

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Justice Ms. Sana Akram Minhas

Constitution Petition No.D-532 of 2022

Government of Sindh  
Versus  
The Additional District & Sessions Judge & others

Date of Hearing: 23.05.2024  
Petitioner: Through Mr. Abdul Jaleel Zubedi, Assistant  
Advocate General.  
Respondent No.3: In person

### J U D G M E N T

**Muhammad Shafi Siddiqui, J.**- This Constitution Petition filed on 28.01.2022, impugns not only the judgment and decree dated 25.11.2009 in Suit No.456 of 2003 (Old Suit No.519 of 1989) but also orders passed by the executing Court in Execution No.18 of 2011 dated 22.10.2021 and by appellate Court in Revision Application No.4 of 2022 dated 19.01.2022 respectively.

2. We have heard learned Assistant Advocate General appearing for the petitioner and perused the material available on record whereas respondent No.3 has appeared in person and has also assisted us.

3. Record reflects that a suit to claim compensation on account of fatal accident under Fatal Accidents Act, 1855 was filed on 23.02.1989 which was decreed. There is no record available nor is that a case of the petitioner that this judgment and decree was challenged before any appellate forum prior to filing of this petition. We cannot upset the judgment and decree in Writ Petition as prayed in the petition.

4. Record further reveals that second execution application was filed as Execution Application No.18 of 2011, no objection to this was raised.

5. It is pertinent to mention here that the order impugned in this petition is in fact of revisional Court and perusal of it reflects that the same was dismissed solely on the ground that the respondent had died and no revision is maintainable against a dead person. Learned Assistant Advocate General however has mainly assailed the claim of interest as calculated in compliance of decree. The reasoning may not be ideal to maintain the executing Court's order, however we have heard the learned Assistant Advocate General at length.

6. The suit was decreed as prayed i.e. in the sum of Rs.2 Million as principal amount and 15% per annum as interest thereon "from the date of filing of the suit till its realization". The suit was filed on 23.02.1989 and thus the interest amount would continue to pile up till its realization by the beneficiaries i.e. deceased's legal heirs. It is petitioner's case that an amount of Rs.8.6 Million approximately was matured in the year 2011 as adjudged by then, but was not paid. Vide order dated 12.07.2013 the executing Court then issued an order to the State Bank of Pakistan to attach the amount to the extent of decree, in the Account No.II (Food) and Account No.I (Non-Food), Government of Sindh, lying with the Director (Accounts), Central Directorate, State Bank of Pakistan, I.I. Chundrigar Road, Karachi, as the appellants despite decree were not willing to comply it. This was not materialized up until 07.07.2014 when the executing Court was pleased to attach the amount of 8.625 Million by an order, again.

7. Yet again the petitioner was not inclined to pay the aforesaid amount and a Second Appeal No.87 of 2016 was filed it. The petitioner at that point in time as well was not willing to pay the amount and was eager to contest it in the second appeal without a challenge to the

judgment and decree. The legal heirs of the deceased realized and submitted that they would contest the appeal and for the satisfaction of Court to have the amount at Court's disposal submitted that they would not withdraw the amount as the release was objected to by the petitioner and will be subject to decision. Order dated 26.09.2016 in this regard was clear. The amount was deposited by a debit voucher of the State Bank of Pakistan dated 16.09.2016 which is available along with statement filed in this petition on 12.03.2024.

8. This 8.6 million amount was calculated at the relevant time i.e. 2011 which was not paid hence it cannot be deemed to have been realized by the beneficiaries. It seems that after some time the amount of Rs.8.6 Million, as deposited was released to the legal heirs. One of the legal heirs was not shown, who then filed an application for the left over amount (2011-2021's interest), which was not adjudged to be recoverable by the Executing Court. A statement was then filed by the respondent No.3 as to the outstanding amount of Rs.2.9 Million, which was then deposited and released to respondent No.3.

9. The only question raised by Assistant Advocate General was that it was not the fault of the petitioner, Government of Sindh, that the penal interest is being claimed as the amount was lying with the Court.

10. We are not convinced with this argument of Assistant Advocate General as the amount was not released to the beneficiary and hence not realized. This is not the penal interest rather interest accrued in between 2011 to 2021. The petitioner Government of Sindh "objected" to the release of the amount throughout. It was then by an order of the Court that the accounts were attached and the Government of Sindh was compelled to deposit this amount with the Nazir of this Court. The amount of Rs.8.6 Million was adjudged in the year 2011 and not deposited until accounts were attached and then State Bank was

compelled to deposit it in 2016. By that time more interest at the prescribed rate accrued in terms of decree, which amount was then claimed by respondent No.3.

11. The Government of Sindh was objecting to the release of the amount even at that point in time when they preferred second appeal. There is no doubt that whatever the accrued amount would have been, it is to be disbursed amongst the legal heirs but as long as the amount is not paid and realized by the beneficiaries, the judgment and decree cannot be deemed to have been satisfied and the amount of interest would continue to accumulate. Deposit alone at a belated stage is not enough to discharge the judgment debtor from the claim of interest piled up during the period as it was not released to the beneficiaries. We therefore do not agree with the learned Assistant Advocate General that it is on account of Court's error that the amount is not released as it was always objected by the Government of Sindh hence the petitioners are under the obligation to pay the interest till it was completely realized by the beneficiary/beneficiaries and/or the decree is satisfied. The judgment and decree was not challenged before an appellate forum as no material is placed before us hence the interest would continue to pile up till its realization. By payment of additional amount of Rs.2.9 Million for the unaccounted period between 2011 to 2021, and release of it to the beneficiaries, the decree now stands satisfied.

12. We may also observe that we are exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and thus cannot probe further as the challenge in this appeal is neither an order which is unconstitutional nor any jurisdictional error is exposed in the exercise conducted by two forums below hence on this score also petition lacks ingredients that could enable us to intervene. Thus, we are not inclined to interfere with the orders of the executing Court in

respect of the amount which has already been released to the beneficiaries. Petition as such is dismissed in view of above along with listed application.

**J U D G E**

**J U D G E**