

*Judgment Sheet***PESHAWAR HIGH COURT, ABBOTTABAD BENCH**

JUDICIAL DEPARTMENT

Civil Revision No.126-A/2011
With CM No.407-A/2025

Aftab Shah... (Petitioner)

versus

Aurangzeb Khan... (Respondent)

Present: Mr. Aqeel Sarwar, Advocate
for petitioner.

M/S Shoaib Khan and
Tanveer Mughal, Advocates
for respondent.

Date of hearing: 13.10.2025.

JUDGMENT

SYED MUDASSER AMEER, J.- Through the instant revision petition, petitioner has challenged the judgment and decree of Additional District Judge-IV, Mansehra dated 09.02.2011 whereby on acceptance of respondent's appeal, judgment of learned trial court dated 12.07.2010 was set aside and respondent's suit was decreed.

(S.B.) Hon'ble Mr.Justice Syed Mudasser Ameer

2. Respondent instituted a suit for possession through pre-emption against the petitioner which was contested by the latter through filing written statement. On trial, suit of the former was dismissed by the learned trial court vide judgment and decree dated 12.07.2010. Aggrieved, respondent preferred an appeal which was accepted by the learned appellate Court vide judgment and decree dated 09.02.2011 while judgment of learned trial court dated 12.07.2010 was set aside and respondent's suit was decreed. Aforesaid judgment and decree of appellate Court has been assailed by the petitioner (defendant/vendee) through this revision petition.

3. Arguments of learned counsel for parties heard and record perused.

4. During pendency of instant revision petition, counsel for respondents moved a **CM No.407-A/2025** for annexing certain documents necessary for just decision of instant petition. The same is allowed. The annexed documents

consist of an application dated 17.02.2011 moved by respondent (decree-holder) after the suit was decreed in his favour by learned appellate court vide judgment and decree dated 09.02.2011, for deposit of remaining decretal / pre-emption amount. The same was allowed by the executing Court vide order of even date. Similarly, an affidavit dated 08.12.2012 is also placed on record through aforesaid CM, whereby it was sworn by the parties that petitioner acknowledges and concede decree passed in favour of respondent. Likewise, an application of even date before the trial Court was submitted by petitioner for withdrawal of decretal amount so deposited. The same was also allowed by the learned executing Court vide order of even date. Consequently, petitioner withdrew the said amount vide Cheques No.0616817 and 0616816 dated 11.12.2012.

5. It was noted with great concern that this petition is pending adjudication since the year

2011, while the decretal amount was withdrawn by the petitioner in the year 2012 but he never bothered to bring that fact on record nor intimate this Court about the same. While denying the Affidavit/agreement, counsel for petitioner contended that the aforesaid agreement is neither genuine nor was submitted by the petitioner before the Court below, however, he does not deny submission of application dated 08.12.2012 as well as withdrawal of decretal amount through aforesaid two cheques issued in petitioner's name. The petitioner, while seeking withdrawal of amount vide application dated 08.12.2012, also concealed the pendency of this revision from the executing Court. Such concealment of facts disentitles the petitioner from any discretionary relief. He who comes into equity must come with clean hands.

Reliance can be placed on the cases of *Superintendent of Police v. Ijaz Aslam (2024 SCMR 1831)*, *Liaqat University of Medical and Health Sciences (LUMHS) Jamshoro v.*

*Muhammad Ahsan Shakeel (2024 SCMR 443),
*Muhammad Saleem v. Additional District Judge
(2024 SCMR 1770) and Justice Khurshid Anwar
Bhinder v. Federation of Pakistan (PLD 2010
SC 483).**

6. Even otherwise, the act of withdrawal of the pre-emption amount by the petitioner amounts to clear **acceptance of the decree** and **acquiescence** in its terms. Once the vendee receives the consideration deposited under the decree, he cannot be permitted to turn around and challenge that very decree. The entire pre-emption amount was deposited by the respondent in Court towards the satisfaction of the decree and was held in trust by the Court while the litigation was pending. Its withdrawal by petitioners clearly means that the amount was discharged to the petitioner and the dispute concluded. His conduct constitutes **waiver** of the right to contest and he stands **estopped** from doing so. The principle is well settled that a

party cannot both *approbate and reprobate* at the same time.

7. Reliance of learned counsel for petitioner on *Aurangzeb v. Massan and others* (1993 CLC 1020) is misplaced. The facts of that case are distinguishable, as there the decree was challenged under section 12(2) CPC after being passed beyond limitation, which is not the situation here.

8. Conversely, the latest and more apposite view is found in *Muhammad Tufail and others v. Niaz Ahmed and others* (2024 YLR 704), where application for restoration of civil revision was dismissed on the ground that vendees withdrew preemption amount.

9. In view of the petitioner's admitted withdrawal of decretal amount, coupled with deliberate concealment of this material fact, no further discussion on merits is required. The

petitioner, having accepted the fruits of the decree, cannot now be allowed to challenge it. He is estopped by his own conduct and has waived his right to contest. Accordingly, this petition is dismissed.

ANNOUNCED.
13.10.2025.

(Jamil)

J U D G E

(S.B.) Hon'ble Mr.Justice Syed Mudasser Ameer