

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

First Appeal No.42 of 2024

S.M. Naeem
Versus
Ziauddin

Date	Order with signature of Judge
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1. For orders on CMA 665/24
2. For orders on CMA 666/24
3. For hearing of main case
4. For orders on CMA 667/24

Dated: 20.03.2024

Mr. Kashif Hussain Shah for appellant.

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Heard the counsel and perused record.

This appeal is preferred against order dated 25.01.2024 in terms whereof Execution Application No.01 of 2023 was allowed thereby rejecting the objections as raised by the appellant. The record reveals that respondent filed summary suit against the appellant for the recovery, which was decreed vide judgment dated 04.03.2023. Against such exparte judgment no appeal was preferred however an application under order XXXVII Rule 4 CPC was filed, which was dismissed by the trial Court vide order dated 16.09.2023 followed by dismissal of First Appeal by a Division Bench of this Court on 13.10.2023. Thus, the judgment of trial Court has attained finality.

When confronted with the settled principle of law that the executing Court cannot travel beyond the decree, which since has attained finality, learned counsel has referred to Section 47 CPC and submitted that the Court executing the decree is bound to determine the questions as raised by the appellant.

There is no cavil with the proposition that the executing Court has to determine the questions as put forward before it but a simple reading of ibid provision of law clearly stipulates that it indeed pertains to questions “relating to the execution, discharge or satisfaction of the decree”, whereas what the appellant is pleading questions regarding merit of the case/suit which had already been decreed and attained finality, as referred above.

In view of the above since learned counsel for appellant has not been able to show any infirmity in the impugned order hence no case for interference is made out and consequently this appeal is dismissed in limine along with listed applications.

Judge

Judge