

## IN THE HIGH COURT OF SINDH AT HYDERABAD

M.A. 42 of 2023 : Abdullah Vs. Faizan.  
For the appellant : Mr. Talib Khan Bhatti, Advocate.  
Date/s of hearing : 04.12.2023.  
Date of announcement : 04.12.2023.

### ORDER

**Agha Faisal, J.** Briefly stated, Summary Suit 02 of 2017 was filed before the 3<sup>rd</sup> ADJ Shaheed Benazirabad and the same was determined vide a compromise decree dated 27.11.2021. Upon default by the present appellant, Civil Execution Application 13 of 2022 was filed before the 3<sup>rd</sup> ADJ Shaheed Benazirabad and the same was allowed vide order dated 19.08.2023 (“Impugned Order”).

The Impugned Order also notes that notice of the execution was issued and despite service the present appellant opted to remain absent from the proceedings. Reference is made to service having been held good and subsequently the present appellant being debarred on account of default. The order concludes that the appellant opted not to file any objections or articulate any submissions before the executing court. Learned counsel articulated no cavil to the narrative or observations recorded in such regard and failed to account for the appellant’s default before the executing court.

It is imperative to observe that the present appellant has *admittedly* never assailed the judgment and decree rendered in Summary Suit 02 of 2017, however, assails the Impugned Order on the *sole* premise that the decree ought *only* to have given rise to a new cause of action and should not have been determined to have been executable. It was also insisted that the executing court ought to have travelled beyond the decree and considered the the merits of the matter.

The Impugned Order has discussed the import of execution proceedings arising out of compromise decrees and the appellant’s counsel made absolutely no endeavor to demonstrate any infirmity in such regard.

While it is trite law that all compromise decrees may not be executable, however, the same is certainly not a blanket bar in such regard<sup>1</sup>. The executing court observed that the compromise decree is *prima facie* a money decree and that there was no impediment for the same to be executed. Reliance was placed on *Khaliludin vs. Rafiq Ahmed Qandhari*<sup>2</sup> reported as 2021 CLC 877 (Sindh) and the appellant’s counsel made no effort to distinguish the applicability of the ratio upon the

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<sup>1</sup> Per Adnan Iqbal Chaudhry J in *Jawaid Sarwar vs. Rana Munir (Execution 68 of 2016)* judgment dated 07.04.2023; *Peer Dil & Others vs. Dad Muhammad* reported as 2009 SCMR 1268.

<sup>2</sup> Per Yousuf Ali Sayeed J.

pertinent facts and circumstances. Learned counsel also failed to demonstrate any law precluding the execution of the relevant decree or any impediment whatsoever in such regard<sup>3</sup>.

In so far as the plea for travelling beyond the decree is concerned, it may suffice to reiterate that the same does not meet the approval of the law<sup>4</sup>. The counsel remained unable to articulate as to why no appeal was filed against the judgment and decree, if the appellant was aggrieved. Learned counsel also failed to account for the appellant's default before the executing court. Under such circumstances no case is made out to entertain this appeal.

While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof this appeal is hereby dismissed *in limine*, along with pending applications, per Order XLI Rule 11 C.P.C. The office is directed to communicate a copy hereof to the trial court.

Judge

Ahmed/Pa,

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<sup>3</sup> *Abdul Wahid vs. Abdul Ghani & Others* reported as *PLD 1963 (W.P) Karachi 990*; *Samba Bank vs. Syed Bhais* reported as *2013 CLD 2080*; *Montgomery Flour and General Mills vs. MCB Bank Limited* reported as *2015 CLD 1590*; *Pakistan Industrial Leasing Corporation Limited vs. Noorani Industries (Pvt.) Limited* reported as *2003 CLD 259*.

<sup>4</sup> *Mian Ejaz Ahmed & Another vs. Meezan Bank Limited* reported as *2021 CLD 113 – Division Bench Sindh High Court*.