

IN THE HIGH COURT OF SINDH AT KARACHI

Execution No.25 of 2012

Date: Order with Signature of Judge

Mr. Irfanullah Khan Advocate and Lubna Aman Advocate for
Decree Holder Askari Bank Limited
Mr. Farjad Ali Khan Advocate and Mr. Muhammad Umar Farooq
Advocate for Malik Ali Zain through, Judgment Debtor No.4

Date of Hearing : 09.09.2025
Date of Order : 23.09.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- Through this common Order, both applications CMA Nos.497/2025 and 495/2025 are being decided which have been filed under sections 141 CPC, 151 CPC, Order XXIX Rule 1 & 2 CPC and section 21 of the General Clauses Act 1887. Both these applications have been filed by the Judgement Debtor No.4 for recall of Order dated 09.05.2025 be recalled. The Order dated 09.05.2025 was passed on an Application filed by Decree Holder under section 151 CPC [CMA No.374 of 2025] for blocking CNIC of Judgment Debtors 2, 3 and 4. The Order reads as under:

“
5] Notice of this application has returned unserved with the report that JDs 2, 3 and 4 have shifted. Counsel for the Decree Holder states that the Decree Holder has no knowledge of the present address of the said JDs. Copies of the CNICs of JDs 3 and 4 have been filed. Therefore, this application is allowed. The office shall write to the NADRA to block CNICs of the Judgement Debtors No.3 and 4 namely; Seema Shirazee and Malik Ali Zain till further orders.”

2. Learned counsel for Judgement Debtor No.4 agitated that the Order was obtained by the Decree Holder without properly assisting the Court on factual and legal position. Further submitted that incorrect address was provided by the Decree Holder to this Court which resulted into non-service of any notice or publication on Judgement Debtor No.4 [**JD No.4**]. In this regard, he drew attention towards the address of **JD No.4** as recorded in the Decree; and also towards the one as provided in this Execution Application; and in the Publications affected in

this execution. Lastly contended that blocking of CNIC is alien to CPC. as applicable in Sindh and relied upon various provisions and Judgments.

3. Conversely, learned counsel for the Decree Holder has drawn attention to the Consent Decree and argued that based upon a Settlement Agreement dated 4th June 2009 the Consent Decree dated 29th June 2009 was drawn. As per Clause 1.5(i) of the Agreement Rs.426,171,375/- were to be settled as the 'Agreed Amount', against which the four properties as listed in Schedule-I to the Agreement were to be acquired by the Decree Holder. According to him, after passing of the decree, and before filing of this Execution Application, the said sum of Rs.426,171,375/- was satisfied through acquisition of all the four properties listed in Schedule-I by the Decree Holder.

4. He then drew attention to Clause 1.5(ii) of the Settlement Agreement which provided another approximate sum of Rs.120 million which was also to be settled as 'Agreed Amount' whereby another four properties were to be sold as listed in Schedule-II to the said Agreement. It is this second part of the decree concerning Rs.120 million, for which the instant Execution Application has been filed. He informed that the first three properties in Schedule-II were sold/ disposed of in different other executions/ proceedings filed by other financial institutions, and out of which the present Decree Holder has also received certain substantial amounts, in partial satisfaction of the said Rs.120 million. However, the 4th property in Schedule-II became subject matter of an application under section 12(2) C.P.C., which was decided vide Order dated 13.11.2023 in this very execution, and against which, High Court Appeals 101/2024 and 102/2024 have been filed by the Decree Holder, which are sub judice.

5. In this backdrop, he concluded that the claim amount of Rs.120 million has also been partly satisfied whereas the remaining amount is required to be satisfied through the instant execution application. In response to a query by the Court as to the exact amount which remains to be recovered in satisfaction of the Decree, learned counsel for the Decree Holder undertakes to file complete details and all relevant documents/ proceedings/ Orders and the latest Accounts, to bring on record complete calculations and the exact outstanding amount to be recovered for final satisfaction of the Decree.

6. As regards the first contention raised by JD No.4 pertaining to service of notices, perusal of the Court File reflects that in the Decree, the address of Judgement Debtor No.4 Mr. Malik Ali Zain is mentioned as **“83, Khayaban-e-Behria, Phase-V, Defence Housing Authority, Karachi”**. However, in the title of the instant execution application, the address of JD No.4 is mentioned as **“03, Khayaban-e-Behria, Phase-V, Defence Housing Authority, Karachi”**. Perusal of various newspapers publications which were issued for service upon JDs through this Court on the request of the Decree Holder, also contains the address of JD No.4 as **“03, Khayaban-e-Behria, Phase-V, Defence Housing Authority, Karachi”**. A clear discrepancy appears in the address of the JD and such position clearly supports the contention of JD No.4 that due to his wrong address in the execution application he was never served in the present proceedings and therefore he did not have any knowledge about the instant execution application. The maxim *‘Nullus commodum capere potest de injuria sua propria’* provides that, no one can benefit from their own wrong. Such address was provided by the Decree Holder, for which the JD No.4 should not be punished.

7. Attending to the next aspect of the matter and in order to justify the blocking of CNIC of Judgement Debtors, Decree Holder’s learned counsel relied upon **Order XXI Rule 77** of the Civil Procedure Code [C.P.C.] of the KPK Amendment, which provides for blocking of National Identity Card of Judgment Debtors. It is to be noted after the 18th Constitutional Amendment, C.P.C. has become a Provincial subject, whereas no such provision is available in the C.P.C. as enforceable in the Province of Sindh. Hence, reliance on such a provision, which is neither available nor enforceable in the present jurisdiction, was completely misplaced. Secondly, it is also to be noted that for execution of a decree under the Banking jurisdiction, a complete mechanism is provided under the C.P.C., being the general law and under the Financial Institutions Ordinance 2001 [**Ordinance 2001**] being special law applicable to this case, which provisions and mechanisms are required to be followed strictly in letter and spirit. Conspicuously, none of these two laws, as applicable in the Province of Sindh, contain any specific provision for blocking of CNIC of a Judgment Debtor in satisfaction of a Decree. Under identical circumstances of blocking of CNIC of a Judgment Debtor for implementation of a Decree, in the case of **Agha Abid Majeed**’ in an unreported Order dated

19.09.2024, a Two-Member Bench of the Honourable Supreme Court of Mr. Justice Muneeb Akhter and Mr. Justice Athar Minallah observed in the following terms:

“ORDER

Learned Additional Attorney General is in attendance. With assistance of the learned Additional Attorney General and assistance of learned counsel for the petitioner we have gone through the impugned order of learned High Court as well as the orders of the learned executing court in terms of which the latter court has blocked the CNIC of the petitioner who is judgment-debtor in respect of some decree and which order has been implemented by NADRA. The revision petition filed against this order of the learned executing court was dismissed by learned High Court which has led to the filing of this leave petition

2. The learned Addl. A.G. has drawn our attention to section 18 of the NADRA Ordinance, 2000 and candidly, in our view, quite properly, accepts that the said section as such does not have any application to the facts and circumstances of the present case. Furthermore, it appears that the CPC which is, since the 18th Amendment, a provincial subject, as now applicable in the Province of Sindh out of which this leave petition arises, does not contain any such provision. Prima facia, and with respect in our view both the learned executing court and the learned High Court fell into error in firstly n allowing, and then upholding the testing of CNIC.

3. We are informed that address of respondent No.1/decreed holder is incorrect. Learned counsel for the petitioner may obtain fresh address, if available, and provide the same to the office. Since two attempts for service have already been made, if no fresh address is available, steps may be taken for substituted service.

4. Learned counsel for the petitioner has drawn our attention to his CMA No.6730/2024. Notice on this application. Till the next date of hearing the impugned order of the learned High Court and learned executing court are suspended, with the result that for CNIC of the petitioner stands restored, Learned Add A.G. shall communicate this order to the relevant authorities in NADRA so that it is to effectively and immediately implemented. Adjourned.”

1. unreported Order dated 19.09.2024 in Civil Petition No. 3744/2023 ‘Agha Abid Majeed v. Idrees Ahmad and others’

8. To justify the action impugned, counsel for Decree Holder then relied upon **section 51 C.P.C.** which pertains to arrest and detention of a Judgement Debtor under certain circumstances. Firstly, the Order dated 09.05.2025 was not passed under section 51 C.P.C.; secondly, no provision for blocking of CNIC of a Judgement Debtor is available under the said provision; and lastly, on the said provision, the principles are well settled in the cases of **Zafar Hasan Khan²**, **Abdul Basit Zahid³** and **Precision Engineering Ltd.⁴** that even before issuance of a warrant under section 51 CPC., certain mandatory pre-requisites must be fulfilled, for even a warrant could not be issued routinely. At the time of passing of the Order dated 09.05.2025 neither any of those pre-conditions was pleaded; nor was issuance of warrant ordered. Reliance on section 51 C.P.C. was therefore, completely misplaced. Rather, in my humble view, blocking of CNIC carries with it much severe implications as compared to issuance of a warrant of arrest. In the expression of Mr. Justice Athar Minallah as Chief Justice of the Islamabad High Court in the case of **Hafiz Manzoor⁵** it was observed that:

“.....suspension of a duly issued CNIC or cancellation thereof has a profound and grave consequence because it virtually brings the life of an affected person to a halt and the latter, by implication, is denied the exercise of fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the 'Constitution'). Such a person loses the right of employment, access to his or her own bank accounts, the right to engage in trade, business or profession. Moreover, access to education, health, etc. is denied. The family members are also equally affected. In a nut shell, the right to life guaranteed under Article 9 is virtually taken away. This phenomenon of blocking or cancelling the CNICs of citizens by the Authority in a perfunctory and arbitrary manner has remained prevalent for a long time because similar grievances have been frequently agitated before this Court...”

9. Lastly, an objection was raised that under Order XX1 Rule 23A the Judgement Debtor No.4 is first required to deposit the decretal amount before his objections could be heard, and reliance was placed on 2015 CLD 1202. In this regard, suffice it to say that the Decree Holder is first required to correct the

2. Zafar Hasan Khan And 2 Others V. Messrs Habib Bank Limited 2024 CLC 1068

3. Abdul Basit Zahid and another V. Modaraba Al-Tijarah and another 2002 CLD 46

4. Precision Engineering Ltd. and others v. The Grays Leasing Limited PLD 2000 Lahore 290.

5. 'Hafiz Hamdullah Saboor v. Government of Pakistan through Secretary Ministry of Interior, Islamabad and 2 others' PLD 2021 Islamabad 305

address of JD No.4 on the title of this execution application; and thereafter is also required to bring on record the exact outstanding amount which is to be recovered in final satisfaction of the decree, after deduction of the amounts received in partial satisfaction of Rs.120 million, as discussed in detail at paras 4 to 6 *ibid*. Once such activity is completed and thereafter if the JD No.4 choses to file Objections to this Execution, that would be appropriate time when such an objection would be considered.

10. Although the Order impugned was passed under section 18 of the NADRA Ordinance 2000 yet even under such Ordinance, Courts have repeatedly discouraged blocking of CNICs, and such instances are available in the cases of **Abbu Hashim, Muhammad Umar** and **Syed Hasamuddin**⁶.

11. Considering the above factual and legal position, I am of the considered view that firstly, incorrect address of JD No.4 was provided in this Execution Application which prevented valid service upon JD No.4, as discussed at para 7 *ibid*. For such mistake on part of the Decree Holder, JD No.4 should not be penalized. Secondly, the exact amount which, according to Decree Holder is to be recovered in final satisfaction of the decree, is yet to be brought on record of the Court (as discussed at paragraphs 4 to 6 *supra*); Thirdly, no provision exists in CPC. or the Financial Institutions Ordinance 2001 for blocking of CNIC of a Judgment Debtor. Lastly, proper assistance on all the above legal aspects was not provided to the Court at the time of passing of the Order dated 09.05.2025. Hence, upon consideration of all the above factors and applying the ratio settled in **Agha Abid Majeed** and **Hafiz Manzoor** *ibid*, both these Applications are allowed and the Order dated 09.05.2025 is hereby recalled. Consequently, NADRA is directed to immediately unblock the CNIC of the Judgement Debtors. Office is directed to serve a Copy of this Order on NADRA authorities for compliance.

J U D G E

6. 'Abbu Hashim and another v. Federation of Pakistan through Secretary, Ministry of Interior and 2 others' (PLD 2021 Sindh 492) 'Muhammad Umar v. Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 2 others' (PLD 2017 Sindh 585); 'Syed Hasamuddin v. Federation of Pakistan' (2018 MLD 1748).