

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.61 of 2021

Muhammad Yousaf Zaheer V/S *Additional District Judge etc*

JUDGMENT

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| Date of hearing | 28.09.2023 |
| Petitioner(s) by | Mian Muhammad Salman Idrees, Advocate with Petitioner. |
| Respondent(s) by | Mr. Abid Hussain Kiyani, Advocate with Respondent No.1. |

JAWAD HASSAN, J. By way of this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”) the Petitioner has called in question the vires of order dated 24.12.2020, whereby the Additional District Judge, Rawalpindi while dismissing the revision petition filed by the Petitioner upheld the orders dated 11.12.2020 and 18.12.2020 passed by the Executing Court/Senior Civil Judge (Family Division), Rawalpindi. The Court will also elucidate the mode and procedure provided under Section 13 of the Family Court Act, 1964 (the “**Act**”).

I. CONTEXT

2. Precisely the facts necessary for adjudication of instant petition are that a judgment and decree dated 30.06.2019 was passed in favour of the Respondents No.3 to 5, execution petition whereof was filed before Executing Court, Gujranwala which was subsequently transferred to District Courts Rawalpindi for its satisfaction. Due to non-payment of decretal amount by the Petitioner/judgment debtor, the Executing Court, from time to time, passed various orders for attachment of his moveable and immoveable property. Finally, orders dated 11.12.2020 and 18.12.2020 were passed and were challenged

through Civil Revision but the same was dismissed vide impugned order dated 24.12.2020 by the Additional District Judge, hence this petition.

II. ARGUMENTS OF THE PARTIES.

3. Learned counsel for the Petitioner *inter alia* contends that impugned orders are result of mis-reading and non-reading of material available on record; that the Executing Court in terms of order dated 11.12.2020 and 18.12.2020 issued warrants for attachment of vehicles without lawful justification; that the Executing Court has adopted the mode for attachment of his moveable/immoveable property which, under the law is not warranted; that the revisional Court has not properly dealt with the issues, as such the impugned orders are not sustainable in law.

4. Conversely, learned counsel for Respondents contended that impugned orders have been passed after taking into consideration all aspects of the matter in dispute hence do not suffer from any error or material irregularity.

5. I have heard the arguments of learned counsel for the parties and perused the record.

III. DETERMINATION

6. Admittedly, judgment and decree passed in favour of the Respondents No.3 to 5 by the Family Court, Gujranwala was transferred to the Court of Senior Civil Judge, Civil Division, Rawalpindi vide order dated 22.01.2020 for its execution as the Petitioner/judgment debtor was the resident of District Rawalpindi. Memo of attendance filed on behalf of petitioner by his counsel on 24.02.2020 was turned down and he appeared on next date i.e. 02.03.2020, when he failed to pay decretal amount, as such; he was served with show cause notice as to why decretal amount should not be recovered from him and, failing which, as to why he should not be sent to Civil Prison for one year. However, he was directed to be released subject to payment of 50 % of decretal amount in three installments as well as furnishing surety to the extent of remaining

50% of decretal amount. Operation of said order dated 02.03.2020 was suspended in Civil Revision, as such, the Petitioner was directed to be released. On 20.06.2020, it was agitated on behalf of the Respondents No.3 to 5 that already attached property of the Petitioner including a Honda City car may be auctioned for purpose of satisfaction of decree in execution as only warrants of arrest of the Petitioner have been suspended by this Court vide order dated 18.06.2019 passed in Writ Petition No.1264 of 2020. Thereafter, warrants of attachment of another Suzuki Alto car and motorcycle were issued vide order dated 10.08.2020. Robkar was issued to Assistant Commissioner Sadar, Rawalpindi to appoint concerned Revenue Officer for determination of market value of said property as well as warrant of attachment of aforementioned Honda City car, besides unblocking of CNIC of the Petitioner was issued vide order dated 03.11.2020. Above mentioned Honda City car having not been found for attachment, on 07.12.2020, the Petitioner was directed to produce said vehicle, failing which, on 11.12.2020 Robkar was directed to be issued to Incharge Anti Car Lifting Cell, Rawalpindi for locating whereabouts of said car and to take over possession thereof. On 18.12.2020, not only SHO Police Station Sadiqabad was directed for production of said Honda City car bearing registration No. AHE-664, but warrants of attachment of Suzuki Alto car bearing the registration No.RLB-212 were also issued.

7. The mode and procedure adopted by the Executing Court for satisfaction of subject decree has been agitated against quite hard on behalf of the Petitioner. Subject decree has been passed by the Family Court and Section 13 of the “*Act*” which deals with enforcement of decrees, reads as follows:

SECTION 13:-

(1) *The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.*

(2) *If any money is paid or any property is delivered in the presence of the Family Court, in*

satisfaction of the decree, it shall enter the fact of payment or the delivery of property, as the case may be, in the aforesaid register.

(3) *Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court not exceeding thirty days, the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.*

(4) *The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

(5) *A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.*

Dilating upon said provision of law, the Supreme Court of Pakistan has held in case "AMJAD IQBAL versus Mst. NIDA SOHAIL and others" (**2015 SCMR 128**) that "Section 13(3) of the Act itself provides that *"Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court [not exceeding thirty days] the same shall, if the Court so directs to recover as arrears of land revenue, and on recovery shall be paid to the decree-holder."* This provision in the Act empowers the Family Court to execute its own decree for payment of money by adopting modes provided for recovery of arrears of land revenue. In the West Pakistan Land Revenue Act various modes of recovery of arrears of land revenue are spelt out and one of the modes provided for recovery of arrear of land revenue is by selling the immovable property of the defaulter." Though substantially dealing with issue of transfer of decrees passed by the Family Courts, it is held in case "Mst. AMMAN GUL versus Judge Family Court, Rawalpindi and 2 others" (**2023 CLC 1300**) that "Sub-section (4) of Section 13 of "Act, 1964" places the Family Court and the Civil Court at the same pedestal for the purpose of execution of decree, so in that capacity a court "Family" or "Civil" enjoys all powers of the executing court

vested in Part II as well as Order XXI of the "C.P.C.". Further, it is observed in case "MUHAMMAD AMIN versus Judge, Family Court, Sahiwal and 3 others" (2015 YLR 316) that "*The very wording in which subsection (3) of section 13 of West Pakistan Family Courts Act, 1964 is couched makes it obvious that the money decree is to be recovered as arrears of land revenue only if the Court so directs at the time of passing the decree. And if no such direction has been made by the Court concerned, it may follow any procedure thereafter to implement its money decree, including the arrest of the judgment-debtor and attachment of his property.*"

IV. CONDUCT OF THE PETITIONER.

8. It is noted that the Petitioner/judgment debtor filed C.M.No.1556 of 2023 for setting aside of order dated 29.05.2023 of Executing Court with the prayer that he was ready to pay remaining decretal amount in installments for which his application under Section 13(5) of the "Act" was pending. This Court vide order dated 07.09.2023 directed the Executing Court to decide aforesaid application not later than one week and also observed that no adverse action against the Petitioner/judgment or his surety be taken till decision of aforestated application. Record is indicative of the fact that the Executing Court complied with directions of this Court and decided application under Section 13(5) of the "Act" vide order dated 18.09.2023 and granted time to the Petitioner/judgment debtor to deposit Rs.24,25,888/- within three days in respect of maintenance allowance of minors, one month time for depositing the amount of 15-tolas gold ornaments, whereas remaining amount of Rs.500,000/- in next month of payment of valuation of gold ornaments. Thereafter, the Petitioner/judgment debtor instead of complying with order of Executing Court, filed another C.M.No.1756 of 2023 for setting aside of orders dated 08.09.2023 and 18.09.2023 with the submission that he is ready to deposit Rs.5,00,000/- under protest with prayer that interim relief be granted in his favour. This Court vide order dated 26.09.2023

suspended the impugned orders subject to deposit of Rs.5,00,000/- with Deputy Registrar (Judicial) of this Court within two days but he did not deposit the said amount. Even record of proceedings before the Executing Court reflects that acts and conduct of the Petitioner/judgment debtor consistently aimed at frustrating proceedings of execution of subject decree. The conduct of the Petitioner is very much relevant with controversy in hand. The subject decree involving maintenance allowance of Petitioner's own kids pertains to the year 2012 but till date he has not bothered to satisfy the same on his own, rather he has been consistent to gear in all efforts to frustrate execution proceedings to avoid satisfaction thereof. He time and again has chosen way to set in field tactics to handicap proceedings conducted for auction of his immoveable property and has not even hesitated to put up every effort for bringing even custody of his attached vehicles in absolute disguise. Thereafter, the Executing Court initiated process for attachment and auction of his aforementioned immoveable property and vehicles. Circumstances existing in case in hand lead to an irresistible conclusion that the Petitioner is capable to satisfy the subject decree, but he deliberately and intentionally is avoiding to do so, forcing even his own kids to starve. A person showing such a callous attitude, in particular, towards discharge of his parental obligation is not entitled for any discretionary relief and so is the case with a person himself not ready to follow and comply law. Reliance in this regard is placed on **"MUHAMMAD ARIF versus UZMA AFZAL and others"** (**2011 SCMR 374**) wherein it has held as follows:

"5. There is no cavil to the proposition that the "conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on maxim "he who seeks equity must do equity".

Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands. Writ jurisdiction cannot be exercised in aid of injustice. The High Court will not grant relief under this Article when the petitioner does not come to the Court with clean hands. He may claim relief only when he himself is not violating provisions of law, especially of the law under which he is claiming entitlement".

9. Above mentioned conduct of the Petitioner cannot be ignored lightly as he is involved in blunt defiance of decree passed under the "Act", preamble whereof leads to roads destined for purpose reading that "Whereas it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith." In the judgment reported as "Mst. Yasmin Bibi versus Muhammad Ghazanfar Khan and others" (**PLD 2016 SC 613**), the Supreme Court of Pakistan has elaborated the preamble of the "Act" and also discussed various sections thereof. Relevant portions of Paragraph 10 and 12 of the said judgment are reproduced hereunder for ease of the matter:-

"10. It was in the above background that the Legislature felt essential to provide for establishment of Family Courts to deal with all matrimonial disputes, mentioned above, in an expeditious manner, curtailing the life of litigation in such cases. To curb and suppress the mischief of delaying tactics on the part of unscrupulous husbands, several amendments were introduced to the Family Court Act, 1964. Some amendments bearing striking features may be cited below:-

S.12-A. Case to be disposed of within a specified period. A Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution:

Provided that where a case is not disposed of within six months either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.

S. 17-A. This newly enacted provision was with the object to curb the mischief of delaying tactics and the Family Court was brought under obligation to pass interim order, directing the husband to pay interim maintenance allowance to the children and the wife after filing written statement or at any stage thereafter.

The provision of S.21-A was also added to the Family Court Act, conferring power upon Family Court to preserve and protect any property, which is in dispute in a suit or any other property of a party to the suit for the future satisfaction of the decree."

To further accelerate and expedite the disposal of such cases, the District Appeal Court and the High Court, orders staying the proceedings before the Family Court, shall cease to be effective on expiring of thirty days time. Again, under section 14, through amendment, it was made mandatory for the Court of Appeal to decide the case positively within four months.

12. Keeping in view the agonies of the parties, particularly the wife, in matrimonial disputes to curtail the mischief of delay and to shorten the life of litigation in such cases, the Law and Justice Commission of Pakistan recommended to the Federal Government and all the Provincial Governments to establish Family Courts in each District and Tehsil Headquarter, which shall be preferably presided over by a female Judge so that the wives who are not well acquainted and familiar with the court proceedings are provided maximum protection and friendly environments."

(underline for emphasis)

10. Contentions raised by the Petitioner in this writ petition are patently absurd, which adversely reflected upon his own conduct, who consistently is struggling hard to delay the satisfaction of the subject decree to deprive his ex-wife and his kids of the fruits of decree. After examining the impugned orders, the Court is of the considered view that the Executing Court was justified to pass the orders which were though assailed in the revision petition before the Additional

District Judge, but the same was dismissed by way of order dated 24.12.2020 and rightly so.

11. In view of above, this petition holds no merit hence the same is hereby **dismissed**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**