

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Civil Appeal No.S-04 of 2020

Saleem Ali Chandio

v.

Syed Abid Hussain Shah and another

Appellant : Saleem Ali s/o Abdul Raheem Chandio through Mr Muhammad Afzal Jagirani, Advocate.

Respondent No.1. : Syed Abid Hussain Shah s/o Syed Khadim Hussain Shah through Mr Mazhar Ali Bhutto, Advocate.

Respondent No.2 : Learned IV-Additional District Judge, Larkana through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Dates of Hearing : 23.02.2024, 14.03.2024, 18.03.2024

Date of Judgment : 28.03.2024

J U D G M E N T

JAWAD AKBAR SARWANA J.: Appellant Saleem Ali Chandio s/o Abdul Raheem, Defendant/Judgment-Debtor in Summary Suit No.04/2017 (hereinafter referred to as "SAC/JD") has filed this Appeal against the Order dated 25.09.2020, passed by the learned IV-Additional District Judge, Larkana ("trial court") in Execution Application No.04 of 2019. SAC/JD is aggrieved by the trial court's Order allowing Respondent Syed Abid Hussain Shah's ("SAHS/DH") execution application no.04/2019.

2. The brief background of the matter is that Respondent SAHS/DH filed Summary Suit No.04/2017 against SAC/JD. Parties agreed to compromise, culminating in the learned IV-Additional District Judge, Larkana, passing the Order dated 03.12.2018 and the Decree dated 08.12.2018. As per the Order recorded by the trial

court, SAC/JD would pay SAHS/DH a sum of Rs.1,340,000/- and acknowledged that SAC/JD had already paid SAHS/DH a sum of Rs.100,000. No other receipt of payment was mentioned in the Order and Decree. When SAC/JD defaulted on the balance payment, SAHS/DH initiated execution proceedings against the SAC/JD. SAC/JD claimed that he had also paid SAHS/DH Rs.200,000/- (Rupees Two Hundred Thousand only), which was recorded in an Iqarnama dated 02.11.2019 but not mentioned in the Order dated 03.12.2009.

3. The learned Counsel for SAC/JD contended that the executing/trial court should not have allowed the execution proceedings as the Iqarnama dated 02.11.2019 constituted a fresh cause of action, and SAHS/DH should have filed a suit against SAC/JD based on the said Iqarnama. Further, the Rs.200,000 he paid should have been adjusted against the total decretal amount payable to SAHS/DH.

4. The learned Counsel for SAHS/DH denied any receipt of Rs.200,000 and contended that the Iqarnama was a sham and fake. He contended that the compromise was recorded in the Order dated 03.12.2018 and did not mention receipt of Rs.200,000.

5. I have heard the Counsels for the Appellant and Respondents and perused the material available in the Appeal file.

6. The appeal arises from an Order dated 03.12.2018 in a summary suit, which was decreed on 08.12.2018. SAC/JD neither preferred any appeal nor review nor filed any revision against the said Order and Decree. SAC/JD accepted the terms and conditions of the compromise as recorded by the learned Judge of the trial court. The Order dated 03.12.2018 did not record any payments made by

SAC/JD except for one payment of Rs.100,000. Therefore, the Order and Decree attained finality.

7. SAC/JD contended that before the recitals were recorded in the Order and Decree dated 03.12.2018, he had received a payment of Rs.200,000/—on 03.10.2018, which is mentioned in the alleged Iqarnama dated 02.11.2019, but SAHS/DH (the Respondent/Plaintiff) denied this. If the contents of the Iqarnama dated 02.11.2019 were genuine, then the payments made prior to the Order dated 03.12.2018 should have been recorded in the said compromise Order and Decree, which was not the case. As already discussed, the Order and Decree have attained finality, and the alleged Iqarnama cannot now dislodge the trial court's Order and decree.

8. I have perused the impugned Order dated 25.09.2020 of the trial court and the reasoning for allowing the execution application, which is well-recorded in paragraph 5 of the said Order and reads as follows:

“ . . . Admittedly, parties were entered into compromise and on the basis of compromise between them, this Court vide Order dated 03.12.2018 and Decree dated 08.12.2018, decreed the summary suit filed by Plaintiff/Decree Holder. However, by filing instant execution application, it is claimed by plaintiff/decree-holder that defendant/judgment-debtor did not comply-with such decretal order, on the contrary a bogus Iqarnama is filed by defendant/judgment-debtor containing his bogus signature. In such a situation, when defendant/judgment-debtor failed to comply-with the order of this Court, there remains no alternate except to allow instant execution application, which is hereby allowed. Let,

plaintiff/decree-holder to submit mode of execution.”

9. The trial court’s Order dated 25.09.2020 is well-founded. It does not require any interference or give rise to any irregularity or illegality.

10. Given the above, the 1st Civil Appeal No.S-04/2020 is dismissed along with all pending applications with no order as to costs.

J U D G E

Manzoor