

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.254 of 2016
Muhammad Mohsin Fawad

Versus

Hina Tayyaba Khalil and others

Date of Hearing: 17.01.2018

Petitioner by: Barrister Farooq Iqbal Khan,

Respondents by: Mr. Muhammad Afzal Ansari, and Ch.
Sheraz Sohail, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Muhammad Mohsin Fawad, impugns the judgment dated 18.04.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 02.03.2016, passed by the learned executing Court, was dismissed. Vide the said order dated 02.03.2016, the learned executing Court turned down the petitioner's objections to the execution petition dated 01.04.2015, instituted by the respondents. Through the said execution petition, the respondents had sought the execution of the judgment and decree dated 17.01.2013, passed by the learned Judge, Family Court, Lahore, whereby the respondents' suit for recovery of maintenance allowance against Dr. Ahmad Shahzad Qureshi ("Dr. Qureshi"), (who is not a party to this petition), was partially decreed to the extent of Rs.60,000/- per month with an annual increase by 10% with effect from the date of the institution of the suit i.e. 27.02.2002. The said judgment and decree dated 17.01.2013 was subjected to an appeal. Vide judgment and decree dated 03.10.2014, the learned appellate Court modified the decree by enhancing the maintenance allowance to Rs.65,000/- per month from the date of the institution of the suit.

2. The record shows that Hina Tayyaba Khalil (respondent No.1) and Dr. Qureshi were married on 17.07.1998. Dr. Qureshi works as a Medical Specialist Consultant in U.S.A. On 02.04.2000, the couple were blessed with a son, Imran Ahmad Qureshi (respondent No.2).

Respondent No.2 was born in U.S.A. Thereafter, the relations between Dr. Qureshi and respondent No.1 deteriorated. On 11.08.2000, respondent No.1 left Dr. Qureshi and came to Pakistan along with respondent No.2.

3. On 27.02.2002, the respondents instituted a suit for recovery of maintenance allowance against Dr. Qureshi before the learned Judge, Family Court, Lahore. Since Dr. Qureshi was in U.S.A., he had appointed his brother, Muhammad Mohsin Fawad (petitioner) as his special attorney to *inter-alia* represent him in the Courts in Pakistan and do all things necessary and incidental to the litigation in Pakistan. Vide order dated 27.02.2004, the said suit was withdrawn to the extent of maintenance for respondent No.1. Vide judgment and decree dated 31.07.2010, the said suit was decreed in favour of respondent No.2 to the extent of Rs.60,000/- per month with an annual increase of 10% from the date of the institution of the suit till respondent No.2 attains the age of majority or change in his custody. Dr. Qureshi as well as the respondents filed appeals against the said judgment and decree. During the pendency of the appeals, the petitioner executed a surety bond dated 11.10.2010, which is reproduced herein below:-

“Know all men BY THESE PRESENT that I, Dr. Ahmad Shahzad, son of Ahmad Saeed Qureshi being judgment-debtor. Through Mohsin Fawad, as attorney, Son of Ahmad Saeed Qureshi, Resident of House No.138, Street No.57, Sector E-11/3, Islamabad (judgment-debtor) and Mr. Muhammad Mohsin Fawad, Son of Ahmad Saeed Qureshi, Resident of House No.D-6, Street No.E-8-14, Islamabad (surety) do hereby and hereunder firmly bind ourselves jointly and severally to Mr. Shahid Rafique, Addl. District Judge, Lahore or his successor-in-office for the time being in the sum of Rs.81,60,000/- of lawful good money to be truly and faithfully paid.

WHEREAS a decree for maintenance was made on the 31st day of July, 2010 against the said Dr. Ahmad Shahazad whereas the said Ahmad Shahzad has preferred an appeal through his attorney against the said decree which is now pending before Mr. Sadiq Masood, Addl. District Judge, Lahore.

AND WHEREAS an order was passed by the Court of Appeal upon the appellant for the furnishing of surety bond to the satisfaction of the court equal to the decretal amount and whereas the said appellant has offered the said Mr. Muhammad Mohsin Fawad, Son of Ahmad Saeed Qureshi, Resident of House No.D-6, Street No.E-8-14, Islamabad as surety he having been approved by the court subject to his entering into a bond for Rs.80,80,000/- creating thereunder a

first charge on the under-mentioned property for the satisfaction of the said decree as may be confirmed or varied by the Court of Appeal.

IN WITNESSES WHEREOF, this deed of surety bond is written and signed at Lahore, this 11th day of October, 2010.”

(Emphasis added)

4. The said surety bond was submitted to the appellate Court. A copy of transfer letter with respect to Plot No.22, Street No.17-B, Block-F (measuring 500 sq. yards), Category-A, Naval Anchorage, Islamabad (“the Plot”), in the petitioner’s favour was attached with the surety bond. The petitioner’s statement on oath was recorded on the reverse of the surety bond. The said statement is reproduced herein below:-

بیان ازاں محمد محسن فواد قریشی ولد احمد سعید قریشی بعمر 46 سال پیشہ ریٹائر ملازم سکنہ مکان نمبر 8-D سٹریٹ نمبر 14، سیکٹر E-8 / سڈ لا مرآباد۔
برحلف۔

بیان کیا کہ میں اپیلانٹ احمد شہزاد قریشی کی طرف سے اپیلانٹ کی عدالت حضور کی طرف سے زرڈگری کے برابر مالیت کی شورٹی داخل کرانے کا حکم صادر ہوا تھا، لہذا میں شورٹی بانڈ زرڈگری مالیت 8080000/- روپے کا پیش کرتا ہوں جس پر میرے دستخط ہیں۔ میری جائیداد ایک کنال کی ہے جو کہ لف شورٹی بانڈ ہے۔ میں تاقیصلہ اپیلانٹ کے ایلی بانڈ کے ایلی جائیداد آگے کسی اور کو فروخت نہ کرونگا۔
سنکر درست تسلیم کیا۔

-sd-

Addl. Distt. & Sessions Judge
11-10-10

(Emphasis added)

5. On 11.10.2010, the learned appellate Court, passed the following order:-

“Surety is accepted subject to all objections by the other side. Surety shall also undertake that he shall not dispose of the property given in surety in any manner till the disposal of this appeal or decision of any objection by the other side, whichever is later. Record to be summoned from the Trial Court.”

(Emphasis added)

6. Vide judgment dated 14.12.2010, the learned appellate Court set-aside the said judgment and decree dated 31.07.2010 and remanded the matter back to the learned trial Court with the direction to recast the issues, and to provide both the parties with the opportunity to produce *pro* and *contra* evidence and then to decide the case on merits.

7. After the framing of issues and the recording of evidence, the learned family Court, vide its judgment and decree dated

17.01.2013, decreed the suit by holding respondent No.2 entitled to recover maintenance allowance at the rate of Rs.60,000/- per month with 10% annual increase from the date of the institution of the suit till respondent No.2 reaches the age of majority or until Dr. Qureshi got his legal custody.

8. The said judgment and decree dated 17.01.2013 was challenged by Dr. Qureshi as well as respondent No.1 in appeals before the Court of the learned Additional District Judge, Lahore. Vide consolidated judgment and decree dated 03.10.2014, the learned appellate Court modified the judgment and decree of the learned Judge Family Court, by enhancing the maintenance allowance in favour of respondent No.2 to Rs.65,000/- per month from the date of the institution of the suit till respondent No.2 attains the age of majority or change in his custody. The record is silent as to whether the said consolidated judgment and decree dated 03.10.2014 was challenged any further.

9. Apparently, the respondents had filed an execution petition on 25.02.2013 (i.e. prior to the judgment and decree dated 03.10.2014 passed by the learned appellate Court) against Dr. Qureshi before the learned Judge Family Court, Lahore. It may be mentioned that an amended execution petition was filed by the respondents on 01.04.2015 for the execution of the judgment and decree dated 03.10.2014, passed by the learned appellate Court. On 16.03.2015, the respondents filed an application under Order XXI, Rule 12 of the Code of Civil Procedure, 1908 ("C.P.C.") for the attachment of the Plot. In the respondents' said application, the Plot was said to be in the name of the petitioner (who was Dr. Qureshi's attorney).

Order XXI, Rule 12 of the C.P.C. is reproduced herein below:-

"12. Application for attachment of movable property not in judgment-debtor's possession. -- Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same."

(Emphasis added)

10. The transfer of the execution petition to Islamabad was sought by the respondents for the satisfaction of the judgment and decree

in their favour. Order dated 16.03.2015, passed by the learned executing Court, Lahore, shows that the learned counsel for the decree holders/respondents appeared before the learned executing Court and recorded his statement to the effect that Dr. Qureshi/judgment debtor was a resident of House No.88-E, Allama Iqbal Road, Lahore, and was currently residing at House No.20, Street No.28, Block-F, Naval Anchorage, Islamabad, and that his movable and immovable properties are also situated in Islamabad. Vide certificate dated 16.03.2015, the learned Judge Family Court, Lahore, certified that the execution petition filed by the respondents before the said Court had not been satisfied; that the judgment debtor was residing at House No.20, Street No.28, Block-F, Naval Anchorage, Islamabad; and that his movable and immovable properties were situated at Islamabad. On 16.03.2015, the learned executing Court at Lahore transferred the execution proceedings to the Court of the learned Senior Civil Judge, Islamabad under Section 39 read with Order XXI, Rule 6 C.P.C. The said transferred order was not challenged by Dr. Qureshi and/or the petitioner.

11. Perusal of the order dated 27.10.2015, passed by the learned executing Court at Islamabad shows that the learned counsel for Dr. Qureshi/judgment debtor wanted to file an objection petition to the execution proceedings. The learned executing Court in the said order made it clear that the objection petition will be entertained subject to the deposit of surety bond equivalent to the decretal amount in accordance with Order XXI, Rule 23-A C.P.C. Nevertheless, on 26.11.2015 an objection petition was filed on behalf of Dr. Qureshi/judgment debtor. Vide order dated 27.11.2015, the learned executing Court directed Dr. Qureshi/judgment debtor to furnish the surety bond before the next date of hearing (i.e., 09.12.2015). A surety bond was not furnished at any stage before the learned executing Court at Islamabad.

12. In his objection petition dated 26.11.2015, the petitioner pleaded that Dr. Qureshi/judgment debtor was not residing at Islamabad, but in U.S.A; that Dr. Qureshi did not own any property

(movable or immovable) in Islamabad; that the petitioner was residing at the address given by the respondents in the application under Order XXI, Rule 12 C.P.C; that the petitioner was not able to communicate with Dr. Qureshi for some time; that the petitioner was not a party to the suit instituted by the respondents; that no judgment or decree had been passed by any Court against the petitioner in his personal capacity; that the respondents had mentioned the petitioner's personal property in the application under Order XXI, Rule 12 C.P.C; that the petitioner's personal property could neither be attached, nor could the decretal amount be recovered from the petitioner's personal property; that even though the petitioner was Dr. Qureshi's special attorney, he could not be made personally liable for the liability of Dr. Qureshi/judgment debtor; that since the petitioner was not a judgment debtor, no proceedings could be initiated against him; and that the learned executing Court at Lahore should not have transferred the decree and the execution petition to Islamabad.

13. The respondents contested the objection petition filed by the petitioner. The written arguments of the respondents are on the record. The position taken by the respondents was that although Dr. Qureshi resides in U.S.A, but he comes every year to Pakistan, and has also appeared before the Hon'ble Lahore High Court; and that in accordance with surety bond submitted by the petitioner before the learned appellate Court at Lahore, the decree could be satisfied against the petitioner's property.

14. Vide order dated 02.03.2016, the learned executing Court dismissed the petitioner's objection petition. The last paragraph of the said order is reproduced herein below:-

"In the light of the above discussion, the instant objection petition has no force. Since the petitioner is surety/special attorney of the judgment debtor, therefore a [coercive] method for the recovery of decretal amount can be adopted against him because a surety is presumed to be a party to a suit, resultantly objection petition is turned down. Now to come up for further proceedings on 11.03.2016."

15. The petitioner's appeal against the said order dated 02.03.2016 was dismissed by the learned appellate Court, vide

judgment dated 18.04.2016. The said concurrent orders/judgments have been challenged by the petitioner in the instant civil revision petition.

16. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, made submissions in reiteration of the petitioner's pleadings in his objection petition dated 26.11.2015. Reference to the said pleadings has been made earlier on. Learned counsel for the petitioner further submitted that the decree could only be executed against Dr. Qureshi (who was the judgment debtor); that the petitioner was not a judgment debtor; that the petitioner was not in any way liable for Dr. Qureshi's debts; that the petitioner's obligations under the surety bond dated 11.10.2010, which was furnished before the learned appellate Court at Lahore, came to an end when Dr. Qureshi's appeal was allowed on 14.12.2010; that thereafter, the petitioner did not furnish any surety bond before the learned executing Court at Lahore or Islamabad; that the respondents were at liberty to execute the judgment and decree dated 03.10.2014, passed by the learned appellate Court against Dr. Qureshi; that simply on account of being Dr. Qureshi's attorney, the said decree could not be satisfied out of the petitioner's personal assets; that the Plot had been purchased by the petitioner from Col. Muhammad Abdal Bala on 04.11.2009; that the said Plot was sold by the petitioner on 04.06.2013 to Mst. Gul-e-Yousaf, who has further sold it to Muhammad Ahmad Nadeem on 23.06.2016; and that a report regarding the sale of the said Plot had been submitted by the Record Keeper of the Housing Directorate, Naval Headquarter, Islamabad, before the learned executing Court. Learned counsel for the petitioner prayed for the civil revision petition to be allowed, and for the orders/judgments dated 02.03.2016 and 18.04.2016, passed by the learned Courts below to be set-aside.

17. On the other hand, learned counsel for the respondents submitted that ever since 2002, the petitioner had been representing his brother, Dr. Qureshi; that although the decree

dated 03.10.2014, passed by the learned appellate Court had been passed against Dr. Qureshi, a special power of attorney was executed on 07.08.2014 in U.S.A. by Dr. Qureshi in favour of the petitioner; that through the said special power of attorney, the petitioner was also authorized *“to deposit any money for the purposes of any proceedings”*; that on the basis of the said special power of attorney, the petitioner could be held personally liable to satisfy the said decree; that although Dr. Qureshi resides in U.S.A., he comes to Pakistan every year; that Dr. Qureshi has contracted a second marriage and has been blessed with three more children; that in escaping his obligations under the said decree, Dr. Qureshi has been actively facilitated by the petitioner; that the petitioner has regularly been appearing in the Court on behalf of Dr. Qureshi and has also adduced evidence on his behalf; that Dr. Qureshi also appeared before the Hon'ble Lahore High Court; and that the surety bond dated 11.10.2010 furnished by the petitioner before the learned appellate Court was enough to hold the petitioner personally liable for Dr. Qureshi's obligations under the said decree. Learned counsel for the respondents prayed for the civil revision petition to be dismissed. In making their submissions, learned counsel for the respondents placed reliance on the law laid down in the case of Muhammad Pervez Vs. Mst. Nabila Yasmeen (2004 SCMR 1352).

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

19. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs No.2 to 15 above, and need not be recapitulated.

20. It is not disputed that the Plot sought to be attached by the respondents was owned by the petitioner, and not by Dr. Qureshi/judgment debtor. In the application under Order XXI, Rule 12 C.P.C., it has been clearly mentioned that the said Plot is in the name of the petitioner. Under Order XXI, Rule 12 C.P.C., only movable property belonging to the judgment debtor can be

attached. Since Dr. Qureshi/judgment debtor was admittedly not the owner of the Plot, the learned executing Court could not attach the same. Furthermore, under Order XXI, Rule 12 C.P.C., only “*movable properties*” belonging to the judgment debtor can be attached. Therefore, in any event, the said Plot could not be attached under Order XXI, Rule 12 C.P.C. For the attachment of immovable properties in execution proceedings, the applicable provision is Order XXI, Rule 13 C.P.C., which is reproduced herein below:-

“13. Application for attachment of immovable property to contain certain particulars. -- Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot --

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.”

(Emphasis added)

21. Again under the said provision, only the immovable properties belonging to the “*judgment debtor*” could be attached. Since the Plot did not belong to Dr. Qureshi/judgment debtor, the same could not be attached under Order XXI, Rule 13 C.P.C. in execution of the judgment and decree, which had been passed against Dr. Qureshi/judgment debtor.

22. Since much stress was laid by the learned counsel for the respondents on the judgment in the case of Muhammad Pervez Vs. Mst. Nabila Yasmeen (*supra*); and the learned Courts below have relied on the said judgment in non-suiting the petitioner, a closer analysis of the said judgment is necessary. In the said case, respondent No.1 had filed a suit for maintenance for herself and her daughter against her husband (Fazal-e-Raziq) before the learned Judge, Family Court, Rawalpindi. As Fazal-e-Raziq was residing in England, his attorney, Muhammad Pervez, contested the suit on his behalf. After the said suit was decreed, respondent No.1 filed an execution petition. It is pertinent to note that Muhammad Pervez, in his capacity as Fazal-e-Raziq's attorney, made a statement before the learned Court that on the next date of hearing, Fazal-e-Raziq

would be produced by him before the Court. Muhammad Pervez's national identity card was retained by the Court, and he was directed to appear in person on the next date. Since neither Fazal-e-Raziq nor Muhammad Pervez appeared on the next date of hearing, the learned executing Court issued non-bailable warrants of arrest against Muhammad Pervez. Muhammad Pervez filed an application for the recall of the warrants of arrest on the ground that the power of attorney previously executed in his favour had been revoked by Fazal-e-Raziq. Muhammad Pervez also asserted that he was not the judgment debtor but was only pursuing the case on behalf of the judgment debtor; and that no liability could have been imposed on him in his capacity as Fazal-e-Raziq's attorney. The said application was dismissed by the learned executing Court. Muhammad Pervez's appeal also met the same fate. The Hon'ble Supreme Court dismissed Muhammad Pervez's petition by holding that it was well settled that once a decree was passed, the same could not be allowed to be set at naught through the judgment debtor's *malafide* act of revoking the power of attorney. Furthermore, it was held that the judgment debtor/Fazal-e-Raziq was bound to satisfy the decree either himself or through the attorney who had been throughout representing him in the suit.

23. It ought to be borne in mind that in the abovementioned case, non-bailable warrants of arrest had been issued against Muhammad Pervez because he had breached his commitment made in a statement before the Court *viz* that the judgment debtor would be produced before the learned executing Court on the next date of hearing. It was Muhammad Pervez's application for the recall of the warrants of arrest which was concurrently dismissed up to the Hon'ble Supreme Court. In the said judgment, it was not held that an attorney could be held personally liable to satisfy a decree passed against the principal. Therefore, it is my view that the case of Muhammad Pervez Vs. Mst. Nabila Yasmeen (*supra*) is distinguishable from the one at hand.

24. In the case at hand, no statement or undertaking has been given by the petitioner that the decree passed against Dr. Qureshi would be satisfied by the petitioner from his own personal property. The surety bond that had been furnished by the petitioner before the learned appellate Court at Lahore was only with respect to the decree dated 31.07.2010, passed by the learned Family Court at Lahore. The said decree was set-aside by the learned appellate Court, vide judgment dated 14.12.2010. With the setting aside of the said decree dated 31.07.2010, the petitioner's liability under the said surety bond came to an end. The said surety bond could not be stretched to bind the petitioner for any decree that could be passed against Dr. Qureshi in the post-remand proceedings. It is after the said judgment of the appellate Court that the petitioner claims to have sold the Plot.

25. The fact remains that the petitioner is not the judgment debtor. The petitioner was not a party to the suit instituted by the respondents. The petitioner happened to be pursuing the case on behalf of Dr. Qureshi before the Courts. It is not disputed that the Plot was owned by the petitioner and not by Dr. Qureshi. Therefore, the decree dated 03.10.2014 could not be satisfied by attaching or selling the property which had belonged to the petitioner. The said decree is to be executed against the judgment debtor i.e., Dr. Qureshi, and none other.

26. I have gone through the terms and conditions of the special power of attorney executed by Dr. Qureshi in favour of the petitioner, and do not find any clause which provides that the petitioner would be Dr. Qureshi's surety. The authority given by Dr. Qureshi to the petitioner *"to deposit any money for the purposes of any proceedings"*, only authorized the petitioner to deposit money for the purposes of any proceedings on behalf of Dr. Qureshi. The said clause in the special power of attorney by no means placed the petitioner under an obligation to pay the decretal amount from his own coffers. In holding so, I derive guidance from the law laid down in the following judgments:

- (i) In the case of Ibrar Meran Vs. Judge Family Court, District Gujrat (2011 YLR 206), a suit for recovery of maintenance was decreed by the learned Judge, Family Court. Thereafter, the plaintiff/decreed holder filed an execution petition. The learned executing Court ordered the arrest of the judgment debtor's brother/petitioner, who had pursued the judgment debtor's cases as his general attorney. Since according to the terms of the general power of attorney, the petitioner was a surety of the judgment debtor as well as his general attorney, the Hon'ble Lahore High Court held that the learned executing Court had rightly adopted the said coercive method for the recovery of the decretal amount. Furthermore, it was held that a surety was presumed to be a party to the suit.
- (ii) In the case of Muhammad Aslam Vs. Ayyan Ghazanffar (PLD 2012 Lahore 392), a suit for the recovery of maintenance allowance was decreed by the learned Judge, Family Court, Lahore. The decree was sought to be enforced against the special attorney of the judgment debtor. The learned executing Court placed liability regarding the decree on the general attorney and issued non-bailable warrants of arrest against him. Through the special power of attorney, the judgment debtor had given the attorney the power to defend the authority and power to defend the suit on his behalf and did not provide that in case of any decree against the judgment debtor, the same could be executed against the attorney. It was held by the Hon'ble Lahore High Court that the attorney, in his independent capacity, could not be booked for the satisfaction of the decree which was never passed against him. Furthermore, the order of the learned executing Court, whereby non-bailable warrants of arrest were issued against the special attorney, was set-aside. Paragraph-12 of the said report is reproduced herein below:-

“12. Whenever the question of interpretation of Power of Attorney is considered, it is now a consensus on the point that deed of power of attorney is strictly to be construed and a

power which has not been assigned in specific terms cannot be presumed to have been given by the principal to the attorney. The attorney in this case when extended the power to defend the suit on behalf of the defendant was never provided with any liability to the effect that in case of any possible decree against defendant/judgment debtor, the same can equally be executable against the attorney. Even in Muhammad Pervez's case (Supra) the Hon'ble Supreme Court of Pakistan is of the view that it is the judgment debtor Fazal-e-Haq who is bound to satisfy the decree either himself or through attorney. Keeping in view such findings of the Hon'ble Supreme Court of Pakistan, the attorney in his independent capacity cannot be booked for satisfaction of decree which was never granted against him."

- (iii) In the case of Muhammad Jameel Vs. Mst. Tahira Bibi (2013 CLC 1529), after a suit for recovery of dower amount, maintenance etc. was decreed by the learned Judge, Family Court, Dera Ismail Khan, the learned executing Court issued non-bailable warrants of arrest against the judgment debtor's special attorney and directed him to pay the decretal amount. Although the special attorney used to appear in the Court for and on behalf of the judgment debtor, but nowhere was it undertaken by the special attorney that he would pay the decretal amount. The Hon'ble Peshawar High Court held that mere pursuance of a case by an attorney never warranted such a harsh and punitive action as was resorted to by the learned executing Court. The Hon'ble High Court allowed the writ petition instituted by the special attorney and set-aside the abovementioned order of the learned executing Court.

27. I am of the view that the concurrent judgments passed by the learned Courts below are not based on the correct appreciation of the law laid down by the superior Courts. Since no decree had been passed against the petitioner; and since the petitioner's obligations under the surety bond dated 11.10.2010 submitted before the learned appellate Court at Lahore came to an end when the judgment and decree dated 31.07.2010, passed by the learned Judge, Family Court, Lahore, was set-aside by the learned appellate Court; and since there was no provision in the special power of attorney dated 07.08.2014 obligating the petitioner to pay the

decretal amount from his own coffers; and since the Plot belonged to the petitioner and not to the judgment debtor/Dr. Qureshi, the judgment and decree dated 03.10.2014, passed by the learned appellate Court could not be executed by attaching or selling the petitioner's personal property. Therefore, I hold that the concurrent judgments of the learned Courts below suffer from a misconception of the terms of the said power of attorney. On account of the said jurisdictional irregularity, the instant civil revision petition is allowed, and the impugned judgments passed by the learned Courts below are set-aside.

28. Before parting with this judgment, it may be observed that the learned counsel for the petitioner had no explanation as to why the petitioner's brother/Dr. Qureshi was escaping from the process of the law and was not showing compliance with the judgment and decree 03.10.2014, which had attained finality. It bespeaks of a sorry state of affairs on the part of Dr. Qureshi, who happens to be a well educated person and is avoiding his legal, moral and religious obligation by not paying maintenance to his own child. The respondents are at liberty to exercise the option of either enforcing the said judgment and decree against Dr. Qureshi in U.S.A. or alternatively to apply to the learned executing Court in Pakistan to issue warrants of arrest against Dr. Qureshi in the execution proceedings.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**