

ORDER SHEET

IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.

C.P. No. D—2325 of 2013.

DATE	ORDERS WITH SIGNATURE OF JUDGE
10.10.2017.	

FOR ORDERS ON M.A. 12952/2017.
FOR ORDERS ON M.A. 12953/2017.
FOR ORDERS ON M.A. 12954/2017.

Mr. Jhamat Jethanand, Advocate.

1. Granted.

2&3. Applicant has preferred an application under section 12(2) along with an application under Article 199(4) for suspension of the order dated 28.09.2017.

This petition was disposed of vide order dated 28.09.2017. This petition pertains to restoration of water supply from 14-BR which is a sanctioned separate out-let of watercourse No.14-R Ex-Chore Wah at RD 48005. This petition was heard at length and in terms of the parawise comments of respondent No.4 a detailed order was passed.

Mr. Jhamat today has contended that this petition was heard without impleading him as being necessary and proper party. He submits that he is one of the Khatedars of the subject water course and 14-BR runs through his land, as such, the restoration of 14-BR would require him to be heard before passing any order for its restoration.

We have heard Mr. Jhamat in detail. He was at the very outset enquired as to which part of the order i.e. under challenge is hit by

the provisions and frame of section 12(2) C.P.C. He has read the entire order and has relied upon the last para of the order.

All those who were in attendance on 28.09.2017 were agreed that the watercourse 14-BR which is one of the separate out-let of watercourse 14-R Chore Wah Umerkot at RD-48005 is to be restored forthwith. This watercourse 14-BR was sanctioned approximately 20 years back. The present applicant who has moved this application has even "consented" to this watercourse at the time when the land of the petitioner was ordered to be irrigated through watercourse 14-BR.

Parawise comments of respondent No.4 available at page 143 further reveals that originally prior to 1994 the petitioner's land was being irrigated through sanctioned watercourse 14-R however, subsequent to 1994 an application was moved by the petitioner with the consent of "Syed Ali Mardan Shah" one of Khatedar and a separate watercourse as 14-BR was provided to the land of the petitioner. It is categorically stated in the comments that so far as the present applicant is concerned he has given consent for the sanction of new watercourse 14-BR.

Before us it is Syed Ali Mardan Shah who has moved this application along with his two brothers under section 12(2) on whose behalf this application under section 12(2) was filed. Since Mian Mardan Shah has already consented to the creation of new watercourse 14-BR and was in operation since 1994, therefore, it doesn't lie in the mouth of the present applicants to object to the restoration of this watercourse since their consent or implied consent is being observed since long. The fact that the applicant on whose behalf an application under section 12(2) was filed has also been substantiated by parawise comments of respondents No.3 & 4 as

well. Hence there is no cavil to this proposition that the present applicant has consented to the creation of watercourse 14-BR as separate outlet of 14-R. The present applicant, therefore, in view of the fact that he has not make out a case to be considered under section 12(2) CPC.

Judge

Judge

A.