

2018 M L D 1296

[Lahore]

Before Jawad Hassan, J

JAVED IQBAL---Petitioner

Versus

JUDGE FAMILY COURT and others---Respondents

Writ Petition No.190734 of 2017, decided on 4th April, 2018.

Family Courts Act (XXXV of 1964)---

---Ss. 13 & 14(3)---Maintenance allowance---Execution proceedings---Unpaid decree---Liability of surety vis-à-vis judgment debtor---Scope---Petitioner/judgment debtor contended that as his surety was behind the bars therefore, the Executing Court could not send him to judicial lock-up for implementation of decree against him---Validity---Surety was as much bound by his undertaking as was the judgment debtor, and both were collectively and severally liable to make payment to the decree-holder---Surety would not be absolved of his liability if judgment debtor was sent behind the bars---Surety would have been conscious of his liabilities and he would not be allowed to evade from the same---Record revealed that surety was arrested and sent to prison but after the arrest of the petitioner (Judgment debtor), executing Court released him (surety)---Said action taken by the Executing Court was in accordance with law---Impugned order passed by the Executing Court was interim in nature and constitutional petition would not lie before the High Court as S.14(3) of the Family Courts Act, 1964 showed that no appeal or revision would lie against the interim order passed by the Family Court---No illegality or infirmity having been noticed in the impugned order passed by the Executing Court---Constitutional petition was dismissed accordingly.

Muhammad Amin v. Judge Family Court, Sahiwal and 3 others 2015 YLR 316; Muhammad Anwar Khan v. Mst. Yasmin Zafar 1987 SCMR 2029; Ms. Quratulain Aleem v. Muhammad Rehman Khan and another 2006 YLR 2604 and Mst. Noor Jehan alias Tasleem Begum v. Muhammad Arshad and another 1986 CLC 442 ref.

Ch. Muhammad Tariq-ur-Rehman for Petitioner.

ORDER

JAWAD HASSAN, J.---Through this constitutional petition, the Petitioner has called in question orders dated 27.02.2018 and 20.03.2018 passed by learned Family Judge, Sumundri whereby he sent the judgment debtor to civil imprisonment and also dismissed his petition for issuance of release order.

2. Arguments heard and record perused.

3. It is the case of the Petitioner that Muhammad Amjad was the only attorney and not the surety and he never submitted surety bonds but despite all this he was sent to civil prison and when he served out one year civil prison, the Petitioner/judgment debtor was sent to civil prison, the said act of the learned Executing Court is illegal and impugned orders are liable to be set aside.

4. From the perusal of record it reveals that the Petitioner is a judgment debtor against whom a decree dated 28-01-2016 was passed by Judge Family Court, Sumundri. Subsequently, the Petitioner/judgment debtor filed surety bond and at a later stage, second surety bond with the consent of the decree holder. The grievance voiced through this constitutional petition is that he was arrested by Executing Court on non-bailable warrants of arrest due to concealment of facts and that his surety is already behind the bars, therefore, the Petitioner/judgment debtor cannot be sent to judicial lock up. The said argument of counsel for the Petitioner is contrary to law and dictum of Superior Courts. The surety was as much bound by his undertaking as was the judgment debtor, and both were collectively and severally liable to make payment to the decree holder. Surety would not be absolved of his liability if judgment-debtor was sent behind the bars. Surety would have been conscious of his liabilities and he would not be allowed to evade from the same. Reliance in this respect is placed upon *Muhammad Amin v. Judge Family Court, Sahiwal and 3 others* (2015 YLR 316). As a matter of fact, Section 17 of the West Pakistan Family Courts Act, 1964 (the "Act") excludes the application of the Civil Procedure Code, 1908 except Sections 10 and 11 thereof. Therefore, the detailed procedure set out in Order XXI, C.P.C. laid down by the legislature to execute civil decrees need not to be followed by a Family Court. Be that as it may, Section 13 of the Act, provides for the mode and manner in which a Family Court shall execute a decree. Section 13(3) of the Act provides a mode for execution of the decree. The very wording in which subsection (3) of Section 13 of Act 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. 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. So far as surety is concerned, as observed above, the surety is as much bound by his undertaking as was the judgment debtor. Both are collectively and severally liable to make payment to the decree holders. If the judgment-debtor is sent behind the bars, this fact by itself would not absolve the surety of his liability. The surety Muhammad Amjad who was arrested and sent to civil prison due to arrest of the Petitioner/judgment debtor has been ordered to be released by the learned Executing Court. The said action/proceedings are in accordance with the law, therefore, no exception can be taken to it. Further, the order passed by learned Family Judge is interim in nature and no constitutional petition would lie before the High Court. Perusal of Section 14(3) of Act, shows that no appeal or revision shall lie against an interim order passed by a Family Court. The Act has explicitly barred the remedy of appeal or revision against such an order, therefore, in case a constitutional petition is entertained against such an order, it will amount to circumvent the intention of the legislation and to frustrate the express provision of law. Reliance in this respect is placed upon *Muhammad Anwar Khan v. Mst. Yasmin Zafar* (1987 SCMR 2029), *Ms. Quratulain Aleem v. Muhammad Rehman Khan and another* (2006 YLR 2604) and *Mst. Noor Jehan alias Tasleem Begum v. Muhammad Arshad and another* (1986 CLC 442).

5. Counsel for the Petitioner has failed to point out any illegality or perversity in the impugned orders, writ petition being devoid of any merits is hereby dismissed in limine.

MQ/J-2/L

Petition dismissed.