

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.252 of 2016
Muhammad Saeedullah
Versus
Jamia Masjid Madni

Date of Hearing: 11.01.2017
Petitioner by: Mr. Abdul Haq Malik, Advocate
Respondent by: Mr. Manzoor Hussain, Advocate

MIANGUL HASSAN AURANGZEB J:- Through the instant civil revision, the petitioner, Muhammad Saeedullah, impugns the order dated 18.05.2016, passed by the Court of learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the orders dated 29.04.2016 and 13.05.2016, passed by the learned Executing Court, was dismissed in limine. Vide the orders dated 29.04.2016, and 13.05.2016, the learned Executing Court dismissed the petitioner's objections to the execution petition and the issuance of warrants of possession regarding the office and residence of Imam of Jamia Masjid Madni situated in Sector F-8/2, Islamabad.

2. The record shows that on 16.02.2013, the respondent (Jamia Masjid Madni, through the Chairman of the Masjid Committee) instituted a suit for declaration, recovery of possession, *mesne* profits/rent, cancellation of registration of trust and cancellation of registration of Madrassah, and perpetual injunction, before the Court of the learned Civil Judge, Islamabad, against the petitioner and seven others. It appears that vide Notification No.8(56)/Aug-Dte/Admin/95, dated 25.10.2011, issued by the Auqaf Directorate, Islamabad, the members of the Masjid Committee of Jamia Masjid Madni, were notified.

3. The position taken by the respondent/plaintiff in the suit was that the inhabitants of the locality of F-8/2, Islamabad, had constructed Jamia Masjid Madni with their funds; that the petitioner/defendant No.1 had offered his services as the Imam of the said Masjid; that the petitioner was provided residential facility in the compound of the said Masjid to facilitate him in

performing his responsibilities as the Imam; that without the consent of the Masjid Committee or the inhabitants of F-8/2, the petitioner started a *Madrassah* in the basement of the Masjid; that the petitioner started posing as the owner of the said Masjid, and started running the administrative affairs of the Masjid without consulting the Masjid Committee; that the petitioner was asked by the Masjid Committee to discontinue the *Madrassah*, but to no avail; that the petitioner handed over the administrative affairs of the *Madrassah* to Maulvi Asad Ullah/defendant No. 3; that resentment developed in the inhabitants of the locality against the petitioner, and they started going to other Mosques; that it was finally decided to remove the petitioner from *Imamat*, and to close the *Madrassah*; that in October, 2011 the petitioner discontinued the *Imamat*, and closed the *Madrassah*, but requested for some time to vacate the residence; that after the petitioner was given some time to vacate the residence, he tried to reoccupy the *mansab* of *Imam* and *Khateeb* of the Masjid; and that the petitioner continued to unlawfully occupy the residence of the Masjid. The said acts of the petitioner caused the respondent to institute the said civil suit against *inter-alia*, the petitioner.

4. In the said suit, the respondent prayed for *inter-alia*, a declaration to the effect that the petitioner had no right to be the *Imam/Khateeb* of Jamia Masjid Madni, and that he had no right to establish a *Madrassah* in the building of the Masjid, and that he had no right to reside in the residence of the Masjid.

5. The petitioner and the other defendants in the suit contested the said suit by filing a written statement. The position taken by defendants No.1 to 6 was that the Mosque was constructed with the funds raised by the said defendants; that the said defendants had done everything in the larger interest of imparting religious education through the divine forum of the Masjid; and that the respondent/plaintiff was instigating negative sentiments in the Masjid. Furthermore, preliminary objections to the maintainability of the suit were taken. It was pleaded that the respondent/plaintiff had not come to the Court with clean hands and that the suit had been instituted with the *malafide* intention

of blackmailing, harassing and pressurizing the defendants. The rest of the written statement is vague and evasive.

6. From the divergent pleadings of the contesting parties, the learned Civil Court, vide its order dated 10.09.2013, framed issues. It appears that another suit titled “Muhammad Saeedullah Vs. Ch. Khudadad”, which was on the same subject matter, was consolidated with the suit titled “Jamia Masjid Madni Vs. Muhammad Saeedullah, etc”. Vide order dated 29.01.2014, the said two suits were consolidated, and the following consolidated issues were framed:-

1. *Whether the plaintiff is entitled to the decree of declaration, possession, recovery of mesne profits, cancellation of trust and madrassa and perpetual injunction as prayed for? OPP*
2. *Whether the plaintiff has no cause of action and locus standi to file the instant suit? OPD*
3. *Whether the defendant is entitled for the decree of permanent injunction as prayed for? OPD*
4. *Whether the suit is not maintainable and plaint is liable to be rejected U/O VII Rule 11 CPC? OPD*
5. *Whether the suit of the plaintiff is false, frivolous and is liable to be dismissed with special costs under section 35-A CPC? OPD*
6. *Relief”*

7. The record/pleadings regarding the suit titled “Muhammad Saeedullah Vs. Ch. Khuda Dad” have not been brought on record by the petitioner.

8. Vide consolidated judgment and decree dated 20.01.2015, the learned Civil Court dismissed the suit titled “Muhammad Saeedullah Vs. Ch. Khudadad”, and decreed the suit titled “Jamia Masjid Madni Vs. Muhammad Saeedullah, etc” to the extent of a declaration to the effect that the petitioner/defendant No.1 had no legal right to retain the office of the *Imam*, Jamia Masjid Madni. Furthermore, the learned Civil Court restrained the petitioner/defendant No.1 from occupying the office of the *Imam* and the premises, and from constructing rooms. The rest of the respondents’ claims were declined. None of the defendants in the suit titled “Jamia Masjid Madni Vs. Muhammad Saeedullah, etc” challenged the said judgment and decree dated 20.01.2015, therefore, the same has attained finality.

9. On 18.09.2015, the respondent/decree holder instituted proceedings for the execution of the said judgment and decree

dated 20.01.2015. The relief sought from the learned Executing Court was to have the residence of the *Masjid* vacated by the petitioner, and to restrain the petitioner from being *Imam* of the Masjid.

10. The petitioner filed an objection petition to the execution proceedings instituted by the decree holder. The sole ground taken in the objection petition was that the learned Civil Court had not granted the relief of possession in the judgment and decree dated 20.01.2015. Therefore, it was pleaded that the Executing Court would be going beyond the scope of the judgment and decree dated 20.01.2015 if the petitioner was dispossessed from the residential premises with the Masjid.

11. Vide order dated 29.04.2016, the learned Executing Court dismissed the petitioner's objection petition, and issued warrants of possession. In the said order, it was held that the respondent, in its civil suit, had also prayed for the relief of possession through ejectment; and that the learned Civil Court had not just granted a declaration in the respondent's favour but had also restrained the petitioner "*from occupying the said office or premises or the construction of rooms*". Furthermore, the learned Executing Court held that the relief of possession had been granted to the respondent in the said judgment and decree dated 20.01.2015, because the petitioner/judgment debtor had been restrained from occupying the office of the *Imam* or the residential premises.

12. It appears that the petitioner/judgment debtor filed an application for the cancellation of warrants of possession on the ground that the judgment debtor had already complied with the judgment and decree dated 20.01.2015. Since the said position taken by the petitioner/judgment debtor was disputed by the respondent/decreed holder, who contended that the premises/residence with the Masjid was still in the petitioner's possession, the learned Executing Court again issued fresh warrants of possession with the direction to the bailiff of the Court to hand over possession of the office as well as the residence with the Masjid to the respondent/decreed holder.

13. The said orders dated 29.04.2016, and 13.05.2016 were impugned by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. The position taken by the petitioner/judgment debtor before the learned Executing Court was simply reiterated in the said appeal. The petitioner's stance was that he had resigned from the office of the *Imam* of the Masjid, and that he was no longer the *Khateeb* of the Masjid, and that he had handed over physical possession of the office of the *Imam* to the Masjid Committee. Vide order dated 18.05.2016, the learned Appellate Court dismissed the petitioner's appeal on merits as well as maintainability. The Appellate Court held that the orders impugned in the appeal were not appealable. It was explained that only the orders specified in Section 104 read with Order 43, Rule 1 CPC were appealable.

14. Learned counsel for the petitioner made submissions in reiteration of the position taken by the petitioner before the Executing Court as well as the Appellate Court. The said position has been set out in sufficient detail hereinabove. On the other hand, learned counsel for the respondent drew the attention of the Court to the relief sought by the respondent in the civil suit. It was explained that the relief of possession, along with other reliefs had been specifically prayed for in the said civil suit. It was submitted that as per the judgment and decree dated 20.01.2015, passed by the learned Civil Court, the petitioner was restrained "*from occupying the said office or premises or the construction of rooms*". Therefore, he submitted that the learned Executing Court was correct in issuing warrants of possession against the petitioner. He further submitted that the petitioner's appeal before the learned Appellate Court was correctly dismissed in limine.

15. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the civil revision petition have been set out in sufficient detail in paragraphs 02 to 13 above, and need not be recapitulated.

16. On one of the dates of hearing (i.e. 05.10.2016) Mr. Muhammad Tariq Asad, Advocate Supreme Court of Pakistan,

was present in the Court for some other case. He was requested by the Court to play a role in resolving this dispute. He was also requested to visit the site in order to explore the possibility of a settlement. Mr. Muhammad Tariq Asad, ASC did try to resolve the dispute in an amicable manner, but the contesting parties could not find any common ground. Therefore, it was decided to dispose of this matter on merits.

17. Now, vide orders dated 29.04.2016, and 13.05.2016, the learned Executing Court dismissed the petitioner's objection petition to the respondent's execution petition. The learned Appellate Court after upholding the impugned orders dated 29.04.2016 and 13.05.2016 on merits, went on to hold that an appeal against the said orders was not maintainable.

18. In the grounds of the civil revision petition, there is no averment to the effect that the said orders passed by the learned Executing Court were indeed appealable. Nonetheless, I propose to decide whether the learned Appellate Court was correct in holding that an order of the Executing Court dismissing the judgment debtor's objections to an execution petition, was not appealable. Section 47(1) C.P.C. provides that all questions arising between the parties to the suit in which the decree was passed, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. By rejecting the petitioner's objections to the execution petition, and issuing warrants of possession, the learned Executing Court passed orders with respect to a question relating to the execution of the decree. These order possess all the essential elements of finality. Section 104 (1)(ff) C.P.C. makes an order passed under Section 47 C.P.C. appealable. Therefore, with due respect, it is my view that the appellate order to the extent of holding that the Executing Court's orders dated 29.04.2016, and 13.05.2016 (rejecting the petitioner's objections to the execution petition, and issuing warrants of possession), are not appealable, is not sustainable. Reference in this regard may be made to the following case law:-

- (i) In the case of Muhammad Ismail Vs. Muhammad Younis (2003 CLC 1252), an application under Order 21 Rule 32 C.P.C. alleging disobedience for a decree for an injunction, was filed. The learned Trial Court found that the decree had been disobeyed and proceeded to pass an order. An appeal was filed against the said order. The Appellate Court came to the conclusion that an appeal against an order made under Order 21 Rule 32 CPC was not competent. The Hon'ble Lahore High Court held that the order of the learned Civil Court passed on an application under Order 21 Rule 32 CPC for the execution of the decree for an injunction, was an order passed in relation to the execution of a decree. Furthermore, it was held that such an order was covered by section 47 CPC being a *lis* between the parties to the suit in which the decree was passed. Consequently, the order was held to be appealable under Section 104(1)(ff) CPC. The revision petition against the said Appellate order was allowed by the Hon'ble High Court.
- (ii) In the case of Lala Zar Textile Mills Vs. Muhammad Yasar Hayat (2014 MLD 820), the judgment debtor's objections to the execution of that judgment and decree were spurned by the learned executing Court. it has been held as follows:-

“10. The objection petition was filed and disposed of within the meaning of section 47 of C.P.C., which empowers the executing court to determine all the questions arising between the parties to the suit in which the decree was passed and also the questions relating to the execution, discharge or satisfaction of the decree and no separate suit in this regard is permissible. Even before the promulgation of the Law Reforms Ordinance, 1972, in view of section 2(2) of C.P.C., the order passed under section 47 of C.P.C. had always considered to be a decree and, thus, was appealable and this view has been confirmed by a Division Bench of Quetta High Court in Messrs Saadullah Khan and Brothers and another v. The Province of West Pakistan and another (PLD 1971 Quetta 101), and after promulgation of the Law Reforms Ordinance, 1972, any order passed by the executing court under section 47 of C.P.C., would still be considered as an appealable order within the meaning of provisions of section 104 (1) (ff) of C.P.C. In aforesaid findings, I am fortified by the judgments rendered in Muhammad Ismail v. Raja Muhammad Younis (2003 CLC 1252) and

Muhammad Afzal and 4 others v. Bashir Ahmed and 4 others (2007 YLR 2821)."

19. Now, as mentioned above the learned Appellate Court after upholding the impugned orders dated 29.04.2016 and 13.05.2016 on merits, went on to hold that an appeal against the said orders was not maintainable. So the learned Appellate Court decided the petitioner's appeal on merits as well. Should the appellate order dated 18.05.2016 be set aside simply because in addition to deciding the appeal on merits, the learned Appellate Court held that the appeal was not maintainable. I would think not. Applying the doctrine of severability, the part of the appellate Court's order deciding the appeal on merits can be segregated from the part of the order where the appeal has been held to be not maintainable. By doing so, I now proceed to examine the appellate order to the extent of deciding the appeal on merits. The Appellate Court's order on the merits of the case was as follows:-

"The appellant through this appeal assailed two orders dated 29.04.2016 and 13.05.2016. Vide order dated 29.04.2016 the learned Executing Court has dismissed the objections filed by the appellant whereas vide order dated 13.05.2016 the learned Executing Court has issued fresh warrant of possession with the direction to the bailiff of the court to comply the decree. The order dated 13.05.2016 clearly speaks that the decree of court be complied in letter and spirit. The warrant of possession is further issued with direction to handover possession of office as well as residence of Mosque. Therefore, this contention of appellant has no force that the learned executing court is intended to dispossess him from Madrassa residence as there is no such direction contained in impugned order dated 13.05.2016."

20. It is a matter of record that in the suit instituted by the respondent/Jamia Masjid Madni relief of possession through ejectment had also been prayed for. Vide judgment and decree dated 20.01.2015, the respondent's suit was decreed, and the respondent was held entitled to a declaration to the effect that the petitioner had no legal right to retain the office of the Imam. Furthermore, the petitioner was *"restrained from occupying the said office or premises or the construction of rooms"*. It is an admitted position that the Masjid's residence is to provide housing facility for the *Imam*. Since the petitioner was no longer the *Imam* of Jamia Masjid Madni, he had no right to occupy the

said residence. In the proceedings before the Appellate Court, the petitioner had taken the position that he had resigned from the office of *Imam* of Jamia Masjid Madni.

21. In these circumstances, I do not find any jurisdictional infirmity or error in the orders dated 29.04.2016, 13.05.2016 and 18.05.2016, passed by the learned Executing Court as well as the decision of the Appellate Court on the merits of the case.

22. By reason of the aforementioned, this revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Sultan*

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