ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1562 of 2022

Muhammad Farrukh Iqbal

versus.

Learned Civil Judge 1st Class, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.05.2022	Mr. Muhammad Kokab Iqbal, Advocate.

Through instant petition, petitioner has impugned order dated 12.04.2022 passed by the learned Executing Court, whereby, objection petition over the report of the local commission for inspection of the suit property was partially dismissed.

2. Learned counsel contends that the local commission failed to follow the directions in letter and spirit qua spot inspection as he has not inspected the house from inside and that the petitioner questioned the deficiency being in contravention of the direction and against his rights through an objection petition but the same was turned down vide impugned order in an arbitrary manner without appreciating the controversy in its true perspective.

3. Arguments heard, record perused.

4. Perusal of record reveals that the suit for partition of the property inter-se the siblings of Muhammad Safdar Iqbal was instituted on **18.08.2012** and was decided on **19.10.2016**. The matter went up till the Hon'ble Supreme Court of Pakistan and thus attained finality, but the decree could not be executed till date.

5. Perusal of the impugned order reveals that the application under order XXI Rule 29 CPC was also filed before the learned Executing Court for stay of the proceedings on account of pendency of another suit on the same subject matter, instituted on **04.11.2021**.

6. The objections, put-forth by the petitioner/judgment-debtor upon the report of the local commission were, inter alia, as under:-

> "*Notice was not served on the judgment debtor. As per report of the of Courier Service notice was delivered to Farrukh Iqbal, Staff but no name of the staff was mentioned on the report. The notice of the local commission was issued one day before his visit to the spot, which is evident from the booking receipt. Report of local commission does not bear any signature, which is clear violation of the order of the learned trial court. The annexe of the suit house, where the judgment debtor resides was locked at the time of visit of local commission, who did not enter the same, as there was nobody inside. The main part of the suit house was in the occupation of a tenant, who was not at home. The local commission could not entered the house as well. The local commission has submitted his report that the suit house is not partition-able, despite that fact that it is not possible to give such finding without physically inspecting the suit house and every portion of the same from inside. The local commission did not mention the rooms, staircase, terrace, bathrooms etc., of the house and has not measured the area of the suit house and yet has stated the same to be 1200 sq. yards. The local commission took photographs off the suit house behind the back of the judgment debtor. The local commission has not stated that the suit house consists of two units. The commission has referred to the CDA rules while mentioning that the physical partition of the suit house among the 05-co-sharers out of 02 Kanal of land as per CDA Rules and Regulations is not permitted, but local commission has not referred the particular CDA rules and bylaws. The local commission got evaluation of the suit house from property dealers of sector F-8, while the suit house situated in Sector F-6 and thus evaluation of the suit house is not reliable. The local commission should be summoned and judgment debtor should be given opportunity to cross question him. The report of local commission is nullity in the eyes of la. The report has been prepared in connivance with the decree holder, who is in a hurry to procure order of auction of suit house. The report of local commission does not bear signatures or name of any witness or neighbor."*

7. As per the stance of the decree holder, the petitioner/judgment debtor wants to delay the execution proceedings because he rented out half portion of the suit

house on rent of Rs. 700,000/- per month. The matter has already attained finality up till the Hon'ble Supreme Court.

8. As per report of the courier someone received the notice issued by the local commission, which is sufficient to assume that notices were served upon the petitioner/judgment debtor. The local commission was directed to inspect the house in the presence of the parties and the report states that he remained at the site for a considerable time. It appears that the judgment-debtor despite having knowledge about visit of the local commission deliberately avoided to join the proceedings of spot inspection in order to make a ground for raising objections and to cause inordinate delay in the matter that had already consumed more than ten years for reaching at final conclusion. As per the report of the local commission, petitioner/judgment debtor and his tenant did not allow him to enter the suit house.

9. On the aspect of ground situation, *Para-e*) of the report of the local commission is significant which states as under:-

> ***"e)*** *That after inspection of the site/house the undersigned observed that the suit property consists of double story house consisting of two parts over an area 1200 sq. yards, almost two (2) Kanal. One part of the house is rented out whereas the other part is occupied by defendant Muhammad Faruukh Iqbal (petitioner herein). The house is situated in F-6/2 which is posh sector of Islamabad, at distance of about 100 meter from 7th Avenue. The house is subject to rules and byelaws of the Capital Development Authority (CDA) for the purpose of transfer, partition etc. Physical partition of the suit house amongst the co-sharers in five portions out of 2-Kanal of land as per CDA Rules and Regulations is not permitted. Therefore, the suit house is physically not partition able as per law.*
> *Hence, the possible way for partition of the suit house can be done by selling the suit property by auction or sale by any other mutually agreed way so that the sale proceeds of the house can be divided amongst the shares according to their respective legal and shari shares."*

10. The observations of the local commission appear to be in consonance with the ground situation as the suit property, *a double story house having two parts over an area 1200 sq. yards approx. 02-Kanal, one part of which had been on rent while the other is being occupied by the petitioner namely Muhammad Faruukh Iqbal,* is not physically partition-able due to constraint of the CDA regulations and byelaws.

11. Having examined the case from every angle, there appears no justification to put the respondents under notice as it would amount to cause further delay in final culmination of the lis that had already consumed more than ten years. There is no question about deprivation of due share of any of the legal heirs while the superstructure, on the face of it as reveals through the synopsis available on file, is indivisible amongst five co-sharers, therefore, the objections being raised retain no force and have rightly been turned down by the learned Executing Court in the backdrop of facts of the instant case. Consequently, instant writ petition is accordingly **dismissed in limine** with observation that the learned Executing Court shall make every endeavor to conclude the execution proceedings at the earliest as the matter pertains to the year 2016. Copy of the order be sent to the learned Executing Court for information and compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//