

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1246 of 2025

(Mst. Nargis Sultana v. Province of Sindh & Ors.)

Date	Order with signature(s) of Judge(s)
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Hg:/Priority.

1. For orders on office objections.
2. For hearing of Misc. No.11718/19
3. For hearing of main case.

02.02.2026.

Syed Muhammad Akbar, Advocate for Petitioner.

Mr. Mubarak Ali Shah, Counsel for KDA.

O R D E R

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has challenged the order dated 12.12.2018 passed in Civil Revision Application No.89 of 2017 (re: Mst. Nargis Sultana v. Syed Muhammad Mehdi & Ors.) by the Court of Additional District Judge-III, Karachi (East) whereby revision application was declined and order dated 12.10.20216 passed by the Executing Court was maintained.

2. It is the case of the petitioner that he filed Suit No. 387 of 2011 (titled *Mst. Nargis Sultana v. Syed Muhammad Mehdi & Ors.*) for specific performance and permanent injunction. The suit proceeded on merits and decreed vide judgment and decree dated 24.12.2011, in the following terms:

"The matter is coming up on 24.12.2011 for Judgment, before Jalaluddin Soomro, VIIth Senior Civil Judge Karachi East, in presence of the learned counsel for the plaintiff and none is present from defendants side. It is hereby ordered that the suit of the plaintiff stands decreed, with no order as to costs.

However plaintiff is directed to deposit the remaining sale consideration amount in respect of the suit property with the Nazir of District Court within the period of one month."

3. It further transpired from the record that the petitioner deposited the balance consideration through pay order amounting to Rs.2,00,000/- (page-85) along with statement. Learned trial Court on depositing the balance sale consideration amount, directed the petitioner to satisfy the court as to why amount deposited with delay be accepted. The learned trial Court on the said application passed following orders.

"Learned counsel has sent present application but did not appear. Thus, he is required to appear in order to justify the above prayer. Hg:21.02.2012."

4. It appears from the record that the petitioner filed an execution application in year 2016 seeking execution of the judgment and decree. The said application was declined on the ground of delay, and the revision application was also dismissed. It is the case of the petitioner that she has deposited the balance consideration amount; therefore, the Nazir of the Court is under an obligation to effect the sale deed in her favour.

5. Heard arguments, perused the material available on record.

6. From a perusal of the record, it reveals that vide judgment and decree dated 24.12.2011, the petitioner/decree holder was directed to deposit the balance consideration amount within one month; however, the said amount was deposited with delay along with a statement. The Executing Court/trial Court directed the learned counsel for the petitioner/decree holder to appear and satisfy the Court as to the grant of the prayer made in the application for execution of the sale deed in favour of the petitioner/decree holder. It further transpired from the record that the said application was not decided; however, the execution application was declined on the ground of delay.

7. It is a settled principle of law that a judgment and decree do not lose their force or merit merely on the ground that execution is sought with delay. In the present proceedings, the petitioner was already in possession of the suit

property and sought the assistance of the Court for execution of the sale deed, for which she had deposited the requisite balance sale consideration amount. Admittedly, the decree was conditional in nature and for that purpose petitioner filed an application dated 11.02.2012 for acceptance of the balance sale consideration. It was incumbent upon the trial Court to decide the application dated 11.02.2012 filed by the petitioner/decree holder. The case diaries available at page 155 of court file show that on 27.02.2012, when the case was fixed, learned counsel for the plaintiff/petitioner appeared before the trial Court and the matter was adjourned to 14.04.2012 for compliance by the Nazir. This case diary clearly reflects that the trial Court had sought a compliance report from the Nazir, and the subsequent case diaries show that an application under Section 12(2), CPC was filed by one Hasnain Abbas Zaidi, which was declined. The case diaries available on record reveal that the trial Court/Executing Court decided only the application under Section 12(2) CPC and application filed by the petitioner/decree holder remained undecided. Since the trial Court had not yet decided the application dated 11.02.2012 which ought to have been decided in accordance with law.

8. The Trial Court is within competence to decide the fate of the application by condoning the delay in depositing the balance consideration amount. Since the foundational concept of the Courts of law is to dispense with justice and to ensure right should go to the person to whom it lawfully belongs, without undue delay.

9. In view of the foregoing discussion, this petition is allowed. The orders dated 31.07.2017 and 17.12.2018 passed by the Courts below are set aside. The matter is remanded back to the learned Trial Court for deciding afresh the application dated 11.02.2012, available at page 83 of the Court's file. The learned Trial Court is directed to decide the said application within one month from the date of this order. The application dated 11.02.2012 shall also be deemed to be an application seeking condonation of delay in depositing the balance consideration amount.

10. The Petition stands disposed of in the above terms along with all listed applications.

JUDGE