THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-58 of 2026

[Ghulam Ali Lashari Vs. Irshad Ahmed Sadhayo & another]

Applicant	**:**	Through Mr. Muhammad Ibrahim Lashari, Advocate
Respondents	**:**	Nemo
Date of Hearing	**:**	**02-11-2026**
Date of Order	**:**	**02-11-2026**

O R D E R

ARBAB ALI HAKRO J. – Through this revision, the applicant, one of the two judgment-debtors, impugns the order dated 11.05.2026 (**the impugned order**)[1] passed by the learned III-Additional District Judge, Shikarpur (hereinafter referred to as '**the executing court**') in Execution Application No. 01 of 2024, whereby the application of the judgment-debtors under Order XXI Rule 6 read with Section 39 of the Code of Civil Procedure, 1908 ('**C.P.C.**') for sending the decree for execution to a court at Karachi was dismissed.

2. Respondent No. 1 obtained a decree on 03.09.2018 in Defamation Suit No. 01 of 2017 against the applicant and his father, Sadique Ali, for Rs.2,000,000 as damages, with a direction to publish a written apology in two newspapers. The defendants preferred First Appeal No. D-01 of 2018 before this Court, which, according to the applicant, is pending for restoration. No order suspending the decree has been placed on record. The decree-holder applied for execution on 30.04.2024. On 22.11.2025, the judgment-debtors moved the executing court to send the decree to a competent court at Karachi on the plea that they reside, work and own property there.[2] The executing court declined the request, holding that Section 39 C.P.C. is only available to the decree-holder and that the assertions were, in any event, not supported by any material.

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[1] Annexure 'A' to the memo of revision.

[2] Annexure 'B' to the memo of revision.

3. Learned counsel for the applicant contends that the applicant is a doctor serving in Karachi; his father is elderly; their properties are situated there; and Section 39 C.P.C. empowered the executing court to send the decree to Karachi, but the request was declined in haste.

4. I have heard learned counsel and perused the record. An order under Section 39 C.P.C. is neither a decree within Section 2(2) C.P.C. nor an appealable order under Order XLIII Rule 1 C.P.C.; the revision is, therefore, competent. However, the scrutiny remains confined to the limits of Section 115 C.P.C., which is supervisory, not appellate, and is meant to correct a jurisdictional defect, illegality or material irregularity, not to substitute one view for another where the subordinate court has lawfully exercised its jurisdiction.[3]

5. Under section 38 C.P.C., a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 39(1) C.P.C. enables the court which passed the decree to send it to another court "on the application of the decree-holder" in the situations enumerated in clauses (a) to (d). These clauses set out the conditions on which the decree-holder's request may be acceded to; they confer no corresponding right on the judgment-debtor. Clause (d), which permits transfer for "any other reason", is equally controlled by the opening words of the sub-section. Having named the person who may set the provision in motion, the legislature does not include the judgment-debtor.[4] Even on the decree-holder's application, the word used is "may", so transfer remains a matter of discretion, not a right. The provision makes no mention of the judgment-debtor's convenience, and the choice of the forum in which the decree is to be executed rests with the decree-holder.

6. Nor did the executing court possess any power to act on its own. Section 39(2) C.P.C. allows the court which passed the decree to send it, of its own motion, only to a "subordinate Court of competent jurisdiction". The civil courts at Karachi are not subordinate to the executing court at Shikarpur. The request of the judgment-debtors was thus beyond the reach

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[3] *Saad Younis v. Ghulam Bari* 2026 SCMR 1978; *Ch. Fayyaz-ur-Rehman Khalid v. Amir Javed* 2025 SCMR 2092.

[4] *Deputy Director Finance and Administration FATA v. Dr. Lal Marjan* 2022 SCMR 566.

of the executing court under either sub-section, and its refusal was the only course open to it in law.

7. The hardship pleaded is also without substance. Order XXI Rule 1 C.P.C. permits the judgment-debtor to pay the decretal amount into the executing court or directly to the decree-holder, and the publication of an apology is a personal act that can be performed from anywhere. The applicant has, moreover, been contesting the suit and the execution through his general attorney, a resident of Jacobabad, since 2017.[5] If the applicant seeks to halt execution during the pendency of his appeal, Order XLI Rule 5(1) C.P.C. makes it clear that an appeal does not operate as a stay; the remedy lies before the appellate court, and the transfer of the execution to another city cannot be sought as a substitute for it.

8. The decree is more than seven years old. The application for transfer was filed some eighteen months after execution was sought, while the appeal has remained unattended. The Supreme Court has deprecated the tendency of judgment-debtors to contest execution as though it were a fresh suit, thereby keeping the decree-holder from the fruits of his decree[6], and has declined to permit technical objections to frustrate a decree.[7] The view of the executing court that the application was intended to delay execution is borne out by the record.

9. It may be noted that the impugned order describes Order XXI Rule 6 C.P.C. as governing the particulars of an execution application. That is the province of Order XXI Rule 11; Rule 6 prescribes the documents which the transferring court is to send once it decides to transfer the decree. Likewise, once the judgment-debtors were found to have no standing under Section 39 C.P.C., the question whether their residence at Karachi stood proved did not arise. Neither aspect touches the jurisdiction of the executing court or affects its conclusion, which is sustainable on its principal ground.

10. Sadique Ali, who was a co-applicant before the executing court, has not assailed the impugned order, which has thus attained finality to his extent.

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[5] General power of attorney, Annexure 'E' to the memo of revision.

[6] *Muhammad Abdullah v. Yatim Khana Khalqia, Sargodha* 2004 SCMR 471.

[7] *Syeda Tahira Begum v. Syed Akram Ali* 2003 SCMR 29.

11. The executing court has applied Section 39 C.P.C. in accordance with its plain terms. It has neither exercised jurisdiction not vested in it nor failed to exercise jurisdiction so vested, nor has it acted illegally or with material irregularity. Accordingly, this revision is **dismissed** in ***limine***, along with the pending applications, with no order as to costs. The executing court shall proceed with Execution Application No. 01 of 2024 in accordance with law.

J U D G E

Zulfiqar