

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Miscellaneous Application No.S- 11 of 2022

(Anjum Shoukat-ul-Islam v. Chief Editor Daily Newspaper Jurat & ors)

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Hearing of case

- 1.For orders on office objections
- 2.For hearing of main case.

20-09-2024

Mr. Farman Ali Rajput, Advocate for applicant.

ORDER

Zulfiqar Ahmad Khan J.- Despite service through various modes, none has effected appearance on behalf of respondents. Counsel for applicant states that respondent No.2 did appear before the trial Court, and the suit was decreed in his favour by considering former's defence. Counsel states that being a Decree Holder he moved application for execution of decree within time in Summary Suit No.02 of 2006 in the Court of Additional District Judge-IV, Sukkur; however, the said Execution Application was dismissed vide order dated 27.06.2018 by calling the counsel for Decree-Holder absent. Counsel states that he moved application for restoration under Order 9 Rule 9 Rule read with Section 151 CPC, which was also dismissed vide order dated 27.05.2022. Where after, he made another application, which was also dismissed by order dated 30.06.2022. Counsel states that the orders passed by the Executing Court while dismissing the applications are illegal as there is no mechanism provided under the CPC to dismiss Execution Application in default or non-prosecution. Counsel has placed reliance on the judgment of this Court reported as *Ark Garment Industry v. Federation of Pakistan & another* (2018 CLC 155), wherein the Court has held that the decree of a competent Court should not be dismissed in default or non-prosecution and there is no provision in CPC, in terms of which Execution Application to be dismissed in default or non-prosecution except Order XXI, Rule 57

CPC, which is not attracted to the case in hand. Once the decree holder had invoked the execution of the decree within the prescribed time, then it was the duty and obligation of the Executing Court to ensure the complete enforcement of the decree. Reliance has further been placed on the judgments rendered by Hon'ble Supreme Court in the cases reported as Haji Khudai Nazar and another v. Haji Abdul Bari (1997 SCMR 1986) and M. Muhammad Sadiq and another v. Punjab Road Transport Board, Lahore through Managing Director (1991 SCMR 2321). Counsel states that the Executing Court summarily dismissed the Execution Application has frustrated the decree and the Executing Court should have adopted all the methods to have the decree executed.

2. Heard learned counsel for applicant. The contentions raised by him are plausible and the reliance of the cited judgments is well placed. In the circumstances, this Civil Misc. Application is **allowed** and the impugned order is set aside. The Executing Court is directed to execute the decree as mandated by the law.

J U D G E

Ahmad