

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

*Constitution Petition No. S-331 2025
(Vijay Kumar v. Pardeep Kumar and others)*

Date	Order with signature of Judge
-------------	--------------------------------------

Before:- Mr. Justice Ali Haider 'Ada'

1. For orders on office objections 'A'.
2. For hearing of main case.

04-02-2026.

Mr. Atta Hussain Chandio, Advocate for the petitioner.
Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.
Mr. Atta Hussain Qadri, Advocate, holding brief for Mr. Muhammad Afzal Jagirani, Advocate for respondents Nos 4 and 5.

Ali Haider 'Ada' Through this Constitution Petition, the petitioner seeks to set aside the order dated 28.02.2025 passed by the II-Additional Sessions Judge, Mehar, as well as the order dated 11.03.2025 passed by the Senior Civil Judge-I, Mehar (Executing Court), and to restore the order dated 15.01.2025 passed by the Executing Court. As he further prays for the removal of the illegal construction of one washroom.

2. The petitioner filed a civil suit against the private respondents as well as the police functionaries and the public functionaries on the ground that some illegal construction was raised, whereby he described such illegal construction, in which the learned trial Court (Executing Court) passed the Judgment and Decree dated 14.10.2020, whereby the suit of the plaintiff was dismissed. As such Judgment was assailed before the appellate Court in Civil appeal No.90/2022, in which the Appellate Court decreed the suit of the Petitioner and set aside the findings of the trial court with directions that the Government functionaries to take measurement and remove encroachment after verifying documents of the parties. Then after the report was called by the trial court in pursuance of the Judgment of Appellate Court and finally passed the order and allowed the Execution Application of the petitioner vide order dated 15.01.2025. Furthermore, the other side challenged the executing order before Appellate Court, in which on 28.02.2025 the order was passed that the executing Court reconsider the report of the functionaries and do not go beyond the execution decree. In that regard, again, the executing court on

11.03.2025 passed an order and disposed of the matter. As such order of the executing Court dated 11.03.2025, as well as the Appellate Court order dated 28.02.2025, are hereby assailed through this petition.

3. Learned counsel for the petitioner submits that previously on round of litigation the Appellate Court set aside the findings of the trial court and disposed of the matter with directions for removal of the encroachment, however, one wash room was also constructed by the respondents but the same was not removed, therefore, through executing Court when approached, as on first instance, the executing Court allowed application with directions to remove wash room of the other side, however, in second round the appellate Court vide order dated 28.02.2025 passed the phrasing wherein order for demolishing the wash room was set aside and then after the executing court followed such order vide order dated 11.03.2025. Learned counsel mainly argued that wash room is also under the illegal encroachment as covered by the first decree; therefore, for restraining from demolishing the washroom is illegal, and prays to set aside both the orders.

4. On the other hand learned Additional Advocate General Sindh pointed out that in first round the learned Appellate Court ordered that to call report, however in such report it was clearly mentioned that the wash room was erected adjoining with plot No.C-47 and C-46 as the same is not come under the area of plot No.C-47 while claim of the petitioner was that he purchased the plot No.C-47, therefore, the decree was passed at first instance within such meters and question for demolishing of the wash room even though was not mentioned in prayer clause or even plaint, therefore, executing Court did not go beyond the decree.

5. Heard arguments and perused the material available on the record.

6. From perusal of the entire record it transpires that learned Additional Advocate General Sindh has rightly pointed out that question for demolishing of the wash room is not subject matter of the civil suit and even though same was further improvement of the petitioner while

Appellate Court has some parameters in which suit of the petitioner was allowed with subject to call reports and even though the reports of the Mukhtiarkar clearly reflected that the disputed wash room is not come under the area of plot of petitioner, therefore, on such ground learned Appellate Court vide order dated 28.02.2025 and then after followed by Executing Court do not want any interference, thus petitioner has failed to establish the case.

7. It is a settled principle that the executing Court cannot go beyond the decree neither can it rescind nor modify the decree/order passed to be executive. Reliance is placed on *Mushtaq Ahmed v. Shahzad Khan reported in PLD 2024 SC 960.*

8. In view of the foregoing reasons and circumstances, the instant petition did not point out any illegality or irregularity to show any inference through this Constitution Petition; therefore, this petition is hereby dismissed with no order as to costs. These are detailed reasons of short order dated 02.02.2026.

JUDGE

Irshad Ali M/Steno