

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Constitution Petition No.D-5826 of 2023

M/s Ghani Builders and Developers
Versus
Learned District & Sessions Judge, Karachi (Malir) and others
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Date of hearing: 14.12.2023

Mr. Raj Ali Wahid Kunwar, Advocate for the petitioner.
Respondent No.3 Sadaf Ahmed Zubairi present in person.
Mr. Sandeep Malani, Assistant Advocate General Sindh.
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J U D G M E N T

Muhammad Shafi Siddiqui, J.- Originally, a suit for declaration and possession was filed by the Respondent No.3 before the Senior Civil Judge-III, Malir which was decreed on 07.11.2022 based on payments made during the year 2015 and 2016 etc.

2. On an appeal preferred by the petitioner bearing No.175/2022 in the Court of District Judge, Malir the appeal was disposed off on 07.03.2023 in the following terms:-

“For the reasons discussed hereinabove the appeal preferred by the appellant/defendant No.1 is allowed, an in result thereof the judgment and decree dated 07.11.2022 passed by the Court of Senior Civil Judge-III, Malir Karachi, is hereby set aside and suit filed by the respondent No.2/plaintiff is dismissed. The appellant/defendant No.1 is directed to reimburse entire amount paid by the respondent No.2/plaintiff in lieu of installments, with interest of 2.5 per cent above the bank rate, from the date of filing of suit till realization of complete amount. No order as to costs. Let the decree be prepared.

3. The said order attained finality and it becomes a money decree. Consequently, an Execution Application No.16/2022, which was already pending for a decree of Senior Civil Judge, was then considered and deemed to have been pending for the recovery

of the amount as decreed by the appellant court in the aforesaid appeal.

4. The question then came up for consideration before the Executing Court was that the payment of the amount with interest of 2.5% above bank rate from the date of filing of the suit till realization of the complete amount. The payment which was ordered to be returned to respondent was made in the year 2015 and 2016 respectively, as the record reflects. The calculation was then made by the Nazir of Malir Court as well as by the Judgment-debtor. The Nazir calculated the amount as per present rate of interest declared by the State Bank of Pakistan in addition to 2.5% that was granted by the Senior Civil Judge, perhaps as a compensation. This calculation of the Nazir in terms of record available at page-141 is disputed, as, per petitioner, since 2018 when the decree was passed by the appellate court the prevailing rate of those years as declared by the State Bank of Pakistan, is to be calculated and not the present one. The calculation of the judgment-debtor is available at page-123 of the file.

5. We have heard learned counsel and perused the material available on record.

6. At the very outset, this constitutional jurisdiction cannot be invoked for the aforesaid purpose, as the orders passed by the two forums below that is the order of 16.09.2023 passed by the Executing Court whereby the petitioner /J.D was directed to deposit the decretal amount per Nazir's report and the order passed by the revisional court i.e District Judge Malir in Civil Revision No.41/2023, do not call for any interference. There is no jurisdictional error. Both the courts below have applied their mind and exercised the jurisdiction vested with them for the recovery of

the amount that was extended to the Petitioner in the year 2015 and 2016, which decree has not been satisfied till date. It is only when this court ordered on 01.12.2023 that the undisputed amount in terms of J.D's calculation was deposited leaving the question of disputed amount to be decided.

7. The equity demands that in view of peculiar facts and circumstances of the case, where a decree of declaration and possession was converted into a money decree in 2018 by the revisional court, the amount ought to have been calculated on the basis of interest prevailing at the time when the amount is being paid.

8. Petitioner enjoyed the principal amount and interest thereon and interest on interest as well but such benefit is not available for respondent and the equity would not be in favour of respondent if varying interest rates for each year are applied to the payment being made now in 2023.

9. No jurisdictional error in calculating the amount is seen and we also deem it appropriate that now when the amount is being paid, it is to be paid with interest prevailing at this point of time along with 2.5% over and above the State Bank's interest rate and that is a compensation that was extended by the appellate Court while converting the declaration and possession into a money decree.

10. Since we have not seen any jurisdictional error, we do not interfere in the impugned order and consequently this petition is dismissed.

JUDGE

JUDGE