

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 80 of 2020

Syed Amir Abbas Shah Kazmi

Versus

Amir Rashid Malik, etc.

Petitioner By : Mr. Saad Ahmad Rajpoot, Advocate.

Respondents By : Ch. Qaiser Nazir Sipra, Advocate.

Date of hearing : 10.07.2020.

LUBNA SALEEM PERVEZ, J.- Through instant Civil Revision Petition, the petitioner has assailed the Order dated 01.02.2020, passed by learned Civil Judge, 1st Class (East), Islamabad, whereby, the application for appropriate orders in execution proceedings has been dismissed.

2. Necessary facts for disposal of this civil revision are that Respondent No.1, filed suit for cancellation of agreements dated 07.03.2018 & 10.05.2018 and for permanent and mandatory injunction along with recovery of physical possession of House No. 11, Street No. 03, Block-I, CECHS, Soan Garden, Islamabad, as well as for recovery of arrears of rent and business loss on the basis of the statement recorded by the petitioner on 20.03.2019 (Ex-D1), whereby, he admitted his liability of payment of Rs. 7,750,000/- a consent decree was passed by the learned Trial Court on 24.07.2019. As no appeal lie against the consent decree, respondent No. 1/decree holder filed execution petition for execution of the decree dated 24.07.2019. During the pendency of execution of decree the parties agreed to certain terms and conditions specifying time of 45 days for mode of payment of the outstanding amount by the petitioner vide settlement/agreement dated 19.11.2019. The petitioner, thereafter, filed application for appropriate orders before the Court for issuance of direction to the decree holder to perform his part of agreement dated 19.11.2019. The learned Executing Court dismissed the said application vide order dated 01.02.2020. Hence the petitioner assailed the same through present civil revision.

3. Learned counsel for the petitioner admitted the liability of payment of Rs. 7,750,000/- for which Respondent No.1 filed suit and the decree was issued in his favour, however, he has challenged the impugned order dated 01.02.2020, while submitting that the learned Executing Court has not appreciated the facts subsequently developed on out of court agreement dated 19.11.2019; that the Respondent No. 1 has failed to perform his part of obligations according to the terms and conditions agreed upon vide settlement dated 19.11.2019, and relied on para 6 and 7 of settlement which are also reproduced as under:-

“6. That during the course of execution proceedings plaintiff/respondent was against approached through respectable citizens for settlements of the claim of the first party out of the Court hence, this attempt is being made by the petitioner to pay the rest of the amount by transferring land measuring 03 Kanal situated at PathriataMurree, which amount to Rs. 1,30,000,00/- through which the amount of Rs. 77,50,000/- will be deducted and rest of the amount Rs. 52,50,000/- will be return to the petitioner or his nominees, it is pertinent to mention here that first the second party will transfer the land of Murree after clearance from the HalkaPatwari, Physical possession will also be handed over to the plaintiff / respondent, statement of the other Co-Sharers including brothers and sisters if any will be also be the responsibility of the second party at the time of selling of this land.

7. That after selling out this land of Murree and receiving the amount of Rs. 77,50,000/- the house in question will be transferred in the name of the second party, because possession of the house in question has also been delivered by the first party.”.

Learned counsel for the petitioner further submitted that learned Executing Court has failed to appreciate that Respondent No. 1 is under obligation to appear before revenue official for transferring the land situated in Murree after payment of fee; that the impugned order dated 01.02.2020 suffers from material irregularity as under section 47 CPC, learned Executing Court was required to determine the question between the parties relating to execution, discharge or satisfaction of the decree; that the Executing Court has failed to appreciate that parties cannot make departure from the contents of settlement and through impugned order has paved way for Respondent No. 1 to depart from the agreed terms which are adversely affecting the rights of the petitioner; that the learned Executing Court has not appreciated the law on the subject as it possesses jurisdiction to determine post decretal matter also; that the petitioner has performed his part of agreement of transferring land situated in Murree in favour of Respondent No. 1, however, his malafides of willfully trying to get illegal gains have not been determined by the Executing Court; that the impugned order

is based on conjunctures and surmises, hence, not sustainable in law. Learned counsel relied on *Samba Bank Ltd. vs. Messrs Syed Bhais* (2013 CLD 2080), *Bahadur Shah vs. Contractor Rehman Shah* (2018 CLC 73) *Dewan Sugar Mills Ltd. vs. Messrs Trading Corporation of Pakistan (Pvt.) Ltd.* (2018 YLR 2337) and *Muhammad Naeem Khan Ghauri vs. Jameel Akhtar Khan* (2019 CLC Note 23).

4. Learned counsel for Respondent No. 1 has vehemently controverted the averments of the petitioner and at the outset has challenged the maintainability of the present civil revision. He submitted that present civil revision is incompetent as there is no order u/s 104 CPC and petitioner has by passed the provision of Section 47 of CPC, whereby, the Executing Court has powers to determine the questions relating to execution, discharge or satisfaction of the decree; that, the order dated 24.07.2019, has been passed on admission of the petitioner regarding payment of balance amount, hence, it was a consent order and decree; that subsequent agreement for setting mode of payment of outstanding amount through settlement dated 19.11.2019, cannot be lawfully interfered with by the Court after the lapse of stipulated period of 45 days, agreed between the parties for satisfaction of decree; that the time was the essence of the settlement dated 19.11.2019, which has been breached by the petitioner himself, therefore, he is not entitled to any relief from the Court; that the mode of payment of balance amount through settlement dated 19.11.2019, is a private agreement arrived at for the satisfaction of Respondent No. 1/decree holder thus it stood cancelled automatically after 45 days allowed to the petitioner; that, out of Court settlement/agreement dated 19.11.2019, cannot be made a tool to influence the order dated 24.07.2019, which order was duly passed with the consent of the parties; that the conduct of the petitioner throughout the proceedings remained evasive as several opportunities have been allowed to him for making payment as per decree but the petitioner unlawfully kept on creating obstacles in execution proceedings by filing frivolous application under section 12(2) which subsequently was dismissed being without any force and merit, vide order dated 10.02.2020; that the learned Executing Court has rightly dismissed the application for appropriate order filed on 13.01.2020, as the prayer for directions sought for by the petitioner was not

legally sustainable. Learned counsel lastly submitted that the civil revision petition is not maintainable and liable to be dismissed.

5. Learned counsel for the petitioner on the issue of maintainability of present revision petition raised by Respondent No.1 in rebuttal submitted that the application for appropriate order was filed under section 47 CPC before the learned Executing Court for determination of questions of execution, discharge or satisfaction of the decree and in view of the value of decretal amount of Rs. 7,750,000/- only the High Court has jurisdiction over the case through civil revision; that the petitioner is not a defaulting party and is willing to perform his part to settle the outstanding liability; that the delay of execution of decree as per settlement dated 19.11.2019 is because of Respondent No. 1 as petitioner has tried his best to meet Respondent No.1 time and again for fulfilling the condition of said settlement.

6. Heard arguments of the rival parties and perused the impugned order as well as record of the case.

7. So far as maintainability of this civil revision before this Court is concerned, the petitioner/judgment debtor has assailed the order dated 01.02.2020, by filing civil revision before this Court on 25.02.2020. It is pertinent to mention that Code of Civil Procedure (Amendment) Act, 2020, (Act VII, 2020) published in the gazette on 21.02.2020, whereby certain amendments in the Code of Civil Procedure, 1908, were introduced for Islamabad Capital Territory. Perusal of Act VII of 2020, reveals that through provision of section 159 which is a saving clause, all the proceedings instituted prior to promulgation of Act VII of 2020, have been saved in the following manner:-

“159. Savings of proceedings.--All proceedings instituted prior to enactment of the Code of Civil Procedure (Amendment) Act, 2020 shall be deemed to proceed and dealt in accordance with the provisions of Code of Civil Procedure which existed prior to the said amendment Act.

Explanation.—In this section the expression “proceedings” includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto.”

In view of the above said saving clause, the present case would be considered in accordance with the provisions of CPC existed prior to the amendments introduced vide Act VII of 2020, dated 21.02.2020, as the suit in the present

case was filed and disposed of, so also the initiation of execution proceedings as well as the impugned order have been passed on 01.02.2020. Hence, the objection of the learned counsel for the respondent regarding incompetent filing of the civil revision u/s 115 CPC filed before this Court is rejected.

8. As regards merits of the case, the record reveals that after consent decree, on the basis of petitioner's admission, vide statement dated 20.03.2019, along with affidavit exhibited as Ex-D1, the learned Trial Court passed the following order on 24.07.2019:-

“Perusal of record shows that defendant No. 1 namely Syed Amir Abbas Shah separately recorded his statement on dated 20.03.2019. In which he contended that he is bound to deposit the remaining sale consideration according to agreement dated 10.05.2018 but he fail to deposit the same. He further stated that he will deposit the remainingsale consideration i.e. 77 lac 50 thousands within three month till the date i.e. 20.06.2019, otherwise he has no objection if the suit of the plaintiff is decreed and he will also give the possession of the house to plaintiff. In this respect he also produced affidavit which is Ex-D1.

Perusal of record further shows that till today defendant No. 1 failed to deposit the remaining sale consideration.

Keeping in view the above, suit of the plaintiff is hereby decreed as prayed for. No order as to cost. Decree sheet be prepared accordingly. File be consigned to record room after its due completion.”.

The contents of the above order shows that despite admitting the facts of the case and liability of payment of balance sale consideration of Rs.7,750,000/-, the petitioner failed to make payment within three months as per his statement dated 20.03.2019, therefore, the decree in favour of present Respondent No. 1 was ordered to be issued. Execution petition was, therefore, filed for satisfaction of the decree. While the execution petition was pending, the parties, for satisfaction of decree, entered into another out of court time bound agreement on 19.11.2019, whereby they settled certain terms and mode of payment specifying a time period of 45 days. Record revealed that the petitioner after the lapse of stipulated period filed application for appropriate orders on 13.01.2020, before Executing Court. It is pertinent to mention that the said application was filed without mentioning of any section in the subject so to determine as to what provision of CPC has been invoked through said application in the execution proceedings. The contents in the application shows that the petitioner/judgment debtor sought implementation of the terms and conditions of later settlement agreement dated 19.11.2019, for

satisfaction of decree. Therefore, I am of the opinion that the application does not fulfill the requirements of section 47 CPC, and it has been filed under section 151 CPC, invoking the inherent jurisdiction of the Court as the petitioner only sought in the said application direction to be issued to the decree holder to appear before the concerned authorities and transfer the land in his favour. The learned Executing Court dismissed the application, vide order dated 01.02.2020, (impugned herein) as it cannot enforce any subsequent out of the court settlement on the decree holder and issued directions for compliance of terms agreed upon by the parties through settlement agreement dated 19.11.2019.

9. The petitioner being dissatisfied assailed the impugned order dated 01.02.2020, through present civil revision u/s 115 CPC. It is well settled that the scope of section 115(1) CPC is very limited and the High Court exercises its discretionary revisional jurisdiction in cases where no appeal lies and where the order of the sub-ordinate Court appears:-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit”.

10. Perusal of impugned order shows that the petitioner is aggrieved of the following findings of the Executing court:-

“5. A wade through the record indicates that settlement agreement was executed between the parties on 19.09.2019, during the execution petition and when 12(2) petition was fixed for maintainability order. That according to the decree holder/respondent the settlement agreement was not executed within stipulated period of time i.e. 45 days, therefore, the decree holder is not satisfied from the settlement agreement. The Court cannot force the decree holder for compliance of settlement during the execution. Even otherwise, the executing Court cannot go beyond the decree passed by the Court.”.

11. Admittedly, order and decree dated 24.07.2019, in the present case has been passed with the consent of the petitioner for his failure to pay the amount claimed in suit within three months in terms of his statement dated 21.03.2019, which also attained finality as no appeal lies against consent decree hence execution petition was filed for satisfaction of the decree. As per settled law, the Executing Court is not empowered to travel beyond the terms of judgment and decree while executing the same. It has also been settled that

parties to the case may, out of the Court amicably settle the terms or mode of payment of decretal amount to satisfy the decree through any agreement whatsoever which the Executing Court may take into consideration at the time of execution of decree, however, the implementation of such agreements are not enforceable by the Court in execution proceedings and no direction can be issued to the Respondent No. 1 / decree holder to obey the terms of that subsequent settlement for payment of decretal amount. The learned Judge, Executing court was, therefore, right in dismissing the application for appropriate order dated 13.01.2020 as the prayer sought by the petitioner was legally beyond the scope of execution which is only a process for implementation of decree as per judgment passed by the court. The Executing Court is bound to remain within the four corners of the judgment/decreed. Any subsequent development between parties out of court through any settlement agreement, raising factual controversies are not implementable by the Executing Court. Thus, I am of the view that the order dated 01.02.2020, passed by the Civil Judge, 1st Class, East-Islamabad, on the application of the petitioner does not suffer from any jurisdictional defect which, as such, has been passed in the light of settled principles of execution of consent decree. Hence, no interference is called for.

12. In view of the above, present civil revision petition, being devoid of any merit, is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 23.07.2020.

JUDGE

APPROVED FOR REPORTING.
Blue Slip added

M. Junaid Usman