

IN THE HIGH COURT OF SINDH AT KARACHI
Ex. No. 13 of 2009

Date	Order with signature of Judge
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1. For order on CMA No.402/2013 (U/s.151 CPC)
2. For order on Nazir's report dated 28.8.2013

For hearing of CMA Nos.

3. 335/2012 (U/s.151 CPC)
4. 417/2012 (U/s.151 CPC)
5. 465/2012 (U/s.151 CPC)
6. 612/2012 (U/s. 47 r/w Order 21 Rule 58 CPC)
7. 43/2013 (U/s.151 CPC)
8. 99/2013 (U/s.151 CPC)
9. 107/2013 (U/s.151 CPC)
10. 108/2012 (U/s.151 CPC)
11. 109/2012 (U/s.151 CPC)

23/12/2013:

Moulvi Iqbal Haider, advocate for the D.H.
Mr. Imtiaz Aga, Advocate for the Applicant.

1. This is an application under Section 151 CPC listed for orders has been filed by the intervener Dr. Waqar, who has already filed a suit for determination of his claim bearing Suit No.1408/2013. In view of the fact that grievance of the intervener against the judgment debtor and decree is subjudiced before competent forum, this application for recalling of the order, which has been passed in the light of the judgment and decree is not maintainable. It is dismissed on the ground that intervener is not party in this execution application. He may file afresh once he makes out a case of being intervener in this case.

2&3. Deferred.

4. This application is dismissed as it has been filed by the decree holder without consultation and counsel is unable to appreciate the contents. She may file afresh with clear prayer as this application is ambiguous.

5. This application has been filed by Ms. Sofia Saeed Shah, learned counsel who has been superseded by Moulvi Iqbal Haider, advocate. However, Moulvi Iqbal Haider learned counsel for the decree holder does not press this application, which is dismissed as not pressed.

6. Learned counsel for the D.H seeks time to file counter affidavit. One week time is granted.

7. Deferred.

8, 9, 10 & 11. These applications are filed by some strangers, who are not party to the proceedings. All the applications have been filed after four years of the judgment and decree without challenging the judgment and decree at all. Section 151 does not apply for adjudication of substantive right between the parties. In this case applicants of CMA Nos.99/2013 107/2013, 108/2013, & 109/2013 were never party to the proceedings and therefore, the Court in the capacity of executing Court cannot entertain application under Section 151 CPC to frustrate the judgment and decree.

Now CMA No.612/2002 & CMA No.43/2013 are left for the counsel of Dr. Waqar Saeed to be heard and decided on merits. Learned counsel is directed not to file any application under Section 151 CPC unless and until he gets two CMAs disposed of on merits. By filing application under Section 151 CPC main controversies have always been pushed away. It is legal where only the party wants to become a party in the case is being impleaded in the proceeding that party cannot have any right of interim orders under the cover of Section 151 CPC.

It is also clarified that this execution proceeding should be fixed on a date other than the date on which pending suits between the parties are fixed. Because under the cover pendency of any suit under the cover of any injunction orders in civil suit, execution proceeding cannot be stayed by executing court. Execution should be decided on merits between the parties and whoever impleaded without reference to their pending suit subsequent to file execution application.

To be fixed on a date other than Monday.

JUDGE

SM

