

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Transfer Application No.01-2024

Mujib-ur-Rehman

Versus

Rafaqat Hussain Raja and others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(04)	04.03.2024	Mr. Wajid Ali, Advocate for the applicant.

Learned counsel for the applicant submits that applicant has approached the office of Registrar of this Court in order to deposit Rs.500,000/- in compliance of judgment, passed in R.F.A No.74 of 2014, but Registrar office has refused to accept the same.

2. Be that as it may, applicant volunteered to deposit the amount referred above as per the decree in the executing Court and now he intends to deposit the said amount before this Court, which is inappropriate, especially when the matter is pending with the executing Court and applicant approached this Court with reference to transfer of his Execution Petition to any other Civil Court. The ground for transfer of Execution Petition is not within four corners of law as it simply reflects that the applicant in order to consume time, filed an application for transfer without any lawful justification.

3. On the other hand, applicant has not denied the passing of judgment and decree in appeal against

him and he is otherwise willing to return amount of Rs.500,000/-, which he received, therefore, the findings recorded in the judgment dated 03.12.2019, passed in R.F.A No.74-2014, vide Para-32 and 33 are relevant to be reproduced:-

In view of the above discussion, the instant appeal is allowed; the impugned judgment and decree dated 30.05.2014 is set aside; and as a result, the respondent's suit for damages is dismissed. Since we are that the proceedings in the suit against the appellants were not just frivolous and vexatious, but a gross abuse of the process of the Court, we are allowing this appeal with costs throughout in addition to costs of Rs.1,00,000/- in terms of Section 35(1)(iii) C.P.C. as amended by the Costs of Litigation Act, 2017.

It is an admitted position that Rs.5,00,000/- was paid by appellant No.1 to the respondent through the learned Executing Court whereas appellants No.2 and 3 had paid Rs.4,90,000/- to the respondent out of Court in satisfaction of the decree to the extent as against the said appellants. Since we have found that the impugned judgment and decree passed by the learned Civil Court is liable to be set-aside and the respondent's suit dismissed, he is placed under a continuing obligation to restitute the amount received from the appellants on the basis of the said judgment and decree. In the case of Sh. Mehraj Din Vs. Ghulam Muhammad (PLD 1965 Lahore 374), the Hon'ble Mr. Justice

Muhammad Akram (as he then was), held that restitution of property follows automatically upon the decree being varied or reversed in appeal and a specific direction for restitution is not necessary to be made by the appellate Court. In the case of Khalid Rasool Vs. Muhammad Sharif (1987 CLC 253). It was held inter alia that restitution of possession to a party who succeeds in getting an adverse order reversed in appeal is nothing more than retracing the steps to nullify the proceedings whereby the party who was not entitled to the benefit had obtained it from the Court under false colours.

4. In view of above, instant application for transfer of Execution Petition in terms of the powers under Section 24 CPC instant application is **DISMISSED** with the observation that applicant has made commitment and assures his bonafide to deposit the amount in compliance of order of this Court, passed in appeal, therefore, he is directed to deposit Rs.500,000/- in the executing Court account.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN