

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Misc Appeal No. S-03 of 2024.

Hyder Khan Vs. Mumtaz Ali & another.

Appellant : Hyder Khan through Mr. Sanaullah Khoso, Advocate.

Respondents : NEMO.

Date of hearing : 07.11.2025.

Date of Decision : 07.11.2025.

J U D G M E N T

Muhammad Hasan (Akber), J.- Through this Civil Miscellaneous Appeal, the Appellant has impugned order dated 23.12.2023, whereby the learned Additional District Judge / MCAC, Hala dismissed the Execution Application No.06 of 2023 filed in Summary Suit No.63 of 2022 by the Appellant / plaintiff / D.H in terms of Order XXI CPC 1908.

2. The Order Sheet of this case reflects that since the filing of this Miscellaneous Appeal, the matter has been fixed in Court for at least 21 dates, and repeated notices were issued to the Respondent and finally, service was held good on the Respondent vide Order dated 18.04.2025, however, the Respondent has chosen to remain absent. This Appeal was heard on 23.10.2025 and 06.11.2025; however, the Respondent was also absent on the said dates. Finally, in these circumstances, the matter was heard today.

3. The crux of the case is that the Appellant being a plaintiff filed Summary Suit No.63 of 2022 against Respondents / defendants in terms of Order XXXVII Rule 1 CPC for recovery of Rs.15,36,000/- (Rupees Fifteen Lacs Thirty Six Thousands) and after service defendant No.1 (Mumtaz Ali) appeared before Trial Court in his own capacity as well as Special Attorney for his wife / defendant No.2 and sought permission to appear and to defend the Suit which was granted vide order dated 01.03.2023. Subsequently, the said Suit was decreed to the extent of Rs.15,36,000/- without interest in favour of the Appellant / plaintiff and Appellant being a Decree Holder filed Execution Application, which was dismissed by the learned Trial Court vide order dated 23.12.2023, which order has been impugned through this Appeal.

4. Learned counsel for the Appellant argued that the impugned order passed by learned Executing Court is illegal and unlawful as the Suit was firstly decreed in favour of the Appellant but in Execution Application, the learned trial Court had reversed its own decision which is clear violation of Section 2(2) CPC; that the learned Executing Court in execution proceedings called the Oath Commissioner being a Court witness and recorded evidence and concluded that the decree stood satisfied; that the learned trial Court after full dressed trial, decreed the Suit of the Appellant, which cannot be reversed on a receipts which were dated 21.06.2022, even prior to the filing of the Suit, which were even not produced during trial; that it is not in the domain of learned Executing Court to reverse its own findings in execution proceedings, therefore, the order impugned may be set-aside which is not sustainable in the eyes of law.

5. Heard learned counsel for the Appellant and perused the record with his able assistance.

6. A very short point appears to be involved in this case. The summary Suit No.63 of 2022 was filed by the appellant, which was decreed on 06.11.2023, with direction to the Respondent to pay Rs.15,36,000/-. For the implementation of the Decree, the Execution Application No.06 of 2023 was filed by the Appellant. However, instead of implementing the Decree in letter and spirit, the same was dismissed by the learned Executing Court. The appellant's case is that instead of implementing the Decree, the learned Executing Court practically indulged in a retrial of the matter, and in this regard, it even called witnesses, the Commissioner District Matiari as Exhibit-01 and based thereon, it dismissed the Execution Application. Per learned counsel, such an exercise was in utter violation of the provisions of section 47 CPC and Order XXI CPC., so also the same was in contrast to the principles settled by the Honourable Supreme Court and the High Courts on the subject. Reliance in this regard was placed upon 2016 CLD 784, 1994 SCMR 22, 2002 YLR 960 and 2004 CLC 979.

7. In the case of '**Mst. Naseem Akhter and 4 others**' (1994 SCMR 22), it was held by the Honourable Supreme Court that a plea which was not taken by the Judgment Debtor before the trial Court, cannot be taken before the Executing Court. It was further held that the plea of incorrect assessment of liability could not be assessed by the Executing Court, and the decree has to be implemented in letter and spirit; that Judgment Debtors in execution proceedings could not take a plea which they had not taken before the trial Court during the course of hearing of the Suit; that although the liability of the J.D. was limited, they could not contend before the Executing Court that their liability was not correctly assessed or determined. Finally, it

was concluded that once a decree was passed, it had to be executed in its terms, and it was not open to the Executing Court to go beyond the terms of the Decree and re-determine the liability of parties.

8. In the case of '**National Bank of Pakistan through Vice President/General Attorney V. Messrs Murtaza Haseeb Textile Mills Ltd. through Chief Executive and 13 others**' (2016 CLD 784), it was held that when the Banking Suit was decreed after dismissal of the application for leave to defend, and no appeal was preferred by the Defendants, the same had attained finality and unless the decree was set aside in appellate or revisional proceedings, the same continued to bind the parties, even if the same was erroneous it was further held that Section 47, C.P.C. did not entitle a party to seek retrial of the issues involved in the suit, particularly, when the party had the opportunity to defend the suit and had contested the suit but had not raised the issues mentioned in the application under S. 47, C.P.C. It was further held that Section 47 C.P.C. empowers the Executing Court to decide all the questions arising between the parties to the suit in which the decree has been passed, when such questions relate to the execution, discharge or satisfaction of the decree and it only deals with the events which are subsequent to passing of Decree, but the same does not relate to a cause which arose prior to the issuance of the decree. It was finally held that Section 47, C.P.C. did not deal with pre-decretal matters.

9. In '**Sughra Bibi V. National Logistic Cell and others**' (2002 YLR 960), it was held that it was not open to the Executing Court to go behind a decree or re-determine the liabilities of the parties but the Executing Court has to execute the existing decree and in case the Judgment Debtor wants to contests the decree as void or without jurisdiction, it should avail the appropriate remedy by getting the decree modified form the appropriate forum.

10. In '**Mst. Yasmeen v. National Insurance Corporation and others**' (2004 CLC 979), it was held that where a decree had become final, the Executing Court would have no option but to execute the same as it was passed. It was further held that the Executing Court could not go beyond the decree sought to be executed, and the Executing Court had no jurisdiction to re-determine the liability of any party or reconsider the law for that purpose.

11. Applying the above principles to the facts of the present case, it appears that the learned Executing Court travelled beyond its mandate and jurisdiction by practically conducting a retrial of the suit, at the stage of execution, with regards to

facts and contentions, which were either already pleaded before and considered by the learned trial Court, or those which were already available to the Judgment Debtor at the stage of the trial, but were not pleaded. Such an exercise by the learned Executing Court violates the essence of the principles settled by the superior Courts as discussed above. In view of the above, the instant appeal is **allowed**; the impugned Order dated 23.12.2023 passed by the learned Additional District Judge/ MCAC Hala in Execution Application No.06/2023 is **set aside**; the Execution Application is **restored** to its original position from the stage where it was dismissed; and the learned Executing Court is directed to expeditiously proceed with the Execution Application until final satisfaction of the decree, strictly in accordance with law.

12. The appeal stands **allowed** in the above terms, with no order as to costs. These are the reasons for my short Order dated 07.11.2025.

JUDGE