

Before Nisar Hussain Khan and Qaiser Rashid Khan, JJ

Hafiz MUHAMMAD YOUNIS---Petitioner

Versus

Mst. SHAHEEN QURESHI and 2 others---Respondents

Writ Petition No.12 of 2011, decided on 20th December, 2011.

(a) West Pakistan Family Courts Act (XXXV of 1964)---

---S.13---Civil Procedure Code (V of 1908), S.48---Constitution of Pakistan, Art. 199---
Constitutional petition---Suit for recovery of maintenance allowance and dower---Suit was
decreed ex parte by the Family Court and subsequently husband (petitioner) appeared before the
Executing Court when the matter was settled through an arbitration agreement and the wife
withdrew her execution petition---Thereafter the wife filed another execution petition for
satisfaction of the decree of the Family Court---Contention of the husband was that the wife was
estopped from filing another execution petition after withdrawal of the first one and that it was
stated in the arbitration agreement that in case of any dispute the matter shall be referred to
arbitrators---Validity---Wife received only part of the gold ornaments as per the compromise
verdict given by the arbitrators and it was specifically provided therein that she could demand
the remaining tolas of gold at any time from the husband---Arbitration agreement and verdict
nowhere stated that the wife could not agitate her grievance again in case of failure, neglect or
refusal of the husband to act in terms of the said agreement---Object of the arbitration was to
bring about a compromise between the parties and not to deprive the wife of her lawful right
which was granted to her by the Family Court---Wife had no choice but to knock at the door of
the Family Court---Decree passed against the husband was still intact and executable---
Compromise could not be construed as rendering the decree itself ineffective and the wife had
never relinquished her entire claim against the husband---No legal impediment existed to file a
second execution petition in case of withdrawal of execution petition from the Executing Court if
the decree had not been satisfied---Constitutional petition was dismissed.

(b) Civil Procedure Code (V of 1908)---

---S. 48---Second execution petition---Scope---Withdrawal of execution petition from the
executing Court---No legal impediment existed to file a second execution petition in case of
withdrawal of execution petition from the Executing Court if the decree had not been satisfied.

Hafiz Muhammad Hanif for Petitioner.

Umar Qayyum Khan for Respondents

Date of hearing: 20th December. 2011

JUDGMENT

QAISER RASHID KHAN, J.- Through the instant writ petition, the petitioner is aggrieved of the judgment and decree dated 15-11-2010 of the learned Additional District Judge-II, Bannu, whereby the appeal of the respondent No.1 was accepted and the judgment and order dated 14-9-2010 of the learned Judge Family Court, Bannu, dismissing execution petition of the respondent No.1, was set aside with directions to the learned Executing Court/ Judge Family Court to re-open the execution petition and to satisfy the decree passed on 28-5-2008 in favour of the respondent No.1.

2. Brief account of the present petition is that the respondent No.1 along with her minor son Sanan, plaintiff No.2 before the trial Court (but not arrayed as respondent in the instant writ petition) filed a suit for recovery of 20 tolas gold ornaments as dower and maintenance at the rate of Rs.2000/- per month for herself and Rs.1000/- per month for Sanan with effect from 20-2-2007 to 20-7-2007, before the learned Family Court Bannu. On the failure of the petitioner/defendant to turn up before the learned Family Court despite personal service, he was proceeded against ex parte. After recording ex parte evidence, the learned trial court decreed the suit, vide judgment and decree dated 28-5-2008. Accordingly, the respondent No.1 filed execution petition before the learned Family Court Bannu for the recovery of dower and maintenance for herself and her minor son, Sanan. During the execution proceedings, the petitioner appeared before the Executing Court and submitted an application for setting aside ex parte decree, passed against him. Due to the efforts of the notables of the area, the matter was patched up between the parties in the form of an arbitration verdict and resultantly the execution petition as well as the application filed by the petitioner for setting aside ex parte decree were dismissed as withdrawn on 29-11-2008. However, on 4-3-2010, the respondent No.1 instituted another execution petition for the satisfaction of her decree before the learned executing Court/ Family Court Bannu. The same was objected to by the petitioner and the execution petition was dismissed on 14-9-2010, but in appeal by the respondent No.1, the order of the executing Court was set aside as mentioned above, hence the present petition.

3. Learned counsel for the petitioner submitted that after the suit of the respondent No.1 was decreed, she filed execution petition before the Executing Court/Judge Family Court for the satisfaction of her decree. However, with the intervention of elders of the locality, the matter was settled between the spouses, in which an arbitration agreement was executed between them and the execution petition was dismissed as withdrawn on 29-11-2008. Thus the respondent No.1 was estopped to file another execution petition before the learned Family Court on 4-3-2010, more so, when it was decided in the arbitration agreement, that in case of any dispute between the parties, the same would be referred to the arbitrators and that the learned Civil Judge-VIII/ Judge Family Court, Bannu rightly dismissed the execution petition. He argued that

the order of learned ADJ-II, Bannu is not legal one, whereby she directed to re-open execution petition before the executing court.

4. Conversely, the learned counsel for the respondent vehemently opposed the contention of the learned counsel for the petitioner and argued that after the withdrawal of the first executing petition, there was not legal bar to institute another and that too, in a situation where the petitioner refused to honour the terms of compromise.

5. Arguments heard and record perused.

6. No doubt as per the arbitration verdict, the respondent No.1 received 7-1/2 tolas gold ornaments, but so far as rest of the gold ornaments of 12-1/2 tolas is concerned, it was specifically provided in the very compromise verdict that she could demand the same from the petitioner at any time. So respondent No.1 on the intervention of the elders of the area had withdrawn her execution petition on 29-11-2008 in terms of arbitration verdict, but nowhere is it laid down in said verdict/agreement that she could not agitate her grievance again in case of failure/neglect/refusal by the petitioner to act upon the terms of the agreement. The object of the arbitrators, who acted in sincerity and all earnest, was to bring about some compromise between the parties and certainly not with a view to deprive the respondent No.1 from her lawful right, which was duly granted to her by the learned Family Court through judgment and decree dated 28-5-2008. From the very contents of the second execution petition filed by the respondent No.1, it is abundantly manifest that she did try to put up with the petitioner, but she was ousted by the petitioner from her house and even the arbitrators expressed their inability due to the stubborn attitude of the petitioner. Thus she had no choice but to knock at the door of the Family Court, through her execution petition claiming 12-1/2 tolas gold as well as maintenance amount outstanding against the petitioner. Therefore, it does not lie in the mouth of petitioner to raise any objection regarding the institution of second execution petition against him by the respondent No.1 in the learned Family Court. Moreover, the decree, passed against the petitioner is still intact and is executable. The compromise cannot be construed as rendering the decree itself as ineffective, or for that matter the respondent No.1 had never relinquished her entire claim against the petitioner. Even otherwise there is no legal impediment to file second execution petition in case of withdrawal of execution petition from the executing court, if the decree has not been satisfied.

7. For the reasons stated above, the Writ Petition being bereft of any merit is hereby dismissed.