

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1118 of 2021

Said Akbar Afridi

Vs.

Syed Karmat Shah, etc.

Petitioner by : Ms Sana Javed Advocate.

Respondents by : Mr Saeed Khurshid Ahmed Advocate.

Date of Hearing : **01.04.2021.**

ATHAR MINALLAH, C.J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"] assailing order, dated 16.03.2021, passed by the learned Civil Judge 1st Class, West-Islamabad.

2. The facts, in brief, are that Syed Karamat Shah son of Syed Muhammad Shah [hereinafter referred to as the "**Respondent no. 1**"] filed a suit on 01.3.2010, for recovery of US Dollars

4,47,000/- alongwith 20% per annum cumulative interest. The suit was contested by Said Akbar Afridi son of Mehr Dil [hereinafter referred to as the "**Petitioner**"] and ultimately it was decreed in favour of Respondent no. 1. The relevant portion of the 'decree sheet' is reproduced as follows:

"This suit coming on this day for final disposal before me in the presence of S.A. Mahmood Saddozai Advocate for the plaintiff and Asad Iqbal Siddiqui Advocate for defendant. It is ordered that the suit of the plaintiff is hereby decreed to the extent of recovery of US \$ 4,47,000/- from the defendant and to the extent of remaining claim, the suit is dismissed. No order as to costs as the litigation between the parties is genuine."

3. The decree was assailed by preferring an appeal i.e. RFA no. 42/2012. This Court vide judgment, dated 31.07.2017, dismissed the appeal. The execution proceedings were initiated by the learned Executing court. The Petitioner filed an application wherein it was prayed that the latter may be allowed to satisfy the decree by converting the foreign currency to Pakistani rupees and that too on the basis of exchange rate which was prevailing at the time of filing of the suit. The application was dismissed by the learned Executing court vide the impugned order, dated 16.03.2021.

4. The learned counsel for the Petitioner has placed reliance on the judgment of the learned Sindh High Court rendered in the case titled "Committee of Administration Fauji Foundation v. Inamur Rehman through his legal heirs" [2018 CLC 1182]. She has argued that there is no bar in accepting the prayer of the Petitioner; the decree can be lawfully executed by allowing the petition to satisfy the decree by making payment in local currency on the basis of the conversion rate which was prevalent on the date of filing the suit; the authorized dealers have refused to sell foreign currency to the Petitioner.

5. The learned counsel for Respondent no. 1, on the other hand, has argued that the decree has to be executed in accordance with its terms; there is no restriction imposed by the State Bank of Pakistan on the authorized dealers of foreign exchange to sell foreign currency to the Petitioner; even if the decree has to be satisfied in local currency then the applicable rate of exchange will be the rate of sale on the date when payment is received; the judgment of the learned Sindh High Court relied upon by the learned counsel for the Petitioner is distinguishable because the judgment of the august Supreme Court relied upon i.e. case titled "Terni S.PA v. Pakistan Engineering Company Limited" [1992 SCMR 2238] related to recovery of interest.

6. The learned counsels for the parties have been heard and the record perused with their able assistance.

7. It is an admitted position that the decree drawn in the case in hand has attained finality and execution proceedings are pending before a competent court. The Petitioner is not refusing to satisfy the decree. However, the latter has taken the plea that since he is prevented from making the payment in US Dollars, therefore, the Executing court ought to allow him to pay the amount in local currency i.e. Pakistani rupees at the rate which was prevailing on the date of filing the suit. The dispute is regarding the payment of the payable amount and not the interest.

8. Decree has been defined in Section 2(2) of CPC as meaning "a formal expression of an adjudication, which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all the matters in controversy in the suit or any of the matters in controversy in the suit". A decree may be preliminary or final. The explanation of Section 2(2) of the CPC draws the distinction between a preliminary and final decree. In the case of the latter, the adjudication completely disposes of the suit, while the former does not have such an effect. The powers of an executing court are provided under Section 47 of the CPC. It, inter alia, provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to

the execution, discharge or satisfaction of the decree, shall be determined by the Court having jurisdiction to execute the decree. Order XXI of the CPC governs the procedure for the execution of decrees and orders. A combined reading of the provisions unambiguously shows that after a decree has been drawn up, the same is to be executed. The decree drawn up following a judgment is distinct and separate. It is by now settled law that a decree by definition is an expression of conclusively determining the matters placed before a Trial Court for adjudication.

9. The learned counsel has placed reliance on the judgment of the august Supreme Court titled “Terni S.PA v. Pakistan Engineering Company Limited” [1992 SCMR 2238]. The law expounded by the august Supreme Court in the said judgment is contrary to the stance of the Petitioner. The rate of exchange prevalent on the date the payment is made will be attracted if the decree has to be satisfied in local currency i.e. Pakistani rupees. In the instant case there is no bar on the Petitioner to purchase foreign currency from an Authorized Dealer of foreign exchange. In case the permission of the State Bank is required then the learned Executing court is empowered to direct the State Bank of Pakistan for the purposes of execution of the Decree.

10. The Petitioner’s conduct does not appear to be bonafide. The plea if accepted would have the effect of breaching the terms of

the decree sought to be executed. It is settled law that a decree has to be executed in accordance with the terms in which it has been drawn up unless the parties expressly consent otherwise. In case the parties consent to execution by conversion of the amount specified in the decree in US Dollars to Pakistani rupees then the applicable rate of exchange will be the notified rate of sale prevalent on the date when the actual payment is made by the Petitioner.

11. For the above reasons, the petition in hand is without merit and, therefore, accordingly **dismissed.**

(CHIEF JUSTICE)

Tanveer Ahmed/*