

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-8300 of 2019

Petitioner : Through Mr. Muhammad Kamran Mirza,
Advocate.

Respondents : Nemo.

Date of hearing : 03.02.2020

Before : Muhammad Ali Mazhar and Yousuf Ali
Sayeed, JJ

ORDER

The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the issuance of a Warrant of Arrest by the learned IXth Additional District & Sessions Judge, Karachi, South vide Order dated 17.09.2019 made in Execution No. 3/2018, emanating from Summary Suit No. 59/2014 where Judgment and Decree in the sum of Rs.1,500,000/- were passed in favour of the Respondent No.1 as against the Petitioner, and has elicited relief seeking that such Warrant be set aside and be suspended during the pendency of this Petition.

2. Per learned counsel, the Summary Suit had been filed on the basis of a promissory note allegedly issued by the Petitioner to the Respondent No. 1 on account of a loan said to have been obtained by her in that sum, however the claim as to such transaction and execution of such promissory note had been denied by the Petitioner in her Application for leave to defend, which had been allowed, but subject to furnishing equivalent surety/bank guarantee and execution of an indemnity bond in the like amount before the Nazir of that Court. It was contended that such condition could not be complied with due to the poor financial state of the Petitioner, with the result that the Suit then proceeded ex parte, culminating in Judgment in favour of the Respondent No.1 on 03.05.2016 and the Suit being decreed as prayed.

3. On query posed as to whether the Petitioner had filed any appeal against the underlying Judgment and Decree or the Order allowing the Execution, or even assailed the issuance of the Warrant vide a revision, learned counsel for the Petitioner conceded that no such measures had been taken and acknowledged that the Judgment and Decree remained in the field, unsatisfied to date. That being so, when confronted as to how the Petition was maintainable under the circumstances, learned counsel was unable to advance any cogent argument, and merely fell back on questioning the Judgment and Decree on merit.

4. Needless to say, the Petitioner had a right to assail the Judgment and Decree vide an Appeal, but did not do so, and cannot be permitted to question the correctness of the Judgment and Decree through this Petition. Furthermore, the Petitioner could have appealed the Order allowing the Execution or otherwise filed a revision assailing the issuance of the Warrant, but has not taken such measures. That being the case, we are of the opinion that interference by this Court in exercise of its extraordinary Constitutional jurisdiction is unwarranted.

5. These are the reasons for the short Order dictated in open Court on 03.02.2020, whereby the Petition was dismissed.

JUDGE

JUDGE

Karachi
Dated _____