

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-1063 of 2024

Present:

Muhammad Faisal Kamal Alam
and Yousuf Ali Sayeed, JJ

Petitioners : Mst. Rehana and others, through
Rashid Raees, Advocate.

Date of hearing : 16.10.2024

ORDER

YOUSUF ALI SAYEED, J - The Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn the Judgment rendered by the Model Civil Appellate Court-II / VIth Additional District Judge Hyderabad on 15.05.2024, dismissing Civil Revision Application No.22 of 2024 preferred by them against the Order passed by the 1st Senior Civil Judge Hyderabad on 19.12.2023 in Execution Application No.92 of 2016, allowing the same to the extent of possession of the suit property while directing that a writ of possession be issued accordingly.

2. The operative paragraph of the Judgment of the Revisional Court reads as follows:

“7. After hearing of arguments advanced by parties counsel, I have gone through the memo of civil revision application, impugned order dated 19.12.2023 for allowing execution application to the extent of possession & issuing writ of possession and other record available therein. While applying judicial mind to the circumstances, it reveals that respondent No.1 to 3/plaintiffs had filed F.C Suit No.79/2009 against the applicants/defendants for Possession and Mesne Profits in respect of suit property viz House No.127 constructed over Plot No.38 situated at Quaidabad Liaquat Colony Hyderabad, which was dismissed by the learned executing Court vide judgment dated 21.05.2014 and decree dated 26.05.2014. Record reflects that respondents No.1 to 3/ plaintiffs challenged that judgment and decree by filing civil appeal No.56/2014 which was allowed by learned 9th Additional District Judge Hyderabad to the extent of possession while mesne profit was declined vide

judgment dated 11.04.2016 and decree dated 15.04.2016, which was assailed by applicants/defendants by filing civil revision application No.204/2016 before the Honourable High Court of Sindh Circuit Court Hyderabad but the same was dismissed in non-prosecution on 04.10.2019. The respondent No.1 to 3/plaintiffs had filed civil execution application No.92/2016, which was allowed by learned executing Court vide order dated 19.12.2023, to the extent of possession and issued writ of possession against the applicants. Record further reflects that restoration application filed by applicants was also dismissed by the Honourable High Court of Sindh, Circuit Court, Hyderabad vide order 08.01.2024 and judgment & decree passed by appellate Court attained the finality. There appears no error in the said order, hence in this appellate forum such order cannot be disturbed or interfered. Even no illegality or error has been urged or pointed out by the applicants, thus, the civil revision application being meritless is dismissed accordingly. The pending applications are also be disposed off.”

3. As is apparent from the foregoing excerpt, the Civil Revision Application that had preferred by the Petitioners before this Court stands dismissed for non-prosecution, with the subsequent application seeking its restoration having also since been dismissed, hence no impediment remains for satisfaction of the Appellate Judgment underpinning the execution proceedings.

4. On query posed to learned counsel as to what illegality or perversity afflicted the Order of the executing Court or the learned ADJ, no cogent response was forthcoming and it was merely contended that a Civil Petition for Leave to Appeal had been preferred before the Supreme Court against the dismissal of Civil Revision Application No.204/2016. However, the pleadings are silent in that regard and counsel was also unable to point to any material placed on record to indicate that the Supreme Court had even been approached in the matter. Even otherwise, the mere pendency of such a proceeding does not operate as a stay of execution.

5. Under the circumstances, no case stands made out for interference in exercise of the extraordinary constitutional jurisdiction of this Court, hence, while granting the application for urgent hearing, we hereby dismiss the Petition *in limine* along with the pending miscellaneous application.

JUDGE

JUDGE

Sajjad Ali Jessar