

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-3133 of 2022

Mir Muhammad Ali
Versus
Province of Sindh and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

Priority

1. For order on Nazir report dated 04.10.2023.
2. For hearing of Misc. No.15271/2023.
3. For hearing of Misc. No.15272/2023.
4. For hearing of Misc. no.13827/2023.
5. For hearing of main case.

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Dated 09.05.2024

Mr. Shahnawaz Memon, Advocate for the petitioner.

Mr. Ahmed Nawaz Jokhio, Advocate for Respondent No.5.

Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

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Muhammad Shafi Siddiqui, J.- A suit for performance, based on a written sale agreement, was filed in respect of an agricultural land measuring 540 acres at the rate of Rs.211,000/- per acre. The suit was apparently compromised and the terms were incorporated in the compromise application available at page-49 as annexure “D” to this petition and sale agreement formed integral part of compromise application. The application was taken into consideration by the Senior Civil Judge, Sujawal and the suit was disposed of on 21.10.2019. Inadvertently, (as we are certain) one of the terms of the compromise application has not been incorporated in the order, though the agreement of 02.12.2017 annexed with the compromise application was admitted through compromise application and speaks volumes. The only discrepancy resolved in the application (as other terms of agreement dated 02.12.2017 admitted in compromise) was that it was not Rs.50,00,000/- that was paid towards sale consideration rather it was only

Rs.41,00,000/-. Thus, what agreed between them was that out of total sale consideration (disclosed in the admitted agreement), the seller has received Rs.41,00,000/- and the balance amount of sale consideration, which may arise out of the sale agreement, is to be paid and that is:-

Rs.211,000/- X 540 acres = 113,940,000/-

Rs.113,940,000 (-) Rs.41,00,000/- = 109,840,000/- Balance payable

2. The decree however was correctly drawn in terms of the agreement and compromise entered into, as it inadvertently left the material term to be incorporated i.e of balance sale consideration. The application under Order-XXIII Rule-3 CPC ought to have been allowed if not found contrary to law or if any of its terms is not found lawful it had to be explained but that was not the case; it is only an inadvertence that a term was left to be incorporated in the order. The decree was rightly drawn and the two courts below, including the revisional court in Civil Revision No.17/2021, have failed to take into consideration that in case a jurisdiction is exercised by the two forums below while deciding application in terms of the compromise, the terms, as agreed, if not found contrary to law, ought to have given precedence. Thus proper jurisdiction has not been exercised either by the revisional court or the executing court, which was only executing a decree strictly within the terms as agreed upon and could not have gone beyond such mandate. Respondent has not asked for any review as far as decree, which was drawn, is concerned.

3. Substantial amount, thus was payable in terms of the agreement, which was retained by the buyer. It's been almost five years that the amount is retained by them and is being paid now,

as the learned counsel for Respondent No.5 “concedes” that it was an error that was surfaced later and they have not preferred any review of decree drawn. Buyer however objects to the claim of interest over the unpaid amount.

4. We are, therefore, of the view that the sale consideration referred above i.e Rs.113,940,000/- after deducting the amount of Rs.41,00,000/-, be paid along with interest at the rate of 10% per annum from the date of order on compromise i.e. 21.10.2019, within 15 days. In case the amount is not paid within 15 days’ time from today, Respondent No.5 will not be entitled for the performance of the compromise that was entered into and the decree passed.

5. The petition stands disposed of in the above terms along with pending applications.

JUDGE

JUDGE

Ayaz Gul