IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-986 of 2026

Mst. Kaneez Syeda Rizvi and others
Versus
Mst. Sadaf Wajahat and others

Petitioner Mst. Kaneez Syeda Rizvi & others	:	Through Mr. Sami Ahsan Advocate
Respondent No.3 Sadaf Wajahat	:	Through M/s Arif Khan and Asif Ali Shah, Advocates
State	:	Through Mr. Abdul Waheed Bhanbro, A.A.G Sindh
Date of Hearing	:	5th & 19th October, 2026
Date of Judgment	:	27.10.2026
Date of announcement	:	29.10.2026

J U D G M E N T

Muhammad Saleem Jessar, J.:- The petitioners have called in question the order dated 09.07.2026 passed by learned IIIrd Senior Civil Judge, Karachi Central (Executing Court), in Execution Application No.20 of 2017, arising out of the decree passed in the matter titled Mst. Sadaf Wajahat and two others v. Mst. Kaneeza and six others, whereby their request for keeping the execution proceedings in abeyance on account of pendency of Civil Petition for Leave to Appeal No.1135-K of 2025 before the Hon'ble Supreme Court of Pakistan was declined. The petitioners seek suspension of the execution proceedings until final adjudication of the aforesaid civil petition.

2. Briefly, respondent No.3 instituted civil proceedings which culminated in a judgment and decree dated 25.07.2017. The appeal preferred by the petitioners was dismissed by learned IVth Additional District Judge, Karachi Central, vide judgment dated 20.02.2019. Thereafter, the petitioners preferred Second Appeal No.55 of 2019 before this Court, which was also dismissed on 07.05.2025. Against the said decision, the petitioners approached the Hon'ble Supreme Court by filing CPLA No.1135-K of 2025, which is stated to be pending adjudication.

3. Learned counsel for the petitioners contended that the Executing Court ought not to proceed with execution during pendency of the civil petition before the Hon'ble Supreme Court, particularly when the subject property is proposed to be auctioned. He further submitted that notwithstanding the restraining order dated 07.05.2019 passed in Second Appeal No.55 of 2019, the Executing Court, vide order dated 24.07.2019, deprived the petitioners of their right of defence and audience. He maintained that the application filed under Section 151, C.P.C., was not properly considered and that continuation of execution proceedings would cause serious prejudice to the petitioners. He accordingly prayed for setting aside the impugned order and suspension of execution proceedings until disposal of the pending CPLA. In support of his submissions, learned counsel placed reliance upon Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others (1992 SCMR 241), Tariq Mohsin Siddiqui and others v. The State (2005 MLD 1827), Muslim Commercial Bank Limited v. Ghulam Nabi (1986 PLC 1141), Mst. Samar Jabeen v. Sub-Divisional Education Officer (Female), Karachi and others (2003 PLC (CS) 358), Hafiz Abdul Waheed v. Mrs. Asma Jehangir and another (PLD 2004 SC 219), Harilal Dalsukhram Saheba v. Mulchand Asharam (AIR 1930 Bombay 225), Nand Kishore v. Shadi Ram and others (AIR 1926 Allahabad 457), Ainuddin Bepari and others v. Banessa Bibi and another (PLD 1969 Dacca 658), order dated 09.03.2024 passed by this Court in Suit No.125 of 2021, District Officer Frontier Constabulary, Hayatabad, Peshawar v. Haji Amir Badshah and others (PLD 2025 SC 698), Anjuman Ghulaman Mustafa v. Darul Islamia Society and others (PLD 2024 SC 489), Sahabzadi Maharunisa and another v. Mst. Ghulam Sughran and another (PLD 2016 SC 358) and Bashir Ahmed Badini and others v. Chairman and Members of the Administration Committee and Promotion Committee, High Court of Balochistan and others (2022 SCMR 448).

4. Conversely, learned counsel for respondent No.3 opposed the petition and submitted that the decree has consistently been maintained by the appellate forums and remains executable in absence of an express order of stay. Referring

to Order XLI Rule 5, C.P.C., he contended that mere pendency of proceedings before a superior Court does not automatically suspend execution. He further submitted that earlier order dated 24.07.2019 was never challenged and cannot be reopened indirectly through present proceedings. According to learned counsel, no jurisdictional defect, illegality or material irregularity has been demonstrated in the impugned order warranting interference in constitutional jurisdiction. He accordingly prayed for dismissal of the petition. To support his contentions, he has relied upon the cases of *Khurshid Akbar V/s Main Manzur Ahmed & another* (1982 SCMR 824), *Lal Hussain V/s Noor Hussain & another* (1991 Law Notes (Rawalpindi Bench) (1159), *Shah Wali V/S Ghulam Din alias Gaman & another* (PLD 1966 Supreme Court 983) and *Abdul Ghani V/s Ghulam Abbas Tamanna & others* (2015 CLC 89).

5. Learned Additional Advocate General, Sindh, supported the impugned order and submitted that pendency of proceedings before the Hon'ble Supreme Court, without an express restraining order, does not prevent the Executing Court from proceeding in accordance with law. In support of his submissions, he placed reliance upon Rashid Baig and others v. Muhammad Mansha and others (2024 SCMR 1385) and Chief Land Commissioner, Punjab/Senior Member Board of Revenue, Punjab, Lahore v. Administrator Auqaf Department, Bahawalpur (2025 SCMR 2078).

6. I have heard learned counsel for the parties, examined the available record and considered the relevant provisions of law.

7. The principal question requiring determination is whether mere pendency of CPLA No.1135-K of 2025 before the Hon'ble Supreme Court constitutes sufficient legal justification for suspending execution of a decree which has already been maintained by the appellate forums.

8. The legal position is well settled. Order XLI Rule 5, C.P.C., embodies the principle that mere filing of an appeal does not operate as an automatic stay of proceedings under the decree appealed from. Although the said provision primarily regulates appellate proceedings under the Code, the underlying principle is equally relevant to the present controversy: the institution or pendency of proceedings before a superior forum does not, by itself, suspend the operation or enforceability of the decree under challenge. Suspension of execution requires an appropriate order passed by a competent Court. The

distinction between pendency of proceedings and an operative order of stay is also reflected in the principles governing execution and finality of decrees.[1]

9. By applying aforesaid principles, it is not disputed that the petitioners have approached the Hon'ble Supreme Court against the decision rendered by this Court in Second Appeal No.55 of 2019. However, no order passed by the Hon'ble Supreme Court suspending the operation of the decree or restraining its execution has been brought to notice of this Court. In such circumstances, mere pendency of the CPLA cannot furnish a lawful basis for indefinitely withholding execution. The decree-holder, having succeeded before the competent forums, cannot ordinarily be deprived of the fruits of the decree merely because the judgment-debtor has invoked a further remedy. Any contrary interpretation would render execution dependent upon the mere institution of successive proceedings, even where no competent Court has granted interim protection.

10. The contention regarding the order dated 24.07.2019, whereby the petitioners were allegedly deprived of their right of defence or audience, does not advance their case in the present proceedings. The said order is stated to have remained unchallenged and is not independently under consideration in this petition. Its legality or otherwise, therefore, need not be determined while examining the validity of the subsequent order dated 09.07.2026. Similarly, the earlier interim order dated 07.05.2019, relied upon by the petitioners, cannot be treated as a subsisting restraint without establishing its continued operation after disposal of the second appeal. No such subsisting restraint has been demonstrated from the material placed before this Court.

11. As regards the application under Section 151, C.P.C., the inherent powers of a Court are intended to secure the ends of justice and prevent abuse of its process. Such powers, however, cannot be invoked merely to circumvent the established principles governing execution or to create a stay as an automatic consequence of pendency of proceedings before a superior forum. The petitioners were required to establish an independent and legally sustainable ground for withholding execution.

12. The apprehension expressed by the petitioners concerning the proposed auction of the inherited property has also been considered. While such

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[1] Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others (1992 SCMR 241); Bakhtiar Ahmed v. Mst. Shamim Akhtar and others (2013 SCMR 5); Rashid Baig and others v. Muhammad Mansha and others (2024 SCMR 1385); and Chief Land Commissioner, Punjab/Senior Member Board of Revenue, Punjab, Lahore v. Administrator Auqaf Department, Bahawalpur (2025 SCMR 2078).

apprehension cannot be disregarded, it does not, by itself, justify suspension of an otherwise executable decree. It is pertinent to observe that Section 144, C.P.C., recognizes the principle of restitution, whereby, if a decree is subsequently varied or reversed, the Court of competent jurisdiction may, upon an application by an entitled party, order such restitution as would, so far as legally permissible, restore the parties to the position they would have occupied but for the decree subsequently disturbed. The remedy may extend to consequential relief, including compensation, damages or mesne profits, where legally warranted. The availability and extent of restitution would; however, depend upon the nature of the subsequent decision, the rights of the parties and any legally protected interests of third persons. Consequently, the possibility of reversal of the decree does not, in itself, furnish sufficient ground for indefinitely suspending its execution. Equally, the existence of a remedy by way of restitution does not dispense with the obligation of the Executing Court to observe all safeguards governing attachment, sale and auction of the property.

13. It is equally well settled that the Executing Court must execute the decree according to its terms and cannot travel beyond it. Any objection concerning the mode of execution, identification of the property, extent of the decretal entitlement or compliance with the mandatory requirements governing auction shall be examined by the Executing Court in accordance with law. The fact that the property is stated to have devolved upon the parties through inheritance does not, by itself, alter the legal principles governing execution, though the nature and extent of the rights recognized under the decree must necessarily be respected.

14. So far as the exercise of constitutional jurisdiction is concerned, this Court does not ordinarily interfere with orders passed during execution proceedings merely because another view may be possible. Such interference is justified where the impugned order suffers from a jurisdictional defect, patent illegality, material irregularity resulting in miscarriage of justice or another recognized ground warranting constitutional intervention. In present case, the petitioners have failed to demonstrate that the Executing Court acted without jurisdiction or committed any such illegality in declining to suspend execution solely on account of pendency of the CPLA. No case for interference under Article 199 of the Constitution is, therefore, made out.

15. It is; however, clarified that the Executing Court shall proceed strictly in accordance with law, ensure compliance with the procedural safeguards governing the proposed sale or auction, and determine any legally maintainable objection falling within its jurisdiction without being influenced by the observations made herein. Nothing contained in this judgment shall be construed as authorizing execution in violation of any subsisting or subsequent order passed by the Hon'ble Supreme Court or any other competent Court.

16. For the foregoing reasons, the constitutional petition, being devoid of merit, is **dismissed**, with no order as to costs. Consequently, the impugned order dated 09.07.2026 passed by learned IIIrd Senior Civil Judge, Karachi Central, calls for no interference and shall remain undisturbed.

17. Before parting, it is clarified that dismissal of this petition shall not prejudice the petitioners' right to seek appropriate interim or final relief before the Hon'ble Supreme Court in CPLA No.1135-K of 2025, in accordance with law. Should any competent Court pass an order suspending the decree or restraining its execution, the Executing Court shall give effect to such order in its letter and spirit.

Karachi JUDGE
Dated 27.10.2026 HEAD OF CONST. BENCHES
Approved for Reporting
Aamir/PS