

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

W.P.No.775 of 2018

Nisar Hussain

**Versus**

Learned Additional District Judge (East) Islamabad and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**03.03.2020**

**Mr. Zahid Riaz Chaudhry, Advocate for the petitioner**

**Sardar Muhammad Asif Khan, Advocate for respondent No.2.**

Through the instant writ petition, the petitioner, Nisar Hussain, impugns the order dated 25.01.2018 passed by the Court of the learned Additional District Judge, Islamabad, whereby his revision petition against the order dated 01.12.2016 passed by the Court of the learned Civil Judge, Islamabad, was dismissed.

2. The record shows that respondent No.2 had filed a suit for declaration and permanent injunction against the petitioner before the learned Civil Court. During the pendency of the said suit, a compromise was effected between the contesting parties. This compromise was reduced into writing on 10.11.2010 and submitted before the learned Civil Court as Exh.C1. On 08.04.2011, the learned Civil Court, after recording the statements of the learned counsel for the defendants, dismissed the said suit. In the order dated 08.04.2011, it was clearly mentioned that both the parties *“will remain bound down according to their compromise deed Ex-C1”*.

3. Subsequently, the petitioner filed an application under Order XXI, Rule 32 of the Code of Civil Procedure, 1908 (“C.P.C.”) for the implementation of the provisions of the compromise. Respondent No.2 contested the said

application by filing a written reply. Vide order dated 01.12.2016, the learned Executing Court dismissed the said application with the observation that in the compromise deed dated 10.11.2010, land measuring 45 *marlas* in *khasra* Nos.57, 58 and 67 had been given to the petitioner. The said order dated 01.12.2016 was assailed by the petitioner in a revision petition before the Court of the learned Additional District Judge, Islamabad. Vide order dated 25.01.2018, the said revision petition was dismissed holding that the plain reading of the compromise showed that before the compromise, the possession of the properties mentioned in the compromise deed had already been handed over by the parties to each other. The said order dated 25.01.2018 has been assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the learned Courts below concurrently erred by dismissing the petitioner's application under Order XXI, Rule 32 C.P.C.; that respondent No.2 did not abide by his commitment in the compromise agreement that he would hand over possession of the petitioner's share in the properties to him; and that since it was recorded by the learned Civil Court that the parties will remain bound down according to their compromise, the learned Executing Court should have passed an order directing respondent No.2 to comply with his commitment under the compromise. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for respondent No.2 submitted that the compromise agreement submitted to the learned Civil Court as

Exh.C1 clearly mentioned that respondent No.2 had given his share in 45 *marlas* of land in *khasra* Nos.57, 58 and 67 to the petitioner, and that the petitioner had given his share in land in *khasra* Nos.34 to 37 to respondent No.2; that on 28.11.2016, respondent No.2 had recorded his statement before the learned Executing Court that he had never breached his obligations under the compromise agreement nor will he breach such obligations in the future; and that the suit instituted by the petitioner before the learned Civil Court had been dismissed, therefore the learned Executing Court is correct in dismissing the petitioner's application under Order XXI, Rule 32 C.P.C. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 3 and need not be recapitulated.

7. There is no denying the fact that the suit for declaration and permanent injunction instituted by respondent No.2 was dismissed vide order dated 08.04.2011. In the said order, the learned Civil Court recorded that both parties will remain bound down according to their compromise deed (Exh.C1). At no material stage was a judgment and decree in terms of the compromise dated 10.11.2010 passed by the learned Civil Court. The said compromise has the status of an agreement between the petitioner and respondent No.2 even though it was filed before the learned Civil Court and finds mention in the said order dated 08.04.2011. On 28.11.2016, respondent No.2 had also made a statement before the learned

Executing Court that he had neither breached any provision of the said compromise nor does he intend to breach any such provision in the future. It was also stated that the construction being carried out by respondent No.2 will be at his risk and cost if the land on which the construction is carried out falls in the ownership of the petitioner.

8. If the petitioner is aggrieved by any of respondent No.2's actions which in his opinion is a breach of the latter's commitment in the compromise agreement, this would furnish a new cause of action to the petitioner with respect to which he would be at liberty to institute proceedings afresh against him.

9. In the case of Mrs. Ishrat Malik Vs. Jamil Ahmad Manj (2017 YLR 1788), during the pendency of a suit for specific performance, the contesting parties had entered into a compromise whereafter the suit was dismissed as withdrawn. Subsequently, an execution petition was filed for the execution of the order whereby the suit was dismissed on the basis of the compromise. No decree in the terms of the compromise had been passed. It was held by the Hon'ble Lahore High Court that breach of the compromise by a party would give a cause of action to the other party to approach the Court and seek his remedy. It was also held that the aggrieved party would be at liberty to institute a separate suit for the redressal of his grievance arising due to the non-fulfillment of the terms of the compromise by the other party.

10. In view of the above, the instant writ petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**