Date	Order with signature of Judge

1.   For hearing of CMA No.461/2012 (U/o. 6 Rule 17 CPC)
2.   For hearing of CMA No.606/2012 (U/o. 21 Rule 29 R/w Sec.
                                                                  151 CPC)

20/12/2013:

                    Mr. Shaiq Usmani, Advocate for the Decree Holder.

                    Mr. Saifuddin Pishori, Advocate holds brief for Mr. R.
                    F. Virjee, Advocate for the Judgment Debtor.

NAZAR AKBAR.J.-   Through this application learned counsel

for the Decree Holder seeks to amend the execution application,

which was filed to satisfy the judgment dated 13-03-2004 and

decree dated 30.3.2004 by the Hon'ble division bench of this court

in Admiralty Appeal No.08/2003 whereby the judgment of the

learned single bench was modified/altered. The order passed in

admiralty appeal was challenged before Hon'ble Supreme Court by

both the parties and ultimately the final judgment in the Admiralty

Suit No.27/1999 was delivered on 9.5.2010 by the Hon'ble

Supreme Court in Civil Appeal No.1446 of 2004 in the following

terms:-

> In view of the foregoing discussion, civil appeals
> Nos.1444 and 1445 of 2004 are dismissed while
> civil appeals Nos.1446 and 1447 of 2004 are
> allowed. Consequently, we set-aside the judgment
> and decree of the learned appellate Bench dated
> 30.3.2004 and restore that of the learned trial
> Bench dated 22.9.2003.

        The learned counsel for the Decree Holder has sought

amendment in the execution application which was filed in 2004 to

incorporate the effect of Supreme Court judgment dated 09.5.2010

whereby according to the Decree Holder his claim of principal

amount has been increased.

I have heard Mr. Shaiq Usmani, Advocate for the Decree Holder and perused the record.

It is an admitted position that the decree which is being sought to be satisfied through this execution application is not and cannot be treated to be in the filed anymore after the judgment of the Hon'ble Supreme Court. Since the decree which is subject matter of this execution application has been set aside by the Hon'ble Supreme Court, this Court cannot continue to prosecute the satisfaction of a decree based on an appellate judgment which is now nullity in the eyes of law. The other aspect of the case is that the date of judgment for the purpose of execution of decree in suit No.27/1999 cannot be a date prior to the date of judgment which in the case in hand is Supreme Court judgment dated 9.5.2010, an ultimate judgment which has finally decided the controversy between the plaintiff/decree holder and the defendant/judgment debtor in suit in 27/1999.

The provision of Order VI Rule 17 CPC are not applicable to the execution proceeding. Rule 17 of Order VI CPC is reproduced below for convenience to understand that why it is not applicable to the execution application.

> **17. Amendment of pleadings.** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

The underlined portion of the rule reproduced above clearly shows that the amendments shall be made for the purpose of determining the real questions in controversy between the parties. So after the judgment of the Hon'ble Supreme Court nothing is left to be considered as a pending controversy. Pleadings has been defined in Order VI Rule 1 as follows

> **1. Pleading** shall mean plaint or written statement.

The execution proceedings start on culmination of controversies between the parties on pronouncement of judicial orders commonly known as "decree". And section 2(2) of CPC defines decree as

> **S. 2(2)** "**decree**" means the <u>formal expression of an adjudication</u> which, so far as regards the court expressing it, <u>conclusively determines the rights of the parties</u> which regard to all or any of the matters <u>in controversy in the suit.</u> ...."

But for this reason the contents of decree in terms of Order XX Rule 6 CPC are compulsorily required to "agree with the judgment". The purpose of referring to the provisions of sub-section (2) of section 2 and Order XX Rule 6 of CPC is to appreciate what is a decree with relation to a judgment. The net result of this exercise is that the contents of execution application are not "pleading" as the applicant cannot write anything in the application from his own sweet will nor plead anything even if it was left undetermined by the court in the judgment.

The execution application is a proforma and it has to be filled by the applicant in accordance with the statement of decree which in itself is a "formal expression of adjudication". Therefore, neither the execution application can be treated as "pleading" nor courts are empowered to amend the contents of an execution application during the process of achieving the satisfaction of a decree. The execution application, on amendment if any, would not continue to be in conformity with the decree on court file. The authority of executing court is very limited. It cannot go beyond the decree. An order on an amended execution application would, unless the decree is also amended accordingly amount to going beyond the decree. Therefore the executing court has no authority to amend an execution application and pass orders on such

amended execution application and ignore the decree. The power of court in terms of the provisions of Order VI Rule 17 of CPC is not available to the executing court.

The conclusion of the above discussion is that the application for amendment in execution application is misconceived; it is, therefore, dismissed.

The inescapable consequence of the above finding is that even execution application is liable to be dismissed since it has become infractuous on passing of the judgment dated 09.5.2010 by the Hon'ble Supreme court in Civil Appeal No.1446/2004 whereby order in Admiralty Appeal No.08/2004 was set aside and original judgment and decree of Single bench of this court dated 22.9.2009 in suit No.27/1999 was restored.

2.   In view of the above execution application is also dismissed along with the pending application.

JUDGE

SM