

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

JM No.Nil of 2023  
[Abdul Ghani & Others vs. Waheeduddin Siddiqui & Others]

Date

Order with signature of Judge(s)

1. For hearing of CMA No.19438/2023.
2. For orders on CMA No.19437/2023.
3. For orders on office objection at flag 'A'.

**13.02.2024**

Mr. Altaf Hussain, advocate for the applicants.

Mr. Altamash Arab, advocate for the Respondent Nos.1(a) (b) (d) & 2.

1. This matter is pending under objection from the very inception and the office has sought an explanation as to how this s.12(2) CPC application is maintainable against an order in execution *inter alia* when a similar application, with respect to the underlying judgment / decree, had already been dismissed.

The *admitted* facts pertinent hereto are as follows: Suit No.1561 of 2010 was filed before this court and the same was allowed vide judgment dated 29.05.2014; the present applicant filed an intervener application, during the pendency of the suit and the same was dismissed; an application under s.12(2) CPC was filed assailing the judgment and decree and the same was also dismissed vide order dated 16.03.2019.

Subsequently, Execution Application 12 of 2015 was filed and the same was allowed vide order dated 26.04.2023. The present JM has been filed in respect of the final order rendered in the execution proceedings.

Learned counsel for the applicants submits that the order in execution exceeds the judgment and decree. It is also contended that the underlying suit was a second suit filed in respect of the controversy, hence, ought not to have been entertained in the first place.

Learned counsel for the respondents submits that the order in execution is in due consonance with the judgment and decree and the same can be gleaned from a bare perusal thereof. It is contended that in any event the present applicant has no *locus standi* as the intervener application as well as the subsequent s.12(2) application already stood dismissed, without any further challenge in such regard, and no fresh ground is made out to entertain these proceedings.

Heard and perused. This is an application under Section 151 CPC for stay of compliance of execution proceedings. Despite query, applicant's counsel is unable to articulate as to how such relief is merited per the provision invoked. The dismissal of the earlier applications of the applicant in the underlying suit has not been denied. The applicant was adjudged to not be a proper party to the underlying suit, hence, the *locus standi* to maintain the present proceedings is under office objection.

The applicant suggests that the underlying suit ought not to have been entertained, however, that appears to be grounds for appellate proceedings *admittedly* never invoked. The issue of execution proceedings exceeding the mandate of a decree could be entertained as objections, provided that the same were filed by an appropriate party, however, counsel remained unable to substantiate as to how the same could be qualified within the ambit of s.12(2) CPC. Learned counsel for the applicant has remained unable to demonstrate that even if his contentions were to be accepted, how the same would corroborate the allegation of fraud or misrepresentation.

In view hereof, no prima facie case, balance of convenience and / or the apprehension of irreparable loss could be demonstrated for grant of this application. Therefore, ad-interim orders dated 08.12.2023 are recalled and CMA No.19438/2023 is dismissed.

2&3. To come up on 16.04.2024 along with the main application.

Judge