

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.4052/2021

Muhammad Waqar Wasi.

Versus

Mst. Amber Abid & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	16.11.2021	Mr. Mohammad Munir Paracha, Advocate for the petitioner.

The petitioner has impugned (i) judgment and decree passed by the learned Judge Family Court (West), Islamabad dated 20.03.2018, (ii) judgment and decree passed by the learned Additional District Judge (West), Islamabad in appeal dated 03.05.2018, pursuant to which the appeal of the petitioner was dismissed, and (iii) execution proceedings pursuant to such judgment and decree in which the petitioner's objection regarding dowry articles has been dismissed.

2. The learned counsel for the petitioner submitted that the impugned judgments and decrees had been passed in breach of principles of natural justice and in the absence of any evidence. He further submitted that the judgment and decree was passed pursuant to an oath sworn by the mother of respondent No.1 and on the basis of such oath only two of the issues framed by the learned Judge Family Court ought to have been decided and not the

entire suit and consequently, the judgment and decree suffers from legal infirmity.

3. When inquired how this petition was maintainable in view of the principle of laches, given that the judgment and decree being challenged was passed two and half years back, the learned counsel for the petitioner submitted that laches could not be equated with the bar of limitation and in the event that the Court came to conclusion that the party has been meted out injustice, such aggrieved person ought not be non-suited on grounds of laches.

4. The subject-matter of the petition involves dispute between former spouses regarding recovery of maintenance, gold ornaments, dower, dowry and the wari articles in face of an acrimonious breakup of their marriage. Respondent No.1 had filed a suit for recovery of maintenance, gold ornaments, dower, dowry and the wari articles on 23.11.2013, which was contested by the petitioner. Interim maintenance was fixed by the learned Judge Family Court on 16.02.2014, which was challenged by the petitioner before this Court and the petition was dismissed. After dismissal of the petition an I.C.A. was filed by the petitioner, which was also dismissed by this Court. The suit to the extent of maintenance of the minors was decreed on 02.07.2015. To the extent of the remaining issues, the proceedings in the suit continued, issues were framed and the

matter was at the stage of recording of evidence when on 18.01.2018, the petitioner filed an application for settlement of the dispute pursuant to provisions of the Oath Act, 1873 ("**Oath Act**"), in the event that the mother of respondent No.1 swore an oath on the Holy Quran in relation to fourteen questions, which have been reproduced in the memo of the petition. The relevant part of the application dated 18.01.2018 stated the following:-

2. That both the families being respectable the applicant/defendant is trying his utmost right from the beginning of the dispute to settle the same amicably, for this proposal is an under:-

The prayer in the application was as follows:

It is therefore, respectfully prayed that the oath and proposal as stated above may kindly be offered to the plaintiff and matter be disposed off in accordance with law in the best interest of justice.

5. Respondent No.1 accepted the proposal of the petitioner on 31.01.2018, when the petitioner's father and counsel reiterated that they stood by their offer to have the said dispute resolved pursuant to an oath in terms of provisions of the Oath Act, as recorded in order dated 31.01.2018. The learned Judge Family Court appointed a local commission for purposes of the oath, which was sworn on 20.03.2018. The report of the local commission appointed for oath proceedings was reproduced in the judgment and decree dated 20.03.2018, which

reflects that the oath had been administered in the *Masjid* situated in the Sessions Court parking in the presence of counsels of the parties. And the report stated that respondent No.1's mother swore an oath to the satisfaction of the petitioner in relation to the entire contents of the application filed by the petitioner. The local commission report also noted that no objection to the oath proceedings was raised by any party. Pursuant to the oath sworn by respondent No.1's mother, in accordance with the proposal made by the petitioner in his application dated 18.01.2018, the suit was decreed on 20.03.2018.

6. The appeal against the judgment and decree was dismissed on 03.05.2018 and in the said judgment the learned Additional District Court noted the following:-

9. I have perused the record with the respective contention of the counsel for the appellant wherein no such objection was raised before the Court that the proceedings of oath could not be carried out on 20.03.2018, rather the record reveals that father of the appellant namely Muhammad Wasi Zafar and the appellant Muhammad Waqar Wasi himself were present in person and joined the proceedings of oath which is evident from the report of local commission and indicate that none of the parties had raised any objection of oath proceedings in Mosque and both were satisfied with oath proceedings. Therefore, same cannot be

brushed aside on the mere assertions that said agreement was not made by them.

*10. Even otherwise it is now trite law that one offer is made by one party and accepted by other, then party making the offer cannot resile from the same. Moreover, an offer of a party to a suit whereby it undertakes to be bound by the statement made on oath by the other party on being accepted by the party is in the nature of a binding agreement. Reliance in this regard is placed on **PLD 2010 Lahore 484.***

7. In view of the aforementioned facts, the learned counsel for the petitioner has failed to convince this Court that the impugned judgment and decree suffer from any illegality and have been rendered in breach of provisions of natural justice. The proposal to settle the dispute that formed the subject-matter of the suit filed by respondent No.1 on the basis of an oath sworn by the mother of respondent No.1 upon the Holy Quran and the heads of her two sons was made by the petitioner himself. And such proposal was accepted by respondent No.1 and the requested oath was sworn by her mother in the presence of the parties and consequently, the suit was decreed by the learned Judge Family Court in accordance with the request made by the petitioner. The learned Additional District Court rightly concluded that the judgment and decree passed by the learned Judge Family Court suffers from no infirmity as the petitioner could not be

allowed to approbate and reprobate simultaneously. The petitioner's application dated 18.01.2018, as reproduced in Para-4 above, reflects that it sought the resolution of the entire subject-matter of the dispute pursuant to an oath and not merely the determination on any one or two of the issues framed by the learned Civil Court. The application filed by the petitioner to settle the dispute that formed the subject-matter of the suit filed by respondent No.1 pursuant to an oath sworn under provisions of the Oath Act was acted upon and thus bound the petitioner, once the dispute was adjudicated in accordance with the petitioner's proposal. The learned Additional District Court therefore concluded that the petitioner could not be allowed to resile from the representation made before the Court. The proposal by the petitioner in the form of the application for resolution of the matter pursuant to provisions of the Oath Act was a representation to the Court and once the suit was decided in accordance with the representation, the principle of judicial estoppel applied and the petitioner could not be allowed to wriggle out of such representation. The reliance can be placed on **Amanullah vs. Kashmir Khan (2008 SCMR 152)** and **Abdul Sattar vs. Judge Family Court, Toba Tek Singh and 02 others (PLD 2016 Lahore 482)**.

8. In view of the aforementioned facts (appreciated in the context of provisions of the Oath Act), the learned counsel for the petitioner has been unable to convince this Court that the impugned judgment and decree have been passed in breach of provisions of natural justice and consequently the instant petition does not fall within the exception to the principle of laches, where a constitutional Court ought to exercise its equitable jurisdiction in order to undo any injustice being meted out to a party. The judgment and decree was passed by the learned Additional District Court on 03.05.2018 and the instant petition has been filed after a delay of two and half years. It is evident that the petitioner seeks to have the enforcement of the execution proceedings in relation to the impugned judgment and decree, which has attained finality, suspended. But the learned counsel for the petitioner has failed to establish sufficient cause as to why the petitioner slept on the matter in the event that he was aggrieved by the judgment and decree passed in 2018.

9. In view of the conduct of the petitioner, as evident from the record adduced before this Court, no case is made out for exercise of the equitable jurisdiction of this Court to interfere with the judgment and decree that has attained finality.

10. In view of the above, this petition is
dismissed in limine.

(BABAR SATTAR)
JUDGE

A. RahmanAbbasi