

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

R.A. No.44 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of M.A-137 of 2010.

21.12.2017.

Mr. Wali Muhammad Jamari, Assistant A.G.

Mr. Ghulam Sajjad Gopang, Advocate for respondent No.1.

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Learned AAG states that this revision application has been filed on account of the learned trial Court failing to consider that an executing Court cannot be behind the decree. In his regard, he relies upon the cases of **Muhammad Ali v. Ghulam Sarwar (1989 SCMR 640)** and **Province of Punjab v. Burewala Textile Mills Ltd. (2001 SCMR 396)**. It is also contended by the learned AAG that a decree in the sum of Rs.05,41,560/- was awarded by the learned trial Court, which was subsequently got corrected by way of application under section 152 C.P.C. and the amount was reduced to Rs.1,59,000/-; however, the enhanced claim by way of execution has been coming up on part of the respondents in violation of the decree as it was an amended decree and the same was to be entertained.

2. Learned counsel for respondent No.1, however, states that the claims were made in accordance with the market value on the date of filing of execution and the same are based upon the decree as given in the matter. It is contended on part of learned counsel for respondent No.1 that it will be injustice to provide payment at the rate of 1995 when the payment is expected to be made in year 2018 or onwards. It is also contended on part of learned counsel for respondent No.1 that a person facing acquisition of land is entitled for additional compensation, which are required to be considered. In this regard, he relies upon the cases of **Land Acquisition Collector, G.S.C., N.T.D.C., (WAPDA) v. Surraya Mehmood Jan (2015 SCMR 28)** and **Muhammad Sadiq v. British High Commissioner (PLD 2011 Karachi 553)**.

3. Having heard the learned counsels and with their assistance gone through the record, it is observed that in the first incident the claim of the respondents is based upon the decree of the civil Court and not the award. Decree is defined under CPC as the final adjudication of the lis, in a money matter the same has to be come up with the actual figure payable, as the dispute in terms of declaration i.e. quantification thereof is to be finalized in view of the judgment of the trial Court. The executing Court as such is left with the element of execution. In the present case the amended decree stood in the sum of Rs.1,59,000/- only, as such in my humble understanding claim other than the same can only be inquired as to the availability of interest as provided in the Code of Civil Procedure and the period thereof from the date of cause of action, filing of the plaint or the grant of the decree till realization as the case may be and no other amount shall be payable as the claim arises from a civil Court decree and not the terms of the award which has its own process of consideration. Had the decree holder required realization of those amounts the claim had to be made accordingly, as it cannot be argued that an executing Court can go behind its decree. While going through the execution application it was observed that interest has been claimed with rest causing compound which is not available, the same has to be calculated at a flat rate. In the circumstances, this revision application is accepted to this extent only with no order as to costs. The pending application also stands disposed of accordingly.

JUDGE

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