

## THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Ahmed Ali M. Shaikh, Chief Justice &  
Mr. Justice Adnan Iqbal Chaudhry.

### C.P. No. D - 3369 of 2022

[Muhammad Waqas Qureshi versus IXth Additional District Judge, Karachi (West) & others]

Petitioner : Muhammad Waqas Qureshi son of  
Abdul Hameed through Mr. Afaq  
Yousuf, Advocate.

Respondents No. 1&2 : Nemo.

Respondent No. 3 : Asif Raza son of Muhammad Bashir  
through Mr. Nadeem A. Farooqui,  
Advocate.

Date of hearing : 10-08-2023

### ORDER

**Adnan Iqbal Chaudhry J.** - The Petitioner, who is judgment debtor in Execution No. 17/2020, is aggrieved of dispossession from the suit property under a writ of possession issued by the executing court vide order dated 29-01-2022, and then by the dismissal of his Civil Revision No. 15/2022 by the Additional District Judge vide order dated 30-03-2022.

2. The suit of the Respondent No. 3 against the Petitioner was that he had failed to pay the balance sale consideration of Rs. 1,250,000/- for the sale of 60 sq. yds. (built-up) of the suit plot, and had also unlawfully taken possession of an additional 60 sq. yds. (unbuilt) of the suit plot which was not part of the sale agreement between them. The decree that came to be passed against the Petitioner included the following (other part of decree not relevant to discussion):

- (a) for specific performance of the balance sale consideration of Rs. 1,250,000/- failing which he shall vacate the built-up 60 sq. yds;

- (b) for delivering possession of the unbuilt 60 sq. yds. which he had unlawfully occupied beyond the sale agreement;
- (c) for mesne profits @ Rs. 8000 per month.

3. The Petitioner had challenged the decree by way of an application under section 12(2) CPC, which was dismissed, and a Revision Application there against was ultimately withdrawn by the Petitioner unconditionally on 07-11-2021 while stating that he is willing to deposit the decretal amount with the executing court.

4. Heard learned counsel and perused the record.

5. Before us, the Petitioner does not contest the decree against him, rather the submission of his counsel was that the Petitioner had subsequently deposited the balance sale consideration of Rs. 1,250,000/- in specific performance of the sale agreement, which amount was withdrawn by the Respondent No.3 from the court in satisfaction of the decree, and yet the executing court dispossessed him from the built-up 60 sq. yds. of the suit plot. On the other hand, learned counsel for the Respondent No.3 submitted that he had withdrawn only the mesne profits that had been decreed as the Petitioner had never deposited the entire decretal amount.

6. The record reflects that by order dated 06-10-2021 passed on the application of the Petitioner, the executing court allowed him one month to deposit Rs. 1,250,000/- with the court. That sum was eventually deposited in 4 months or so. However, that sum was only part of the decretal amount as the decree was also for mesne profits. When the Petitioner failed to deposit the entire decretal amount despite a number of last chances, the executing court allowed the Respondent No.3 to withdraw Rs. 448,000 as mesne profits and issued writ of possession for the remaining part of the decree. A report called from the executing court affirms that fact.

7. Therefore, at the time writ of possession was issued by the executing court, the Petitioner had not deposited the entire decretal

amount, nor had the Respondent No.3/decree holder ever accepted Rs. 1,250,000/- in full and final satisfaction of the decree. Thus, the Petitioner's contention that the decree had been satisfied is incorrect. In such circumstances the orders impugned do not call for any interference. The petition is dismissed.

**JUDGE**

**CHIEF JUSTICE**

Karachi:  
Signed on 28-08-2023

Announced by & on: