

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1461 of 2021

Ch. Muhammad Razzaq

Vs

Learned Additional District Judge, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
09)	<u>27-10-2021.</u>	Mr Arif Khan Advocate, for the petitioner. Malik Muhammad Asghar Advocate, for respondents no. 3 and 4.

ATHAR MINALLAH, C.J.- Chaudhary Muhammad

Razzaq [hereinafter referred to as the **"Petitioner"**] has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the **"Constitution"**] and has assailed orders, dated 27.03.2019 and 17.04.2019, passed by the learned executing court.

2. The facts, in brief, are that two separate suits were filed and the dispute was regarding shop no. 147, Sector I-11/4, Islamabad [hereinafter referred to as the **"Property"**]. Respondents no. 3, 4 and 5 had filed a suit for specific performance while the Petitioner had filed a suit for possession of the Property. The suit for specific performance was dismissed by the learned trial court through the consolidated judgment and decree, dated 16.12.2003. However, the respondents preferred an appeal, which was allowed vide

judgment and decree, dated 03.05.2007. The decree passed by the learned trial court was set aside by the learned appellate court. Civil Revision i.e. C.R. no. 404/2008 was subsequently dismissed by this Court vide judgment, dated 03.02.2015. The Petitioner thereafter challenged the decree and the dismissal of the Civil Revision by this Court before the august Supreme Court in Civil Petition no. 1523/2015, and the same was dismissed by the apex Court vide its order, dated 18.09.2018. However, while dismissing the petition, the august Supreme Court had observed as follows:

"The petitioner was a co-sharer of the property and did not enter into the agreement to sell, therefore his share could not be allowed to the respondents in vide decree. This position is conceded today by Moulvi Anwar-ul-Haq, learned counsel for respondents Nos. 1 and 2, that the decree could be confined only to the extent of Muhammad Fayyaz's share in the common property. Furthermore, it may be mentioned that the gift deed executed by Muhammad Fayyaz in favour of his brother, Muhammad Razzaq is in fact a colorable transaction and cannot take any precedence over the admitted agreement to sell entered into between the respondents and Muhammad Fayyaz to the extent of the latter's share."

3. The Petitioner had filed an objection petition on 10.11.2015, before the learned executing court. However, for unexplained reasons the objection petition remained pending. The learned executing court, after affording several opportunities to the Petitioner, dismissed the objection petition vide order, dated 27.03.2019. The Petitioner filed an application for setting aside of the exparte order, dated 27.03.2019 and it was dismissed by the learned trial Court vide order, dated 17.04.2019. The objection petition filed by the Petitioner has also been perused with the assistance of the learned counsels. It is apparent from a plain reading of the objection petition that the grounds raised therein are contrary to the aforementioned observations of the august Supreme Court. No prejudice was caused to the Petitioner because of the dismissal of his objection petition since the matter has attained finality and rights of the parties have been determined by the august Supreme Court. In the facts and circumstances of the case in hand the executing court was required to execute the decree having regard to the above reproduced observations of the august Supreme Court.

4. The conduct of the Petitioner had led to passing of the impugned orders. It is settled law that a non-vigilant litigant or one who willfully causes obstruction or delays the proceedings cannot expect extra ordinary relief from the courts. The learned counsel for the Petitioner, despite his able assistance, could not point out jurisdictional error nor any other legal infirmity warranting interference by this Court

while exercising its jurisdiction under Article 199 of the Constitution.

5. For the foregoing reasons, the instant petition has been found to be meritless and, therefore, it is accordingly ***dismissed***. The executing court, however, is expected to complete the proceedings expeditiously, preferably within sixty days from receiving a certified copy of this order.

(CHIEF JUSTICE)