

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Execution No.34 of 2010

Date	Order with signature of Judge
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For hearing of Execution Application

04/12/2013:

Mr. Zaheerul Hassan Minhas, Advocate for Decree Holder
Mr. Abdul Haleem Siddiqui, Advocate for Judgment Debtor

This is an execution application of a consent decree passed on 29.10.2010. The consent decree contains the following three clauses:

- “7. That the plaintiff shall bring a buyer of the amount which has been agreed in the agreement dated 6th March 2008 and the amount shall be paid to the Defendant after deducting the amount of Rs.1,15,00,000/- which has already been paid to Defendant by the Plaintiff towards the sale consideration of the subject property.
8. That in case the Plaintiff failed to bring the buyer within 15 days from the date of compromise the agreement dated 6th March 2008 alongwith addenda agreement shall stands cancelled and the Defendant shall soon return the amount of Rs.1,15,00,000/- to the Plaintiff. Consequently the Plaintiff shall be entitled for the recovery of their amount of Rs.1,15,00,000/- in terms of this compromise.
9. That the Defendant shall at time of execution of sale shall return the amount of Rs.1,15,00,000/- and this amount of Rs.1,15,00,000/- shall remain as a lien on the subject property bearing No.12-A, Block-2, measuring 242 square yards, PECHS, Karachi, which shall be paid as soon as possible as the Plaintiff has conceded to the claim of interest until this compromise date.”

Both the judgment debtor and decree holder failed to abide by the terms of the compromise decree. Since the compromise decree has been frustrated by the conduct of the parties, the Court cannot help them out through the present execution application. As the compromise decree and failure to implement the terms and

conditions thereof has given rise to a fresh cause of action and on the basis whereof they can file a fresh suit for implementation of the compromise. Learned counsel for the judgment debtor has relied on the case reported as ***Peer Dil and others v. Dad Muhammad (2009 SCMR 1268)***, wherein it has been held by the Honourable Supreme Court that a consent decree based on compromise and noncompliance thereof provided a fresh cause of action on the basis whereof a fresh suit could have been instituted to get the compromise implemented in letter and spirit. In view of this judgment and above observations, this execution application is dismissed.

JUDGE

Gulsher/PA