

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Execution No. 33 / 2006

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA No. 395/2017

29.03.2018.

Ms. Noor Naz Agha Advocate for Decree Holder.
Mr. I. H. Zaidi Advocate for Judgment Debtor.

Through this application, the Decree Holder has prayed for passing of orders to initiate sale of the attached property through auction to satisfy the claim as allowed vide order(s) dated 7.2.2007 and 22.04.2015.

Learned Counsel for Decree Holder submits that this Execution Application was allowed on 7.2.2007 in terms of Para 11 whereas, the Judgment Debtor never contested such order. She further submits that thereafter, the Execution could not be satisfied and subsequently, an amendment application was filed which was allowed vide order dated 22.4.2015 and on 6.4.2017 the property in question was attached and office was directed to issue proclamation under Order 21 Rule 54 CPC. Per learned Counsel since then no proceedings have taken place nor the decree has been satisfied; therefore, instant application has been filed for auction of the property and for satisfaction of the Decree.

On the other hand, learned Counsel for Judgment Debtor submits that this Execution Application is to be heard and decided along with this application as according to the learned Counsel orders which have been passed are not in conformity with the Decree, whereas, no amendment could have been allowed. Per learned Counsel these are all legal objections and the Court is

not competent to modify the Decree and in fact the Execution Application is misconceived as the Decree is non-executable as no valuation has been carried out. Learned Counsel has submitted that an application was made for appointment of Nazir which application was also not pressed on 24.3.2007. According to the learned Counsel in terms of Order 21 Rule 17 the Executing Court after filing of the Execution Application cannot permit any amendment and therefore, this Execution is liable to be dismissed. He has relied upon *Sardar Ahmed Yar Khan Jomezai and 2 others V. Province of Baluchistan through Secretary C&W Department (2002 SCMR 122)*.

I have heard both the learned Counsel and perused the record. This Execution Application has been filed pursuant to an Award dated 4.5.1993 passed by the Registrar's Nominee under the Cooperative Societies Act, VII of 1925 in Arbitration Case No. 10/1992. It appears that such Award was challenged in Appeal No.26-1993 and the said Appeal also stands dismissed vide order dated 9.7.1998 against which the Judgment Debtor has not availed any further remedy and the Award has attained finality. This Execution Application was allowed on 7.2.2007 and the objection regarding limitation raised by the office was overruled, whereas, the Execution Application was allowed in terms of Para 11 through which the Decree Holder has prayed for attachment and sale of property of the Judgment Debtor under Order 21 Rule 34 CPC. Subsequently, on an amendment application the Decree Holder was permitted to amend clause 7 and 9 of the Execution Application. Both these orders have attained finality and in fact it is an admitted position that no further challenge has been made by the Judgment Debtor nor any effort has been made to get these orders reviewed and or modified as contended. Therefore, the objections of the Judgment Debtor's Counsel that the entire Execution Application is to be heard and decided as being not maintainable is

not only misconceived but without any plausible justification and appears to be an attempt to deny fruits of the Decree to the Decree Holder. It may further be observed that in the award not only directions were given to allot another plot of 125 sq.yds but so also compensation being difference of prevailing price of plot of 125 sq.yds and 400 sq.yds. And therefore, the award and decree is for all intent and purposes a money decree as well.

Be that as it may, since the Execution application already stands allowed as per Para 11 thereof, and it is now only the enforcement of the same which is before the Court and for that this Court is competent to act accordingly, whereas, merits and de-merits of such orders cannot be questioned at this stage of the proceedings. The Court has already passed orders for attachment of the property in question which again has not been challenged any further. Therefore, this Court has no powers at this stage of the proceedings to recall both the orders dated 7.02.2007 and 22.04.2015 as they have attained finality and are to be acted upon. The Judgment Debtor has failed to satisfy the Decree as no further challenge has been made.

In view of such position, this application is allowed and Nazir is directed to proceed further for sale of the attached property. Nazir shall proceed in terms of the rules accordingly. The charges for publication if any, are to be paid by the Decree Holder in advance, whereas, Nazir shall be entitled for his fee as per rules. This being an old matter, Nazir is directed to act as expeditiously as possible.

Application stands disposed of.

J U D G E