

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

RA No. 60 of 2022

(Muhammad Irfan & another versus Qadeer Muhammad & another)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants	:	Through Mr. Muhammad Arshad S. Pathan, Advocate who is called absent today and his associate Mr. Safdar Hussain Leghari, Advocate is present
Respondents	:	Through Mr. Ahmed Murtaza A. Arab, Advocate

Date of hearing & decision: 02.09.2022

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this Civil Revision Application, the applicants have challenged the orders dated 22.01.2022 & 10.02.2022 respectively passed by learned District Judge Mirpurkhas in Summary Execution Application No. 05 of 2021 [Re: Muhammad Yasin & another v. Muhammad Irfan & another], whereby, the learned Judge allowed the above Execution Application dismissing the application of the applicants for staying the proceedings moved on the ground of pendency of CPLA before Honourable Supreme Court.

2. Brief facts of the case are that respondents filed Summary Suit No. 14 of 2017 while applicants filed F.C. Suit No. 01 of 2018 (new No. 366 of 2017). The Summary Suit of respondents was decreed while the Suit of applicants was dismissed by the learned District Judge, Mirpurkhas vide Judgment dated 31.3.2021. The applicants being aggrieved of the said Judgment preferred 1st Appeal No. 21 of 2021 before this Court, the appeal was also dismissed vide Judgment dated 24.12.2021. The applicants against the said Judgment of this court filed CPLA before Honourable Supreme Court which is pending as per applicants. The respondents after allowing the Summary Suit filed Execution Application No. 05 of 2021 which was allowed vide order dated 10.02.2022. An excerpt of the order is reproduced below:-

“ By this order, I intend to dispose of the instant execution application filed by the plaintiffs/D.Hs for the satisfaction of the decree.

Notice of the application was given to the defendants/J.Ds who filed objections.

The learned counsel for the plaintiffs/D.Hs has argued that the suit of the decree holders has been decreed by this Court vide Judgment dated 31-03-2021 and decree dated 03-04-2021 and the appeal preferred by the defendants/J.Ds has also been dismissed by the Honourable High Court vide judgment dated 24-12-2021. Thus there is no obstacle in execution of the judgment and decree passed by this Court by directing the defendants to pay the decretal amount with mark-up. The movable and immovable properties of surety of the J.Ds may be attached, auctioned, alternatively, the J.Ds be put behind the bars for realization of the decretal amount.

On the other hand the learned counsel for the J.Ds has contended that the decision of Honourable High Court has been challenged before the Honourable Supreme Court and such CPLA is pending. The judgment and decree passed by this Court would not attained finality till disposal of CPLA. The instant execution application is pre-mature which cannot be entertained.

Upon query made by this Court, the learned counsel for the J.Ds has admitted that there is no restraining order passed by the Honourable Supreme Court in the CPLA. Admittedly, the suit of the plaintiffs/D.Hs was decreed by this Court vide judgment dated 31-03-2021 and decree dated 03-04-2021, which was challenged before the Honourable High Court through civil appeal, which has also been dismissed vide judgment dated 24-12-2021. Though the J.Ds have preferred CPLA before Honourable Supreme Court but admittedly no restraining order has been passed by the Honourable Supreme Court. Thus I am of the opinion that there is no impediment in allowing the execution application. Therefore, the instant execution application is allowed. The plaintiffs/D.Hs should submit the details of assets/properties of the J.Ds for realization of decretal amount.”

3. The above order has been challenged before this court through instant Civil Revision Application.
4. Today before starting arguments, learned counsel for applicants filed a statement along with application under Section 151 CPC for payment of decretal amount in installments as per the schedule given in the application; whereby the learned Executing Court directed the applicants / Judgment debtors to mention pay order numbers through by which the amount is sought to be paid to the Decree holders.
5. On the aforesaid proposal, learned counsel representing the respondents has no objection if the applicants may be allowed to enforce the judgment and decree passed by the trial court in terms of the schedule of payment attached whereof, if this is the position of the case let the applicants pay the decretal amount in terms of payment of schedule in stricto sensu without fail.
6. By consent of the parties, this revision application stands disposed of in the above terms.

JUDGE