

Form No: HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 1179 of 2021

Asim Irfan Ahmad.

Versus

Learned Additional District and Sessions Judge, Islamabad, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	30.12.2021	M/s Shahzad Kiyani, Tahir Afzal Abbasi and Raja Nisar ul Haq Abbasi, Advocates for the petitioner. Ms. Saira Khalid Rajpoot, Advocate for respondents No.3 and 4.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the legality and validity of order dated 21.10.2019, passed by the learned Executing Court as well as judgment dated 27.11.2019, passed by the learned Additional District Judge, West-Islamabad, whereby salary of the petitioner / judgment debtor has been attached.

02. Succinctly stated, facts of the matter are that respondents No.3 and 4 filed a suit for

recovery of maintenance allowance which was decreed against the petitioner vide judgment/decreed dated 17.07.2018; being aggrieved the petitioner filed an appeal which was dismissed; writ petition for setting aside of the impugned judgment and decree was filed which was dismissed by this Court vide order dated 21.01.2019; Civil Petition filed in the Hon'ble Supreme Court of Pakistan was also dismissed vide order dated 20.06.2019.

03. Contesting respondents filed a petition for execution of decree and during the proceedings learned Executing Court attached the salary of the petitioner / judgment debtor vide order dated 21.10.2019, with a direction to the Chairman Pakistan Atomic Energy Commission (PAEC) to pay the same through a cross cheque to the decree holder; the petitioner / judgment debtor filed an appeal against order dated 21.10.2019, which was also dismissed vide judgment dated 27.11.2019, by the Court of learned Additional District Judge (East), Islamabad, hence the instant writ petition.

04. Learned counsel for the petitioner *inter alia* states that as per Section 60 of Code of Civil Procedure, 1908 whole salary of judgment debtor cannot be attached; the petitioner has no other source of income; while passing the impugned order/judgment, both the learned courts below have not considered the dictums laid down by Hon'ble Superior Courts and have passed the same in a hasty manner; both the decisions of learned Courts below are against the law and facts and hence are liable to be set aside.

05. Learned counsel for respondents No.3 & 4 controverted the arguments made by learned counsel for the petitioner and stated that both the impugned order/judgment have been passed in accordance with law; after passing the decree, the petitioner / judgment debtor has not paid single penny till the attachment of his salary; instant writ petition is barred by the principle of laches; petition has been filed by concealment of facts as the petitioner has not mentioned the earlier decisions passed by this Court and Hon'ble

Supreme Court of Pakistan and has prayed for dismissal of the instant writ petition.

06. Arguments advanced by learned Counsel for the parties have been heard and record has been perused with their able assistance.

07. Judgment and decree was passed by learned Senior Civil Judge / Guardian Judge / Family Court-East, Islamabad on 17.07.2018, whereby following relief was granted to respondents No.3 & 4:

“Relief:

In light of issue wise finding the plaintiff No.1 is held entitled for recovery of maintenance allowance for herself @ Rs. 20,000/- per month from April 2009 till the period of iddat with 15% annual increase. The plaintiff No.2 is also entitled for the maintenance of Rs.20,000/- per month since birth till the age of 18 years subject to 15% annual increase. The defendant shall made arrangement for admission of the minor in best school in the town on panel of PAEC, otherwise, he shall be bound to pay the education expenses of the minor in addition to maintenance as decreed

above. Defendant shall also be liable to pay education expenses of plaintiff No.2 as incurred so far by the plaintiff No.1 including admission fee, monthly fee and expenses of stationary only. The defendant shall also pay pre and post birth expenses as Rs.67,000/- and Rs.80,800/- respectively. The plaintiff will be entitled to recover 09 tola gold from the defendant or value at the existing market rate. The defendant shall also pay Rs. 15,000/- to the plaintiff as remaining dower amount. No order as to costs. File be consigned to record room after due completion.”

08. As the judgment and decree dated 17.07.2018, passed by learned Judge Family Court was upheld by the Hon’ble Supreme Court of Pakistan and has attained finality; the decree holders / respondents No.3 & 4 filed execution petition but the petitioner neither paid the decretal amount to his minor daughter / respondent No.4 nor to his ex-wife / respondent No.3.

09. Many opportunities were provided to the petitioner for the payment of decretal amount but he delayed the matter on one pretext or

another; learned executing Court vide order dated 05.03.2020, issued perpetual non-bailable warrants of arrest of the petitioner / judgment debtor through SHO, Member (Administration) of Pakistan Atomic Energy Commission (PAEC) was directed to assist the police in arrest of the petitioner / judgment debtor, Chief Manager of the bank was also directed to freeze all the bank accounts maintained by the petitioner / judgment debtor; mobile sims of the petitioner were blocked but surprisingly, the petitioner / judgment debtor has not challenged the order dated 05.03.2020, so, his perpetual non-bailable warrants of arrest are still intact and order regarding freezing of all bank accounts and blocking of mobile sims is also in field.

10. When confronted, learned counsel for the petitioner admitted that with effect from passing judgment dated 17.7.2018, till the passing of impugned order dated 21.10.2019 for attaching salary of the petitioner / judgment debtor, the petitioner has not paid

single penny to respondents No.3 &4 / minor daughter and ex-wife.

11. Important legal question involved in this case is that as to whether the executing Court could pass an order for attachment of the salary of the judgment debtor in view of the provisions contained in section 13(3) of the Family Courts Act, 1964. It would be advantageous to reproduce the relevant provision of section 13(3) of the Act *ibid* herein below:-

"13. Enforcement of decrees. (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."

12. Although mode of execution has explicitly been provided in the afore-cited provision and the applicability of Civil Procedure Code has been excluded in terms of section-17 of the Act *ibid* however, by now it has become an established law that Family

Court might follow the procedure as contained in the Civil Procedure Code for execution of a decree. Reliance is placed on "Muhammad Ramzan v. Ali Hamza and others" (PLD 2016 Lahore 622).

13. Specific provision for the execution of the decree does not exclude powers of the executing Court to adopt any other procedure permissible in law. Much emphasis has been laid down by learned counsel for the petitioner that sub-clause (3) of section 13 of the Act *ibid*, only authorizes the executing Court to satisfy the decree through arrears of land revenue.

14. Plain reading of the afore-stated provision makes it explicitly clear that the process of recovery through arrears of land revenue would come in operation only when the trial Court while passing the decree had expressly directed to do so, whereas, in this particular case no such direction exists. Therefore, it is open for the executing Court to adopt any lawful procedure for satisfaction of

the decree. Reliance is placed on a case titled as "**Muhammad Amin v. Judge, Family Court, Sahiwal and 3 others**" (2015 YLR 316) wherein it has been held 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."

15. It has been categorically laid down by the Hon'ble Apex Court that the Family Court is a quasi-judicial forum which could draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial. Reliance is placed on a case titled as "**Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore and others**" (2014 SCMR 1365), wherein it is held that:-

"Family Court empowered to strike off defendant's defence and pass ex parte decree---Scope---Family Court was a quasi-judicial forum, which could draw and follow its own procedure, provided such procedure was not against the principles of fair hearing and trial---Defendant of a family suit, who was duly served, but did not file his written statement within the time allowed to him by the court, the Family Court shall have the inherent power to proceed ex parte against him, to strike off the defence and to pass an ex parte decree in line with the principles enunciated by the Civil Procedure Code, 1908."

16. Hon'ble Supreme Court of Pakistan while maintaining the order of attachment and auction of property of judgment debtor passed by the executing Court in a family matter, has held that:

"As to the other argument of the learned counsel nothing was brought on the record to show any non-compliance of the provisions of Order XXI, rule 54, C.P.C. or of the High Court Rules and Orders. The learned counsel failed to point out with any particularity as to how the attachment of the property by the Family Court was vitiated. In the absence of any proof to the contrary we have to presume that all legal formalities had been duly fulfilled by the Family Court in the process of attachment of the property. Reference may usefully be made to the case of 'Muhammad Akbar Khan v. Mian Musharaf Shah and another (AIR 1934 Privy

Council 217). In the case of Ghulam Abbas v. Mst. Zohra Bibi and another (PLD 1972 SC 337), this Court had held that the provisions of Order XXI, rule 54, C.P.C. were not mandatory and substantial compliance thereof was enough. Even otherwise, the strict compliance with such provisions of the C.P.C. may not be insisted upon as its application has been excluded by the provisions of section 17 of the Family Courts Act, 1964 (Act NO.XXXV of 1964). Moreover, the Special provisions of section 13 of the said Act provide for the execution of a decree passed by, a Family Court. Similar view was taken in the case of Syed Muhammad v. Mst. Zeenat Bibi (PLD 2001 SC 128)."

17. Learned counsel for respondents No.3 &4 has filed comments, whereby she has mentioned and also attached certified copies of the judgment dated 04.12.2018, whereby, appeal filed by the petitioner against the judgment and decree dated 17.7.2018, was dismissed by the Court of learned Additional District Judge, Islamabad; copy of order dated 21.01.2019 passed in a writ petition No. 213 of 2019, whereby writ petition filed by the petitioner against the judgments and decrees passed by learned Judge Family Court and learned Additional District Judge was dismissed and copy of order dated 20.06.2019, passed by Hon'ble Supreme Court of Pakistan in C.P No. 858/2019 filed against the order dated

21.01.2019 passed by this Court was also dismissed.

18. The petitioner has not mentioned the facts of dismissal of appeal against the judgment and decree dated 17.7.2018 by the learned Additional District Judge, this Court and Hon'ble Supreme Court of Pakistan.

19. Order was also passed on 27.3.2019, by Hon'ble Supreme Court of Pakistan in C.P No. 858/2019, whereby, the petitioner was directed to deposit the accumulated maintenance amount of child at the rate of Rs.20,000/- per month with annual increase of 10%, less any amount already paid, in the executing Court. Learned counsel sought time for one month for compliance of the order but during the course of arguments, learned counsel for the petitioner has admitted that said order was not complied with. It is also established that the petitioner has violated the order dated 27.3.2019, passed by Hon'ble Supreme Court of Pakistan.

20. It has been established that the petitioner has concealed the material facts by

not mentioning the orders passed by this Court and Hon'ble Supreme Court of Pakistan in earlier round of litigation. It is established law that a person who seeks equity must approach the Court with clean hands.

21. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "**Shafqatullah and others Vs. District and Sessions Judge, Nowshera, N.W.F.P and 4 others**" (2001 SCMR 274), that:-

"It would also appear from the record that the petitioners did not approach the High Court with clean hands entitling them to the discretionary, equitable relief under the Constitutional jurisdiction".

Reliance is also placed on a case reported as **2000 CLC 623 [Lahore]**.

22. Impugned order was passed by the learned Judge Family Court on 21.10.2019 and appeal was dismissed by learned Appellate Court on 27.11.2019, but the instant writ petition has been filed on 22.03.2021, i.e. after the delay of more than one year and three months, hence it is not maintainable on the principle of laches.

23. In a case titled as **"Ahmed and 25 others Vs. Ghama and 5 others" (2005 SCMR 119)**, it is held by the Hon'ble Supreme Court of Pakistan that:

"There is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition".

It is further held that:

"We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumbers after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case".

Reliance is placed on the cases reported as **2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720, PLD 2016 SC 514 and 2021 PLC(C.S) 951.**

24. There are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent finding of the courts below, scope of the constitutional petition becomes very limited. Reliance is placed on cases reported as **2008 YLR 2309 & PLD 2008 Karachi 2005.**

25. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance is placed on cases reported as **2020 SCMR 2155, 2020 SCMR 260, 2019 SCMR 919, PLD 2018 SC 28 & PLD 2007 SC 45.**

26. Learned counsel for the petitioner has failed to point out as to how the impugned order/judgment passed by the learned Judge Family Court and learned Additional District Judge were the consequence of an error of law

or without jurisdiction or in excess of jurisdiction, hence both the impugned orders do not require any interference by this Court.

27. In view of above, the instant writ petition is not maintainable and the same is **dismissed being meritless.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh

Approved for Reporting