

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
C.R No. 66481 of 2023

Fayyaz Ahmad **Versus** Subay Deen

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
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11.10.2023 Mr. Muhammad Anwar Bhaur, Advocate for the petitioner.

Through this civil revision, filed under section 115 of the Code of Civil Procedure, 1908 (the ‘*Code*’), the revision-petitioner has called into question the validity of order and decree dated 09.04.2022 passed by the learned Civil Judge Ist Class, Pattoki as well as judgment and decree dated 09.09.2023 passed by the learned Additional District Judge, Pattoki.

2. Brief facts of the case are that on 11.12.2015 the revision-petitioner instituted suit for possession through specific performance of agreement dated 04.12.2014 / Exh.P-1 (the ‘*agreement*’), allegedly executed between the revision-petitioner and the respondent with respect to property as described in the suit (the ‘*property*’). The process of adducing evidence was in progress when an application dated 09.04.2022 (the ‘*application*’) for administration of special oath was filed by the revision-petitioner. The offer contained therein was accepted by the respondent and as a consequence of the same oath of Muhammad Riaz son of Khushi Muhammad was administered and on the basis of the same, the suit was dismissed on 09.04.2022. The said decision was assailed through Civil Appeal No. 58 of 2022 by the revision-petitioner, which was dismissed on 09.09.2023 by the learned Appellate Court. Aggrieved from the same, the present revision petition has been filed.

3. Mr. Muhammad Anwar Bhaur, learned counsel for the revision-petitioner, has submitted that concurrent findings of the learned two Courts below are against the facts of the case as well as the law applicable thereupon; that Muhammad Riaz, when appeared as DW-2, made some false statement, which disturbed the revision-petitioner, due to which he made the offer for administration of special oath. Learned counsel has relied upon the cases titled “Khushi Muhammad through L.Rs. vs. Mst. Nazira Bibi and 4 others” (2007 CLC 1874), “Muhammad Ali vs. Major Muhammad Aslam and others” (PLD 1990 SC 841) and “Ahmad Khan and others vs. Jewan” (PLD 2002 SC 655) and stated that the learned trial Court should have acted carefully to see that the statement is not recorded in snap speed and the learned trial Court should not have acted so promptly rather every possibility of ambiguity or emotions should have been ruled out before permitting the administration of oath and / or to rest the decision on such oath. No other ground is pressed before this Court.

4. I have heard the arguments and carefully gone through the documents available on the record, with the able assistance of the learned counsel of the revision-petitioner.

5. Section 9 of the Oaths Act, 1873 (the ‘Act’) provides that if any party offers to be bound by special oath or solemn affirmation, as mentioned in section 8 of the Act, the Court if thinks fit, can communicate the offer to other party or witness concerned. Section 10 of the Act provides that upon acceptance of the offer the learned Court can proceed with the administration of oath. The evidence / oath so given then in terms of Section 11 of the Act, is binding upon the person who

made the offer and it is deemed to be conclusive proof of the matter stated therein.

6. In case titled “Saleem Ahmad vs. Khushi Muhammad” (1974 SCMR 224), the Supreme Court of Pakistan reached to the conclusion that one cannot claim the right to resile from solemn agreement. The contracting parties could not be allowed to back out from the same unless the contract was void or had become frustrated. In one of recent judgment in case titled “Sajid Mehmood vs. Mst. Shazia Azad and others” (2023 SCMR 153), where one of the party filed an application for special oath and then after administration of the oath attempted to depart, the following has been observed:-.

“6.The letter of the law makes it unequivocally clear that under the provisions of the Oaths Act, a party in litigation can offer the opposite party to accept or reject the claim on special oath, but they cannot compel each other to take the special oath, however if the offer is accepted by the other party then a binding agreement comes into existence and the party making the offer has no right and authority in law to resile from it. When the Court communicates the offer to the other party and gets hold of his assent or refusal, as the case may be, it in fact plays a role as an intermediary between the parties and when the offer is accepted by the other party, the acceptance is transmitted to the party inviting the other to take special oath, thereafter the agreement is completed between the parties unless the offer is withdrawn before its acceptance by the other side. The stipulations of the Oaths Act cannot be construed to give an unfair or inequitable advantage to one party over the other, so in the event of an offer or proposal to be bound by the oath of the opposite party, then obviously, due to the mutuality of the promise between them, the party making an offer has no right to resile from it after the offer is accepted and the special oath is taken. In the absence of any such satisfactory or sufficient cause the Court is obligated to implement the agreement and to record the statement of the party concerned to make a decision in the case accordingly. The petitioner

cannot wriggle out or withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will."

(Underlining is added)

7. Reverting to the facts of the case, the proceedings in the suit were at the stage of producing evidence. The revision-petitioner completed his evidence and when the evidence of the respondent was being recorded, the revision-petitioner filed the *application* which clearly reveals that the revision-petitioner was desirous to have decision on special oath. The relevant paragraph of the *application* reads as follows:-

"یہ کہ سائل / مدعی دعویٰ عنوان بالا کا فیصلہ برحلف قرآن کروانا چاہتا ہے کہ اگر منجانب مدعا علیہ پیش کردہ گواہ محمد ریاض ولد خوشی محمد اگر رو برو عدالت حضور قرآن پاک پر حلف دے کر مدعا علیہ صوبے دین نے آراضی متدعو یہ کا سودا بیع ہمراہ مدعی نہ کیا ہے اور نہ ہی مبلغ -/2100000 اکیس لاکھ روپیہ وصول کیا اور نہ ہی قبضہ آراضی متدعو یہ مدعی کے پاس ہے تو مدعی کا دعویٰ خارج فرما دیا جائے تو من سائل کو اعتراض نہ ہوگا۔"

8. The revision-petitioner offered in terms of section 9 of the *Act*. The *application* is signed by the revision-petitioner as well as his learned counsel. The *application* was filed after three days of the relevant event i.e. the statement of Muhammad Riaz / DW-2, upon which the revision-petitioner showed satisfaction to make the offer in question. This offer was accepted by the other side as well as the witness concerned and the learned Court proceeded to administer the special oath of Muhammad Riaz son of Khushi Muhammad in terms of the *Act*.

9. There appears to be no haste, in making the offer or its acceptance. The revision-petitioner took his time, then instructed learned lawyer to make the offer, who after drafting the *application* obtained signatures of the revision-petitioner on the *application*. Thereafter, the

statements of the learned counsel for the parties are recorded, which are followed by the special oath. The wording of the *application* as well as the order dated 09.04.2022 reveal that there was no ambiguity as to the offer or the significance upon acceptance. The revision-petitioner was fully aware that the statement on oath, if given shall be binding upon him and it can have consequence of dismissal of the suit, therefore, the reliance by the learned counsel on “Khushi Muhammad through L.Rs”, “Muhammad Ali” and “Ahmad Khan and others” cases (*supra*), is of no help to the revision-petitioner.

10. The learned trial Court noticeably remained careful. Not only the written request duly signed by the revision-petitioner, containing his verification, was brought on the record but at the same time the statements of the learned counsel for the parties were recorded. The consequences of the offer were very clear to the revision-petitioner. The revision-petitioner cannot be allowed to back out from a statement / offer after it has culminated into a binding contract and when the contract has been acted upon. This attempt to withdraw from the statement and the dual stance also attract the principle of *approbate* and *reprobate* with its full force. Reference can be made to case titled “Muhammad Rafique vs. Nasir Mehmood” (PLD 2016 Lahore 428).

11. There is no substance in the grounds taken in this revision-petition. Therefore, this revision petition is *dismissed in limine*. No order as to cost.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting.

Judge