

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-5958 of 2023

(Shakir-ud-Din v/s M/s Twin Badar and others)

PRESENT:

MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM
MR. JUSTICE NISAR AHMED BHANBHRO

Petitioner : In person.
Respondent : Nemo for Respondents.
Date of hearing : 07.02.2025
Date of Order : 20.02.2025

ORDER

Nisar Ahmed Bhanbhro, J. Discontent with the Order dated 13.11.2013 passed by the Court of Learned Additional District Judge XII (Model Civil Appellate Court) Karachi South in Civil Revision Application No. 105 of year 2023 (Shakiruddin Versus M/S Twin Badar & others), the Petitioner has brought this Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, praying for issuance of a writ in the nature of Certiorari, for grant of following relief:

- a. *To set aside the "Impugned Order" dated 13-11-2023 in Civil Revision application No. 105/2023 passed by XII Additional District & Sessions Judge (South) Karachi/Respondent No. 12.*
- b. *To further direct the Respondents No. 1 to 4 to hand over the peaceful vacant possession of the said shop No. 10 Twin Baddar-I and Baddar-II Construction/Builders, Shah Abdul Latif Bhittal Road, Moosa Lane, Lyari, Karachi without any further delay and litigations*
- c. *To set aside the "Impugned Order" dated 13-11-2023 in Civil Revision application No. 105/2023 passed by XII Additional District & Sessions Judge (South) at Karachi/respondent No. 12 therein the revision application to set aside the order dated 28-9-2023 was declared as an "Infructuous" and was pleased to dismiss the civil revision of the petitioner in respect of SHOP No. 10, TWIN BADDAR BADDAR-I & BADDAR-II, SHAH ABDUL LATIF BHITTAI ROAD, MOOSA LANE, LYARI, KARACHI as such both the orders are invalid and infructuous obtained with connivance of and by misguiding the Hon'ble respondents No. 1, 11 & 12*

d. Further this Hon'ble Court may be pleased to issue the notice to SBCA in the above said matter under suo motto actions by this Hon'ble Court for lawful setting aside the order dated 09-10-2023 of the respondent No. X.

2. The notice of this petition was given to the Respondents, but they chose to remain absent despite service, therefore the Petitioner was heard in person.

3. Arguments and record considered.

4. The Petitioner emphasized that the Execution Proceeding before Learned Executing Court ought to have continued and Orders dated 29.09.2023 passed by Learned Executing Court and 13.11.2023 passed by Learned Revisional Court are illegal, arbitrary and void and be set aside by this Court exercising writ jurisdiction. He may be put into vacant possession of **the Suit Property**, Viz. Shop No. 10 in Twin Badar (Badar I & Badar II) in terms of the Judgment and Decree dated 19.07.2019 and 22.07.2019, respectively, passed by the Court of the Learned Senior Civil Judge VIII Karachi and writ of possession issued by the Learned Executing Court in Execution Application No. 07 of 2019. He is an old aged person and pursuing this matter since 2018 but without fruits.

5. Instant petition roots from Suit No. 359 of year 2018 filed by the Petitioner (Plaintiff) against Respondents No. 1 to 4, before the Court of Learned Senior Civil Judge [VIII Karachi South], for Declaration, Specific Performance, Possession and Permanent Injunction. The Petitioner claimed that pursuant to an advertisement he booked **the Suit Property** for a total consideration of Rs.21,00,000 against which, Petitioner paid an amount of Rs.5,80,000. The Respondent No. 1 (the Defendant No. 1 in the Suit) on receiving balance consideration, was under an obligation to transfer vacant possession and title of **the Suit Property** in favor of Petitioner but he failed to perform part of agreement. The Petitioner sent legal Notice to Respondent No. 1 through his Counsel but did not yield results, hence he adopted legal course by filing Suit against them. The Suit was admitted and on Notices Respondents No. 1 (Defendants No. 1 to 4 in the Suit) shown appearance and filed their written statement denying the claim of Petitioner. The Learned Trial Court framed Six Issues based upon the divergent pleadings of the Parties. The Petitioner (Plaintiff in the Suit) examined himself and one Baleeghuddin in support of his claim, the witnesses were cross

examined by Learned Counsel for Respondents No. 1 to 4. Equal opportunity to lead evidence was accorded to Respondents No. 1 to 4 (Defendants No. 1 to 4 in the Suit) but they remained absent, compelling Learned Trial Court to close their side for evidence. The Trial Court decreed the Suit as prayed vide Judgment and Decree dated 19.07.2019 and 22.07.2019, respectively. The Respondents No. 1 to 4 (Defendants No. 1 to 4 in the Suit) preferred Appeal No. 340 of year 2019 which was dismissed by the Learned Appellate Court vide Judgment and Decree dated 04.02.2020. Petitioner adopted Execution Proceeding by filing Execution Application No. 07 of 2019 for satisfaction of decree which was allowed by Learned Executing Court, consequently, Writ of Possession was issued in favor of Petitioner/ Decree Holder.

6. The Respondents No. 6 to 9 (Ghulam Qadir Raees and others) who are not Party in the original proceedings in Suit No. 359 of 2019 raising the plea of fraud and misrepresentation, filed an **Application under section 12(2) of CPC** before Learned Appellate Court challenged the Judgement and Decree dated 04.02.2020. Per claim of the Respondents No. 6 to 9, they were actual owners of **the Suit Property** viz. survey number 22 admeasuring 972.50 Square Yards situated at Layari Head Quarters, which they purchased through Registered Sale Deed No. 1239 dated 13.06.2016. The Respondents No. 2 to 4 (Haji Zahid, Bashir and Hamza) were neither owners of the Project Twin Badar I – Badar II nor having any rights in the plot where upon project was constructed. The Respondents No. 6 to 9 (Applicants in 12(2) CPC application) came to Notice of the proceedings when Mukhtiar and Nazir of the Court came to **the Suit Property** for satisfaction of Decree. The Petitioner (Plaintiff in the Suit) had not purchased the Suit Property from them. The Plaintiff/ Petitioner filed a collusive suit by deliberately not joining the Respondents No. 6 to 9 as Party in the Lis. Petitioner obtained Judgment and Decree in his favor by playing fraud and misrepresentation, therefore the same be set aside.

7. The Learned Appellate Court issued notices of the Application to Parties in Appeal, who appeared and filed their replies, claiming that there was no fraud or misrepresentation on their part, hence Application be dismissed. The Learned Appellate

Court after hearing the Parties allowed Application under section under Section 12[2] CPC vide Orders dated 28.09.2023 with following observations:

“In view of above discussed reasons: I have come to conclusions that Respondent No. 1/ the Plaintiff got the Judgment dated 19-07-2019 and Decree 22-07-2019 from the Trial Court in Suit No. 359/2018 on the basis of fraud and misrepresentation; that Judgment and Decree dated were also got in Appeal No. 340/2019 on the basis of fraud and misrepresentation, hence I set aside all of them by exercising jurisdiction u/s 12(2) C.P.C. All actions carried out during execution on said Decrees are consequently of no legal effect. The Suit No. 359/2018 shall be reopened from the stage after institution of the Suit by impleading the Applicants as Defendants No. 6 to 8. Learned Trial Court shall hear the parties on cause of action. If the plaint is found disclosing cause of action, the Suit shall proceed further in accordance with law. In case plaint does not disclose cause of action the Court may exercise jurisdiction under Order 7 Rule 11 CPC and to return the balance amount to the Plaintiff/ Respondent No. 1 Application in hand is granted accordingly.”

8. The Learned Executing Court on receiving copy of the Order of the Appellate Court declined to proceed further and closed execution proceedings vide Orders dated 29.08.2023. Petitioner challenged the Order of Learned Executing Court by filing Revision Application under section 115 CPC, the Learned Model Appellate Court Karachi South affirmed the Orders passed by Learned Executing Court and dismissed the Revision Application, resulting into filing of this Constitutional Petition.

9. The Petitioner, during hearing of Petition, was apprised of the legal status of his Case in open court on account of subsequent developments, but he still insisted for reversing the findings of Courts below on the score that he was a decree holder, having deposited balance consideration amount in the Executing Court; was entitled to get possession of **the Suit Property**, he was an old aged person, pursuing the matter since year 2018 and Learned Courts below failed to deal him in accordance with law, passed illegal orders which are liable to be set aside. He sought assistance of the Court for putting him into vacant possession of the Suit Property by acting upon the order dated 07.09.2021 passed by Learned Executing Court. He prayed for allowing this petition.

10. In our candid consideration, the Petitioner had no case at all to file Revision Application, as the Judgment and Decree dated 19.07.2022 and 22.07.2022 passed by

Learned Trial Court and Judgment and Decree dated 04.02.2020 passed by Learned Appellate Court stood set aside by means of order dated 28.09.2023 in proceedings under section 12(2) CPC with directions to conduct de novo trial of the Suit by impleading Respondents No. 6 to 9 as defendants. There was no decree in the field and all the proceedings conducted by Learned Executing Court for satisfaction of Decree dated 22.07.2022 became infructuous, thus, the Learned Executing Court rightly closed the Execution Proceedings. The insistence of Petitioner to carry on Executing Proceedings for satisfaction of Decree has no legal force. Petitioner fully understanding the consequences of order dated 28.09.2023 has already adopted due course of law by instituting appropriate proceedings before this Court. Record reflects that Petitioner has been using uncalled for pressure tactics against Presiding Officer of Learned Executing Court by moving complaints against him (available at page number 135, 151 and 157 of memo of Petition), language of which suggests that Petitioner by hook or crook wanted to seek possession of the suit property. Petitioner took recourse to fast-track system of this Court for deciding his matter on priority on account of his age, this petition was also dismissed in default by this Court on 09.10.2024 and same was got restored vide Orders dated 14.01.2025. The conduct of petitioner shows his acquaintance with practice and procedure of courts of law.

11. We find this petition a classic case of frivolous and vexatious litigation, a sheer abuse of the process of law. Petitioner being aware of the consequences of Orders dated 28.09.2023 filed appropriate proceedings before this Court, which was a due course as available under the law. Petitioner with mala fide intentions aiming to drag Respondents filed Revision Application before the Court of Learned District Judge and instant Constitution Petition before this Court, thus, unnecessarily burdened the Courts with an incompetent litigation, wasted precious time and divulged the Courts from dealing with genuine litigation. Such frivolous litigation handicap the judicial system, hamper the Courts to provide inexpensive and expeditious justice to the genuine litigants as enshrined in Article 37(d) of the Constitution being the Principles of Policy for promotion of Social Justice.

12. It is about time, that there should be an end to such frivolous litigation, which can only be achieved by imposing costs. Had the Petitioner been burdened with a cost by the Appellate Court dealing with the Revision Application would have the Petitioner from

bringing the instant petition which time could have been invested on some genuine litigation.

13. In the case of Tanvir Sarfaraz Khan Versus Federation of Pakistan through Director Legal Islamabad reported as 2025 SCMR 98, Bakhat Biland Khan Versus Zahid Khan reported as PLD 2024 Supreme Court 1273 and Capital Development Authority CDA through Chairman CDA Islamabad Versus Ahmed Murtaza reported as 2023 SCMR 61, the Honorable Supreme Court of Pakistan was pleased to decline relief to the litigant petitioners by imposing heavy cost, when found that the abuse of process of law was committed by filing frivolous litigation.

14. Sequel to the above discussion, we are of the view that Petitioner adopted dishonest tactics to carry on a frivolous and vexatious litigation, dragged Respondents by abuse of the process of law, thus warrants dismissal of Petition with heavy cost, but taking lenient view and considering his age we do not impose costs and dismiss instant Petition along with listed applications with a warning to the Petitioner to be careful in future.

Judge

Judge