

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

First Appeal No.99 of 2024

Date	Order with signature of the Judge
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Fresh Case

1. For Order on C.M.A No.1660 of 2024 (U/A)
2. For Order on C.M.A No.1661 of 2024 (U/S 149 CPC)
3. For Order on office objection a/w reply as at "A"
4. For Order on C.M.A No.1662 of 2024 (Exemption)
5. For Hearing on Main case
6. For Order on C.M.A No.1663 of 2024 (Stay Appl.)

22.08.2024

Mr.Abdul Khalique Nawal, Advocate for the appellant

Through instant Appeal under Section 96 of the Code of Civil Procedure, 1908 ("C.P.C"), the appellant has assailed the legality of Order dated 12.7.2024, passed by learned IX-Additional District Judge(MCAC), Karachi East ("Executing Court") in Execution Appl. No.26 of 2023 offshoot of summary Suit No.103 of 2021 (Re: Waseem Yar Khan vs Muhammad Rehan Ashraf) whereby execution application was allowed.

2. The learned counsel for the appellant/J.D, among other things, argued that the learned Executing Court passed the exparte judgment and decree without addressing the merits of the case. He contended that the law mandates that matters should be decided on their merits after recording evidence. He further asserted that the learned Executing Court committed an illegality with material irregularity while passing the impugned Order, and therefore, it should be set aside.

3. We have heard the arguments advanced by learned counsel for the appellant and minutely perused the material available on record. It is a matter of record that the respondent filed a Summary Suit No.1709/2021 for the recovery of Rs.3,466,800/- predicated on cheques issued by the appellant. In Paragraph No.2 of the instant appeal, the appellant disclosed his appearance in the suit and his application for leave to defend, which was subsequently dismissed due to non-prosecution per the Order dated 11.01.2023. Subsequent to this, the suit proceeded exparte and was ultimately decreed exparte vide the Judgment and Decree dated 26.7.2023. The record does not indicate that the appellant sought restoration of his application for leave to defend or challenge the aforementioned exparte Judgment and Decree. His sole contention in this appeal is the Order dated 12.07.2024, whereby the

execution application was granted. The appellant has failed to provide any explanatory application as to why he remained silent and did not contest the summary suit, and only when the Execution Application was filed by the respondent/Decree Holder did he appear and file his objection, thereby attempting to deprive the decree-holder of the fruits of the decree. The learned counsel for the appellant was unable to highlight any illegality or jurisdictional error in the impugned Order that would necessitate interference by this Court.

4. For the foregoing reasons, the instant appeal is devoid of merits and accordingly **dismissed in limine**.

JUDGE

JUDGE