lahore High Court has explained the scope of Section 47 of CPC. Issue in this reported case was of a property in respect of which the petitioner (of the reported decision) had filed an eviction proceeding against respondent, who denied in his reply the

relationship of landlord and tenant, on the ground that respondents No.1 to 4 were in occupation on the basis of a registered instrument-an exchange deed; consequently, the Judgment and Decree passed in the eviction proceeding was set aside, because the said respondents No.1 to 4 (objectors) were never impleaded as party. The learned Court has held that scope of Section 47 of CPC is akin to a suit and for that reason it contains an inbuilt provision empowering the Court to treat the objection petition as a suit subject to certain conditions.

3. Adverting to the present *Lis*.

4. Till date no Appeal is preferred against the Judgment and Decree, which attained finality. Nazir's Report dated 21.09.2022, was taken on record on 22.09.2022, according to which decretal amount has been attached as informed by Allied Bank Limited.

5. In terms of Sections 37, 38 and 39 of CPC, a Decree can be transferred to other Court for implementation, *inter alia*, on the application of Decree Holder; but, in my considered view, facts of present *Lis* are different, as, in the present case, the objection is raised by the Judgment Debtor No.1. The issue of jurisdiction was already decided by the Order dated 16.02.2016, passed in the Suit No.1576 of 2015, filed by Decree Holder, has attained finality. The said Order is perused. An Application was filed by the Judgment Debtor No.1, for rejection of plaint, on the ground that this Court lacks jurisdiction, as the latter [Judgment Debtor No.1] is situated in Multan. After hearing, the Application was dismissed.

6. The discussion on the cited case law on behalf of Judgment Debtor No.1 (MEPCO), shows that it is distinguishable from the facts of the present Case. The decretal amount has already been attached, as highlighted above.

Secondly, this Court while exercising its Original Jurisdiction is not a Court exercising ordinary original civil jurisdiction, but is a Constitutional Court, as already ruled in the case of *Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan and others* [2018 S C M R 1444].

Thirdly, substantial justice is to be done between the litigants. Once a decree attains finality, then, statutory right and interest accrue in favour of Decree Holder, which cannot be strangled on the basis of procedural law, status of which is that of stepping stone and not a stumbling block, as held in the case of *Dino Manekji Chinoy and 8 others versus Muhammad Matin* [P L D 1983 Supreme Court 693].

7. Since the order attaching the above amount has also attained finality, therefore, there should be no impediment in allowing the present execution. Therefore, Application-C.M.A. No.506 of 2022, filed by Judgment Debtor No.1, is not tenable and is dismissed; consequently, present Execution Application [Petition] is granted. If the decretal amount, attached earlier, has already been transferred into the account of Nazir Office, then the same should be paid to the Decree Holder forthwith, through its duly constituted representative.

8. In view of the above order, all pending applications also stand disposed of.

Judge

Karachi.
Dated: 16.02.2023.

Riaz / P.S.