

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-3004 of 2018

Lucknow Cooperative Housing Society Limited  
Versus  
XII Additional District Judge Karachi South & others

Date	Order with signature of Judge
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For orders as to maintainability of instant petition.

**Dated: 30.09.2020**

Mr. Afaq Yousuf for petitioner.  
Mr. Iftikhar Hussain for respondent No.3.

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There was a declaratory decree of 21.10.2010 in Suit No.1115 of 2009 for allotment of two plots; one residential and one commercial. Perhaps at some point of time some constitutional proceedings were also initiated for the annulment of suit and execution proceedings in March 2016. The Executing Court however while passing order on 03.07.2015 in his wisdom, in order to meet the ends of justice ordered that plot of office of petitioner Society be attached and to deposit, in alternate an amount of Rs.56 lacs. Learned counsel for respondent No.3 is unable to explain as to how the Executing Court in pursuance of a decree passed in the aforesaid suit, could attach the office of petitioner society or in the alternate could direct petitioner to deposit an amount of Rs.56 lacs as cost of both the plots. Without the decree being modified such recourse was undertaken by executing Court itself and on account of non-compliance of this order, perhaps warrant of arrest for non-deposit of decretal amount was issued.

This was never the mandate of the executing Court; in comparison the mandate of the executing court was only to the extent of decree

passed by the trial Court on 21.10.2010, and nothing beyond that. If that alternate recourse was suggested it should have either been with the consent of the parties or the decree should have been modified by competent Court to enable the executing Court to tow the object of execution of the decree.

Earlier petition bearing No.D-1705 of 2016 was filed by petitioner for quashing the proceedings of Suit No.1115 of 2009 and execution application No.1 of 2011 whereas in the present petition the order of arrest of Secretary of Society and orders subsequent to filing of earlier petition were challenged. In the earlier petition the petitioner was granted time to comply order of executing Court dated 21.12.2012 and nothing beyond that. Executing Court now is adamant to recover the value of subject plots which were never allotted and never made part of decree. Decree is silent as far as recovery of value of plot is concerned.

Such being the situation, we observe that the order of executing Court passed on 02.10.2011 available at page 81 Annexure 'N' is without jurisdiction. The Honorary General Secretary of the Society was only managing the affairs and no orders of his arrest should have been passed when the decree itself was silent as far as deposit of the amount is concerned. It was never a decretal amount which was ordered to be deposited by executing Court.

While we observe this situation, both the counsels also submit that the secretary has now completed his tenure and a new secretary would resume the office soon. Be that as it may, the executing Court is only supposed to execute the decree and that is spirit of order passed on 04.05.2016 in C.P. No.D-1705 of 2016 and nothing beyond that hence with this observation the impugned order of the arrest of the Secretary is set aside and so also the order of Executing Court dated 03.07.2015 to

the extent of deposit of amount of Rs.56,00,000/-. The parties are left to pursue their remedy in accordance with law.

Petition stands disposed of in the above terms along with pending applications.

**Judge**

**Judge**