

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

C.P. No. D-2060 of 2024

[Mrs. Naseem Shakir versus 7th Addl. District & Sessions Judge & Another]

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For orders on Misc. No. 9362 of 2024.
2. For orders on Misc. No. 9363 of 2024.
3. For orders on Misc. No. 9364 of 2024.
4. For orders on Misc. No. 9365 of 2024.
5. For hearing of main case.

03-05-2024

Mr. Muhammad Tariq, Advocate for the Petitioner.

Adnan Iqbal Chaudhry, J:

1. Urgency granted.
3. Exemption granted subject to all just exceptions.
- 2, 4 & 5. The Petitioner is aggrieved of order dated 02.12.2022 passed by the Additional District Judge, Karachi (East), dismissing Civil Revision No. 145/2021, followed by order dated 12.03.2024 dismissing his review application.

The facts are that in Suit No. 1082/2011, instituted by the Petitioner against the Respondent No.3 for recovery of rent arrears, the Senior Civil Judge passed an order dated 05.09.2013 for attachment before judgment of Rs. 20,75,000/- that had been deposited by the Respondent No.3 in Suit No. 1794/2010, which was a suit for specific performance filed in the High Court by the latter against the former. The attachment order was passed inasmuch as the Respondent No.3 had made an application in Suit No. 1794/2010 to withdraw the said amount. Subsequently, Suit No. 1082/2011 was decreed by the Senior Civil Judge in favor of the Petitioner on 15.08.2015 for *“arrears of rent @ Rs. 25,000/- per month for three years before filing of ejectment application till handing over possession of suit property, and repair charges of Rs. 500,000/- with no order as to costs.”*

On 05.03.2016, the Executing Court ordered: *“In these circumstances Nazir of the Hon’ble High Court of Sindh is required to remit the amount of Rs. 20,75,000/- to this Court.”* However, the amount remitted by the Nazir of the High Court was Rs. 29,98,709/ ,

which included profit accrued on the attached amount, which was disbursed by the Executing Court to the Petitioner, and by order dated 01.02.2019 the Execution was disposed of as having been satisfied.

Thereafter, the Respondent No.3 moved an application under section 12(2) CPC before the Executing Court, contending that by way of fraud the Petitioner had obtained from the Executing Court an amount in excess of the decree. It was the case of the Respondent No.3 that the decree was only for arrears of rent and did not award any profit or interest on the principal amount. That being so, the Executing Court allowed the application under section 12(2) CPC *vide* order dated 13.10.2021, and directed the Petitioner to return the excess amount of Rs. 7,23,709/-. Against that order, the Petitioner preferred a Civil Revision which was dismissed on 02.12.2022, and then a Review application which too was dismissed on 12.03.2024; hence this petition.

Though learned counsel submits that the Petitioner is entitled to retain the profit that had accrued on the amount attached, he concedes that the decree awarded to the Petitioner did not include any profit/interest. But, besides that, the fact of the matter is that the amount attached by the trial court by order dated 05.09.2013 was only Rs. 20,75,000/, and the amount called by the Executing Court from the Nazir of the High Court by order dated 05.03.2016 was also the same, nothing over and above. It is not the Petitioner's case that the decree entitled him to more than Rs. 20,75,000/, but even if it did, there was no order by the Executing Court to attach any amount in excess of Rs. 20,75,000/-. Therefore, we see no reason to interfere with the orders impugned. This petition is dismissed *in limine*.

JUDGE

JUDGE