

IN THE HIGH COURT OF SINDH AT HYDERABAD

R.A. 1 of 2019 : Mushtaque Ali & Others vs.
Continental Enterprises

For the applicant : Mr. Noor Ahmed Memon, Advocate

Date/s of hearing : 19.12.2023.

Date of announcement : 19.12.2023.

ORDER

Agha Faisal, J. This matter is pending since 2019 and despite the passage of more than 4 years even notice has not been sought till date.

Briefly stated, Summary Suit No.47 of 2010 was allowed against present applicant vide judgment dated 05.10.2015 by VII Additional District Judge Hyderabad. Per learned counsel 1st Appeal No.19 of 2016 has been filed against the said judgment and the same remains pending till date. Notwithstanding the forgoing, the present revision application has been filed against the order dated 28.11.2018 passed in Execution Application No.5 of 2016 and the learned counsel seeks to assail the underlying judgment and decree in this revision application. It is consider illustrative to reproduce the contents of impugned order below:

“By the dint of instant order, I intend to dispose of the captioned execution application filed on behalf of the Decree Holder.

During course of arguments, main forte of learned Advocate for the decree-holder was that as per judgment 05/10/2015 & Decree dated 10/10/2015 he is entitled for recovery of the decretal amount from Judgment Debtor as awarded by this Honorable Court in the above said judgment and decree.

Heard arguments of learned Advocate for decree-holder, Advocate for J.D and perused material available on record, which reveals that decree-holder had filed Suit for Recovery of Amount of Rs.38,00,000/- with penalty of Rs.2500,000/- before this Court, which was subsequently decreed vide Judgment 05/10/2010 & Decree dated 10/10/2018 respectively. After admission of the Execution Application, the process were issued for service upon the Judgment Debtor as well as Publication was made in “Daily Ibrat” on dated 17/11/2016 and J.D has appeared and sought adjournment by an application dated 10/08/2017, which was granted but J.D has failed to file objections till date. The learned Advocate for decree-holder has contended that there is nothing in rebuttal on record against the execution application or any stay is in operation from the Honorable Apex Court.

In view of the above attending facts and circumstances, since there is nothing in rebuttal as against the execution application and, therefore, the instant Execution Application stands allowed accordingly. The decree-holder is directed to submit the schedule of movable/immovable/immovable properties of in the name of Judgment Debtor for satisfaction/realization of decree. Execution application stands disposed of accordingly. ”

Learned counsel submits that the amount awarded there against in Summary Suit 47 of 2010 is unwarranted, hence, interference is merited in rge revisionary jurisdiction to adjudicate the same; notwithstanding the pendency of the appeal there against.

The learned counsel was confronted with the narrative contained in the impugned order, as particularized supra, and asked as to whether it was commensurate with the facts; he replied in the affirmative. Learned counsel was then asked to demonstrate any infirmity in the appellate order meriting interference under Section 115 of the Code of Civil Procedure, however, he remained unable to do so.

It is settled law that an executing court does not travel beyond the decree, which in any event is stated to be under challenge in appeal. Under such circumstances no case has been made out to warrant any interference in the order impugned; upon the grounds articulated.

The executing court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

Judge

A.Rasheed/stenographer

¹ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.