

# **JUDGMENT SHEET**

## **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

### **WRIT PETITION NO. 2425 OF 2020**

**MST. NAGHMANA FAROOQ, ETC.**  
**Vs.**  
**MUHAMMAD FAROOQ AZAM, ETC.**

**Petitioner by** : **Ms. Humaira Khadim, Advocate.**

**Respondents by** : **Ms. Mehraj Tareen, Advocate.**  
(For Respondent No.1)

**Date of hearing** : **10.12.2020.**

**LUBNA SALEEM PERVEZ, J.** Petitioner has invoked the constitutional jurisdiction of this Court by way of filing instant writ petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

*“It is most respectfully prayed that the instant Writ Petition may very graciously be accepted by setting-aside the impugned order dated 12-02-2020 passed by respondent No.3 in execution proceedings and it is further prayed that an order may kindly be passed by directing the respondent No.2 to deposit an amount of Rs. 92,00,000/- as per statement recorded vide dated 28.01.2020 before respondent No.3 by way to adopt all modes of executing as per provision of law.*

*Any other relief which this Honorable Court deems fit and proper may also be awarded to the petitioner”.*

2. Necessary facts for disposal of instant petition are that the petitioners filed a suit for maintenance against Respondent No.1, which was decreed by the learned Judge Family Court, Chakwal, vide judgment & decree dated 25.06.2011 and maintenance was awarded to petitioners No. 2 to 5 @ Rs. 4,000/- per month per child w.e.f 28.01.2007 with annual increase of 15%. Said judgment and decree dated 25.06.2011, was assailed before the learned Additional District Judge, Chakwal, but the same was upheld vide judgment and decree dated 05.01.2012. The judgment passed by the learned

Additional District Judge was further challenged before the Hon'ble Lahore High Court through W.P. No. 969/2012 and the Hon'ble High Court upheld the judgment but with slight modification in annual increase by reducing it from 15% to 10% per annum, vide judgment dated 18.10.2016. Thereafter, petitioners filed execution petition which was transferred from District Chakwal to Islamabad, where the Respondent No.1 opted not to appear before the learned Executing Court and, therefore, after issuance of notices/summons, the court issued bailable and then non bailable warrant of his arrest on 20.12.2016 & 07.02.2017, respectively. He was finally arrested and sent to the Civil Prison vide order dated 09.12.2017, which order was assailed by Respondent No.1/Judgment Debtor before the learned Executing Court, Appellate Court and finally before this High Court through W.P.No. 2342/2018 for his release from civil prison. His request was declined, however, this Court vide judgment dated 19.07.2018, directed the Executing Court to summon the petitioner from Civil prison in person and ask him to deposit sufficient surety for his conditional release. In compliance, Respondent No.1 was called by the learned executing Court from the civil prison, but he still failed to do the needful. On 13.03.2019, petitioners' counsel recorded her statement that decree holder did not know about properties of Respondent No.1, to be attached for satisfaction of judgment and decree dated 25.06.2011, hence, the file of execution proceedings was consigned to the record room. Later, on 25.01.2020 petitioner moved an application for appropriate order to execute the judgment and decree dated 25.06.2011 and on the same day Respondent No.2 appeared and recorded his statement before the Court whereby he admitted that he has to return an amount to Rs. 92,00,000/- on account of business transactions, to the judgment debtor/Respondent No.1 and is ready to deposit the same in the Court on his behalf. The learned Executing Court in view of his statement vide order dated 12.02.2020 ordered for attachment of moveable assets of Respondent No.2 amounting to Rs. 92,00,000/-, whereas, according to

petitioner, she does not know about the assets of the Respondent No.2, and has filed instant petition for setting aside order dated 12.02.2020.

3. Learned counsel for the petitioners, inter-alia, submitted that the impugned order has been passed without application of judicial mind, as such, is not sustainable in the eye of law; that the impugned order has been passed without hearing the petitioner which is against the settled principle of *audi alteram partem*. Learned counsel lastly contended that the learned Executing Court instead of passing order for attachment of moveable assets of creditor of the Judgment Debtor it should have directed Respondent No.2 to deposit the amount of Rs. 92,00,000/- in the Court till disposal of petitioners' application and requested to modify the impugned order, accordingly.

4. On the other hand, learned counsel for Respondent No.1 while supporting the impugned order submitted that same is just and lawful which has been passed after proper application of judicial mind keeping in view the facts and circumstances of the case as well as relevant law. She prayed for dismissal of instant writ petition.

5. Arguments heard, record perused.

6. Perusal of the order sheet attached with execution petition shows that during proceedings on the petitioners' application for appropriate orders for execution of decree, the creditor/Respondent No.2 of the judgment debtor/Respondent No.1 appeared in person and voluntarily got recorded his statement on 25.01.2020, admitting therein that he had to pay an amount of Rs. 92,00,000/- to Respondent No.1 and gave consent to deposit the same in the court. Thereafter, on 12.02.2020, in the light of the statement of the creditor of the judgment debtor earlier recorded, order for attachment of moveable property amounting to Rs. 92,00,000/- till further orders, was passed. Now, the petitioners seek modification in the said order to the extent

that instead of attachment of moveable assets of the creditor, he may be ordered for deposit of amount of Rs. 92,00,000/- in the court.

7. It is apparent from the order sheets of the learned Executing Court that the Creditor of the judgment debtor has voluntarily recorded his statement before the Court regarding deposit of an amount of Rs. 92,00,000.0 which he has to pay to the judgment debtor, therefore, the petitioners' prayer regarding issuance of directions to him in this regard seems justified.

8. In view of background and litigation history of the case, which clearly reveals that due to apathetic attitude of Respondent No.1 towards his real children (Petitioner Nos. 2 to 5), the judgment and decree dated 25.06.2011 has been executed till date, hence, the titled petition is allowed and order dated 12.02.2020, passed by the learned Judge Family Court is modified to the extent that the creditor / Respondent No.2 is directed to deposit the amount of Rs. 92,00,000/- before the learned Executing Court, at the earliest, for the satisfaction of the decree.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**Announced in the open Court on \_\_\_\_\_.**

**JUDGE**

M. JUNAIDUSMAN