

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-2199 of 2023

Date	Order with signature of Judge
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For orders as to maintainability of the Petition.

25.08.2023.

Mr. Abdul Latif Khatti, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 01.02.2023 made by the learned District Judge/Model Civil Appellate Court, Thatta, dismissing Civil Revision Application No.21/2022 filed by the Petitioner against the Order passed by the learned Senior Civil Judge, Sujawal, on 24.11.2022 in Civil Execution Application No.01 of 2020 emanating from Civil Suit No.21/2012, whereby the Application of the Petitioner under Order XXI Rule 29, read with Section 151 CPC was dismissed.

2. A perusal of that Application reflects the same to be perfunctory and based on a single ground, reading as follows:-

“APPLICATION U/O XXI RULE 29
READ WITH SECTION 151 CPC

It is prayed on behalf of the Judgment debtor that this Honourable Court may be pleased to stay the execution of decree of instant suit as the subject matter of this decree is common in another suit bearing F.C. No.94 of 2022, pending before this Honourable Court between Decree holder and Judgment debtor, on the consideration of grounds mentioned in accompanied affidavit.”

3. The aforesaid Application came to be dismissed by the Executing Court on the ground that the same was misconceived, with the ensuing proceedings before the Revisional Court then meeting the same fate. The relevant excerpt of the Order of the Revisional Court reads as follows:-

“03. From perusal of record, admittedly the application for stay the proceedings of Execution Application referred hereinabove was filed on the sole ground that besides the F.C Suit No.21/2012, a Suit bearing No.94/2022 was filed by the J.Ds and same was pending adjudication before the learned trial Court between same parties; such is no ground for stay the execution proceedings, as same is filed just to frustrate the proceedings of the Execution Application. Not only this, but subject matter of the subsequent suit filed by the J.Ds referred hereinabove is quite different, as in such suit J.Ds have sought declaration in respect of agricultural land situated in deh Keenjhar, Tapo Valhar; however, subject matter of decree and execution proceedings was in respect of City Survey Plot Nos.866, 867 & 868 situated in Sujawal City; besides, false assertion is observed on the part of J.Ds with intention to mislead the Court to obtain stay order. Admittedly, an Appeal and a Revision Applications filed by the J.Ds have been dismissed up to the Honourable High Court of Sindh, whereby J.D Mst. Maryam had also patched up with the decree holders.”

4. On query posed to learned counsel as to what perversity or illegality afflicted the Orders of the fora below, no cogent response was forthcoming. On the contrary, it was conceded that the subject matter of two Suits was entirely different. That being so, it is apparent that the underlying Application made by the Petitioner under Order XXI Rule 29 read with Section 151 CPC was misconceived.

5. Under the given circumstances, we are of the view that the Petition is devoid of force. Hence, while granting the application for urgency, we hereby dismiss the Petition *in limine*, along with other pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR