

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

R.A. No.167 of 2022

Asghar Shah

.....

Applicant

Vs.

Mst. Naheed Khalid
& others

.....

Respondents

**Date of hearing &
Order**

: 09.10.2024

M/s. Shah Khan and Nighat Jabbar, advocate for applicant
Mr. Muhammad Akram Tariq, advocate for respondent No.

ORDER

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MUHAMMAD IQBAL KALHORO J: Respondent No.1 filed a summary suit for recovery of Rs.2,000,000/- against respondent No.2 (Zar Jalal Shah) on the basis of a dishonored cheque. The suit was decreed vide judgment and decree dated 18.09.2019, in compliance of which respondent No.1 (Mst. Naheed Khalid) filed an Execution Application No.01/2019. While passing the order impugned here on the execution application, learned Executing Court relying on some agreement dated 15.05.2017 between the parties, envisaging that in case the defendant/judgment debtor failed to pay the amount, his two brothers, namely, Nadir shah and Asghar Shah (Applicant) employees of State Bank of Pakistan (**SBP**) and his son, namely, Muhammad Khalid will be responsible for the decretal amount, has proceeded to order the SBP to attach the salary of the applicant.

2. I have heard learned counsel for the parties and perused material available on record. Learned counsel for the respondent No.1 has supported the order. Be that as it may, the applicant was neither a party in the suit, nor in the execution application he was issued a notice. The Executing Court before attaching the salary of the applicant even did not bother to call him or issue him a notice and hear his side of the story. On the basis of some agreement in which only name of applicant is mentioned, without his signature, or any information whether he is aware of this agreement or not, or whether he is a brother of defendant / judgment debtor or not, the Executing Court ordered for attachment of salary of the applicant. This order on the face of it appears to be illegal and against well settled principle of law stipulating that nobody should be condemned unheard. In the entire proceedings, it is not even mentioned that applicant was the guarantor of defendant/JD, and, if he was, why respondent No.1 did not make him a party in the suit to verify this fact and give him an opportunity to defend himself. Learned counsel for the applicant has even claimed that applicant is not even the brother of the respondent No.2 and there is no proof to

establish so. These facts discussed above show that the Executing Court has merely acted on surmises and hypothesis and erred in directing attachment of salary of the applicant without even ascertaining the necessary facts. To me this appears to be a fit case in which some stricture shall be passed against the said learned Judge, but I refrain from doing so, and warn the learned Judge to guard himself and desist from passing such orders in future. The impugned order being meritless is accordingly set aside. The Executing Court may proceed with against the judgment in accordance with law.

The Revision Application stands disposed of in above terms along with pending applications.

J U D G E

Rafiq/P.A.