

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Civil Revision Application No.S-273 of 2024

Applicant : Ghulam Abbas son of Haji Jaan
Muhammad through Ms. Shabana
Qureshi, Advocate

Respondent No.1 : Abdul Shakoor son of Misri through
Mr. Sagar Ali Sathio, Advocate

Official Respondents : Province of Sindh through Mr.
Muhammad Yousif Rahpoto, A.A.G.,
Sindh

Date of Hearing : 28.08.2025

Date of Judgment : 27.10.2025

J U D G M E N T

Jan Ali Junejo, J.- The applicant through the instant Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, has impugned the order dated 16.09.2024 (hereinafter referred to as the "*Impugned Order*") passed by the learned District Judge, Tando Muhammad Khan (hereinafter referred to as the "*Appellate Court*") in Civil Misc. Appeal No. 05 of 2024, whereby the appellate court maintained the order dated 29.07.2024 passed by the learned 2nd Senior Civil Judge, Tando Muhammad Khan (hereinafter referred to as the "*Executing Court*") in Execution Application No. 01 of 2022 arising out of F.C. Suit No. 07 of 2020, filed by the respondent No.1 (decree-holder). The learned trial court dismissed the applicant's objections under Sections 47, 151 and Order XXIII Rule 3, C.P.C., and proceeded with the execution of the compromise decree. Being dissatisfied, the applicant has invoked the revisional jurisdiction of this Court.

2. Briefly stated, the respondent No.1 filed F.C. Suit No.07 of 2020 for specific performance of contract and permanent injunction before the learned trial court. During proceedings, parties entered into a compromise agreement, and accordingly, the suit was disposed of on compromise under Order XXIII Rule 3, C.P.C. vide order dated 13.10.2020. Subsequently, the respondent filed Execution Application No.01 of 2022 for enforcement of the compromise decree, alleging failure of the applicant to execute the sale deed in his favour despite receipt of major part of the consideration. The executing court allowed the execution

application vide order dated 31.05.2022, subject to deposit of the balance consideration by the decree-holder within 15 days, and directed the applicant to execute the sale deed. Upon non-compliance by the applicant, the Nazir was directed to execute the sale deed on behalf of the judgment debtor. The applicant thereafter filed objections under Sections 47, 151 and Order XXIII Rule 3, C.P.C., contending inter alia that the compromise decree was not executable being contractual in nature, that certain terms remained unfulfilled, and that part of the property included minor's share. The learned executing court dismissed such applications in limine vide order dated 29.07.2024. The appeal against the said order was dismissed by the learned District Judge on 16.09.2024. Hence, the present revision.

3. Learned counsel for the applicant contended that the impugned orders are vitiated by illegality and material irregularity. She argued that the decree in question was founded upon a compromise based on mutual consent rather than judicial adjudication; hence, it could not be executed unless both parties mutually consented to its performance. It was further submitted that a compromise decree is, in essence, a contractual arrangement between the parties, and any breach thereof gives rise to a fresh cause of action rather than execution proceedings. The learned counsel maintained that the Courts below acted in undue haste and failed to properly decide the pending objections under Section 47 and Order XXIII Rule 3, C.P.C. before proceeding with execution. She, therefore, prayed for the acceptance of the present Civil Revision Application. Reliance was placed upon *Peer Dad v. Dad Muhammad* (2009 SCMR 1268), *2019 CLC 1243*, *2018 CLC 73*, and *2025 CLC 858*.

4. Conversely, learned counsel for respondent No.1 supported the impugned orders, contending that the compromise decree was duly recorded by the Court in accordance with Order XXIII Rule 3, C.P.C., and therefore attained the status of a valid and executable decree like any other decree of the Court. He submitted that the respondent/decreed-holder had deposited the remaining sale consideration in compliance with the order dated 31.05.2022, but the applicant willfully avoided execution of the sale deed in contravention of the compromise terms. It was further argued that both the learned Courts below passed well-reasoned and speaking orders based on the record and settled legal principles, which do not warrant interference in revisional jurisdiction. The learned counsel, therefore, prayed for dismissal of the present Civil Revision Application. Reliance was placed upon *2021 CLC 877*, *2024 CLD 563*, and *PLD 2005*

Sindh 242. The learned A.A.G. adopted and supported the arguments advanced on behalf of respondent No.1.

5. I have carefully considered the arguments advanced by the learned counsel for the respective parties and have minutely examined the material available on record. It is by now a well-settled proposition of law that when a compromise or adjustment between the parties is duly recorded and verified by the Court under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, it attains the status of a “decree” within the contemplation of Section 2(2) of the C.P.C. Such a decree is not only final and conclusive as to the matters compromised but is also executable in the same manner as any other decree of the Court, provided that the compromise is lawful, voluntary, and free from any taint of fraud, coercion, or misrepresentation. The underlying rationale of this provision is to give sanctity to a settlement reached between the parties during the pendency of litigation, thereby promoting the expeditious and amicable resolution of disputes without the necessity of a protracted trial. The Court, however, bears the solemn duty to ensure that the agreement or compromise is genuine, lawful, and not opposed to public policy before recording it and converting it into a decree. For a proper appreciation of the legal framework governing such compromise decrees, it would be appropriate and expedient to reproduce hereunder the text of Order XXIII Rule 3, C.P.C., which provides as follows:

“3. Compromise of suit. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit”.

A plain and harmonious reading of the aforesaid provision reveals that Order XXIII Rule 3, C.P.C. encapsulates the principle that a civil suit may be lawfully adjusted, wholly or partially, through a voluntary, bona fide, and lawful agreement or compromise entered into between the parties. Where it is proved to the satisfaction of the Court that such compromise or satisfaction has indeed taken place, the Court is under a mandatory obligation to record the same and to pass a decree in accordance therewith, insofar as it relates to the subject matter of the suit. The essential requirement of the Rule is that the compromise must be lawful, genuine, and free from all elements of fraud, coercion, misrepresentation, or undue influence, as only such a lawful and voluntary adjustment can culminate into a valid and binding compromise decree. The Rule contemplates two distinct situations: (i) where the suit has been

adjusted wholly or in part by a lawful agreement or compromise, and (ii) where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit. It is, therefore, evident that Order XXIII Rule 3 is confined in its operation strictly to the subject matter of the pending suit, either wholly or in part. Any term or condition of an agreement or compromise which travels beyond or is unrelated to the subject matter of the suit does not fall within the purview of this Rule and, consequently, cannot be embodied in or executed through a compromise decree. In such a case, the breach of those extraneous terms, being outside the scope of the pending litigation, may furnish a fresh cause of action, for which an independent suit would have to be instituted. This legal position has been categorically affirmed by the Hon'ble Supreme Court of Pakistan in the case of **Peer Dad v. Dad Muhammad (2009 SCMR 1268)**, wherein it was held that: *"In case of any deviation, violation and departure from the judgment/decree based on consent and compromise, the provisions enumerated in Order XIII, rule 3, C.P.C. can safely be pressed into service. There is no cavil to the proposition that a consent decree or order is nothing but a contract between the parties within command of the Court superadded to it and its force and effect is derived from contract between the parties on the basis where of consent decree was passed and hence it is binding upon the parties until a fraud is alleged in procuring such decree which is not the case of petitioners"*.

6. Moreover, this Court, in the case of **Habib Bank Limited v. Amin Soap and Oil Industries (Pvt.) Limited (2024 CLD 563)**, held that: *"In the absence of, inter alia, any material variation or modification in the terms of the compromise decree as a result of subsequent events and agreements arrived at between the decree-holder and judgment-debtor after passing of the compromise decree or the compromise decree becomes executable in view of the changed circumstances in the compromise decree or the terms of compromise decree travel beyond the frame of the suit, the executing Court would be in a position to execute the decree under section 47, C.P.C. and in exercise of this jurisdiction under the latter provision it can also question the executability of a decree as well as take into consideration subsequent events even after passing of the decree"*. The case laws relied upon by the learned counsel for the applicant do not advance the applicant's case and are clearly distinguishable on the facts and circumstances of the present matter.

7. There is no cavil to the proposition that an executing Court is ordinarily not empowered to travel beyond the terms of the decree, as

consistently held by the Honourable Superior Courts. However, while exercising jurisdiction under Section 47, C.P.C., the executing Court may examine the executability of a decree ***if it is satisfied that the decree is a nullity in the eyes of law, has been passed by a Court lacking jurisdiction, its execution would not advance any legal right of the decree-holder, or it has been rendered in violation of any statutory provision.*** Only in such circumstances may the executing Court lawfully refuse to execute the decree. Reliance is placed on the case ***Habib Bank Limited v. Mst. Parveen Qasim Jan and others (2014 SCMR 322)***. Similarly, in case of ***Fakir Abdullah and others v. Government of Sindh through Secretary to Government of Sindh, Revenue Department, Sindh Secretariat, Karachi and others (PLD 2001 Supreme Court 131)***, the Honourable Supreme Court of Pakistan observed as under:--

“There is no cavil with the proposition that a Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, few of them have been referred by the learned counsel for the petitioners in his arguments but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree-holder if refused to be executed or the decree has been passed in violation of any provision of law, say as in the instant case apparently petitioners obtained an ex parte decree in their favour without showing that what was their legal character to institute the suit in terms of section 42 of the Specific Relief Act and if the relief so claimed by them is not granted how he/they will be prejudiced or if the Court came to conclusion that by granting the relief to the decree-holder the functioning of Government administration has been interfered with according to section 56(d) of Specific Relief Act”. *Emphasis supplied.*

8. In the present case, the record reveals that the respondent/decreed-holder duly deposited the remaining sale consideration in compliance with the execution order dated 31.05.2022, whereas the applicant failed to execute the sale deed despite clear judicial directions. His objections under Section 47 C.P.C. were vague and unsupported by evidence. No material has been placed to establish fraud, misrepresentation, or illegality in recording the compromise. The plea that the decree involves minor's share was neither substantiated before the trial court nor adjudicated through a proper application under Section 12(2) C.P.C. Hence, such plea at the revisional stage is untenable. As regards the argument that the trial court dismissed the objections without proper adjudication, the record shows that the executing court had already determined that the decree-holder had complied with the essential terms by depositing the balance consideration, and upon applicant's default, the Nazir was lawfully directed to execute the sale deed. The appellate court, while maintaining such order, has also rightly observed that the execution proceedings had

attained finality, and the objections were an attempt to delay enforcement of a lawful decree.

9. It is by now a well-settled proposition of law that the revisional jurisdiction conferred under Section 115, C.P.C. is circumscribed and can be exercised only where the subordinate Court has committed a jurisdictional error, acted with illegality, or exercised jurisdiction with material irregularity. The scope of revision is, therefore, supervisory and not appellate in nature. In the present case, both the learned Courts below have passed well-reasoned and speaking orders after due consideration of the record and the applicable law. The applicant has not been able to point out any jurisdictional defect, illegality, or material irregularity in the impugned orders that would justify interference by this Court in the exercise of its limited revisional powers. It is also a settled principle that concurrent findings of fact recorded by the subordinate Courts are not to be disturbed by the revisional Court except in cases where there is gross misreading or non-reading of material evidence, or where the findings suffer from a patent illegality or jurisdictional error. The Honourable Supreme Court of Pakistan, in the case of ***Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)***, has reaffirmed this well-established position of law. As no such exceptional circumstance, illegality, or jurisdictional defect has been demonstrated by the applicant, no case for interference within the narrow ambit of revisional jurisdiction is made out.

10. For the foregoing reasons, I find no illegality, impropriety, or jurisdictional error in the concurrent findings recorded by the learned Courts below. The orders dated 29.07.2024 and 16.09.2024 are well-reasoned, supported by the record, and in consonance with the settled principles of law. Hence, they do not warrant any interference in the exercise of revisional jurisdiction. Accordingly, Civil Revision Application No.S-273 of 2024, being devoid of merit, is dismissed. The impugned orders of the learned Appellate Court dated 16.09.2024 and the learned Executing Court dated 29.07.2024 are hereby maintained. The parties are left to bear their own costs in respect of these proceedings.

JUDGE