

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3144/2020

Mst. Yasmin Akhter & 02 others.

Vs.

Learned Additional District & Sessions Judge (East), Islamabad &
another.

PETITIONERS BY: Ch. Mohammad Aslam, Advocate.

RESPONDENTS BY: Proceeded against ex-parte

DATE OF DECISION: 13.12.2021.

=====

BABAR SATTAR, J.- The petitioners have impugned judgment dated 09.09.2020, pursuant to which the appeal filed by respondent No.2 against orders of the learned executing Court dated 13.02.2020 and 08.08.2020, pursuant to which property of respondent No.2 had been attached in execution proceedings, was accepted.

2. This Court had issued notice, but nobody appeared on behalf of respondent No.2. Consequently after issuance of proclamation, respondent No.2 will be proceeded against ex-parte.

3. The learned counsel for the petitioners submitted that pursuant to orders dated 13.02.2020 and 08.08.2020, respectively, the property of respondent No.2 was attached and ordered to be auctioned in order to execute the decree against the son of respondent No.2 i.e. Muhammad Riaz dated 29.09.2014. He submitted that the auction was suspended pursuant to order dated 22.08.2020 on the date on which the auction had been conducted and subsequently the impugned

judgment was passed. He submitted that pursuant to law laid down by the learned High Court in **Sultan Ahmad vs. Judge Family Court and 05 others (PLD 2012 Lahore 148)** and **Mst. Haleema Bibi and 04 others vs. Additional District Judge, Layyah and 02 others (2018 CLC Note 12)**, in the event that a decree for maintenance for up keep of minors could not be executed against the father, such minors could not be left merciless and the decree could be executed against paternal grandfather of the minors. He contended that it was in reliance of these judgments that the learned execution Court had ordered the attachment and auction of property belonging to respondent No.2, which order has been set-aside through the impugned judgment.

4. The learned Additional District Judge in the impugned judgment relied on a judgment rendered by the learned Lahore High Court **Muhammad Ramzan vs. Ali Hamza and others (PLD 2016 Lahore 622)**, wherein it was held that liability could be affixed against a grandfather only in the event that the father was poor and infirm, and the mother was also unable to maintain her children and further that the grandfather was a person of means and could maintain the grandchildren. In the impugned judgment it has also been noted that the learned execution Court failed to take into account the fact that an application for attachment of the property of the father had already been filed and dismissed by the learned executing Court by order dated 05.11.2019, which was upheld in appeal by the learned Additional District Court and that the learned executing Court had erred while passing orders dated 13.02.2020 and

08.08.2020 by not taking into account the dismissal of the appeal of the petitioners with regard to attachment of the property of respondent No.2. The learned Additional District Court also distinguished the law laid down by the learned Lahore High Court in **Mst. Haleema Bibi and 04 others**.

5. The facts of the case are that the judgment and decree dated 29.09.2014 was passed against Muhammad Riaz in suit for recovery of maintenance, delivery expenses and dower filed by petitioner No.1. Respondent No.2, who is the father of Muhammad Riaz, was not a party in the suit, there was no claim made by petitioner No.1 against respondent No.2, and no judgment or decree were rendered against respondent No.2. It was only after the judgment and decree against Muhammad Riaz could not be executed, despite Muhammad Riaz having been arrested under the order of the learned executing Court, that petitioner No.1 filed an application seeking the attachment of property of respondent No.2 to seek the execution of decree dated 29.09.2014.

6. A perusal of provisions of the Code of Civil Procedure, 1908 ("**CPC**") including, *inter alia*, Sections relating to execution of the decrees as well as Order XXI of CPC, reflect that there is no provision within the CPC that permits decree holder to seek execution of a decree except against the person against whom such decree has been passed. The only exception to this scheme is the case where execution is being sought against the legal representatives of a person against whom a decree has been passed. Such decree can then be executed to the extent of the

property of the judgment debtor that makes its way to his/her legal representatives. It is also settled law that the executing Court is vested with no authority to go beyond the scope of the judgment and decree that is being executed by it. Reliance is placed on **Ch. Ahmed Nawaz vs. Province of Punjab through Land Acquisition Collector, Jhelum and others (2015 SCMR 823)**, **Irshad Masih and others vs. Emmanuel Masih and others (2014 SCMR 1481)** and **Mst. Naseem Akhtar and 04 others vs. Shalimar General Insurance, Company Limited and 02 others (1994 SCMR 22)**.

7. With all due respect to the view expressed by the learned Lahore High Court in **Sultan Ahmad**, this Court is not inclined to follow such dicta. The jurisprudence on the question of maintenance makes room for obliging the grandfather of minors to support such minors in certain limited circumstances. But a pre-condition to the creation of such obligation, *inter alia*, is that it stands determined by a Court of competent jurisdiction that the father of the minors is either not alive or is otherwise infirm and incapable of maintaining the children. Merely because a decree for maintenance has not been executed against the father, the grandfather cannot be burdened with the responsibility of discharging his son's obligations just because the decree holder finds it more convenient to seek the execution of the decree against the grandfather. Suggestion to the contrary is not only against the jurisprudence on the question of maintenance, where, in a suit for maintenance, before creating a financial obligation against the person who is not the father of the minors, a Court has to satisfy itself that the person being

asked to maintain the minors is obliged under law to discharge such obligation. But such suggestion is also contrary to the fundamental principle of individual responsibility under the Constitution.

8. Article 5 of the Constitution creates an obligation for every citizen to be obedient to the Constitution and the law. And Article 4 creates a reciprocal obligation for the State to treat every citizen in accordance with the law. In the event that a citizen is burdened with the liability to discharge the obligation of another citizen as affixed by a Court of competent jurisdiction, such transfer of liability without due process of law would be in breach of article 10A as well as articles 9 and 23 of the Constitution. The Constitutional framework is rooted in the notion of individual responsibility as opposed to collective responsibility and under the concept of rule of law one adult citizen cannot be randomly held liable for the responsibilities and obligations of another adult citizen without due process or a fair trial, even when the two citizens are related by blood. Any rule to the contrary would fall foul of the principle of individual responsibility under the Constitution.

9. In view of the above, the learned counsel for the petitioners has failed to point out any infirmity in the impugned judgment dated 09.09.2020. The petition is therefore **dismissed**.

(BABAR SATTAR)
JUDGE