

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**

*Writ Petition No.10469 of 2022*

*Muhammad Akram*

**Vs.**

*Additional District Judge and 5 Others.*

**JUDGMENT**

<i>Date of hearing</i>	<i>17.10.2022</i>
<i>Petitioner by</i>	<i>Mr. Muhammad Masood Bilal, Advocate</i>
<i>Respondent(s) by</i>	<i>Ms. Aasia Khan Malezai, Advocate for the respondents No. 3 to 6.</i>

**SULTAN TANVIR AHMAD, J:-** Through the present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the judgment dated 30.05.2022 passed by learned Additional District Judge, Multan, whereby, order dated 17.09.2021 passed by learned Judge Family Court, Multan has been *set-aside*.

2. Facts, necessary for the disposal of the present petition, are that petitioner filed surety bond dated 16.11.2017 before the learned Family Court, Multan and rendered himself liable for payment under decree dated 06.09.2016, passed under section 17(A) of the Family Courts Act, 1964. At the time of filing of surety bond the total outstanding liability was

Rs.78,000-, which was paid by the petitioner and he applied to discharge the surety bond. The learned Family Court vide order dated 17.09.2021, allowed the application of the petitioner, discharging him from any further liability accruing under the decree. The said order was assailed through civil appeal dated 02.10.2021. The learned Appellate Court allowed the appeal, and the order dated 17.09.2021 passed by learned Judge Family Court, Multan was *set-aside* vide judgment dated 30.05.2022. Aggrieved from the same, present petition has been filed.

3. Mr. Muhammad Masood Bilal, learned counsel for the petitioner has submitted that learned Appellate Court has travelled beyond its jurisdiction while holding that the petitioner is responsible to pay the entire decreed amount, ignoring the fact that petitioner never undertook the responsibility to satisfy the decree rather he filed this surety bond as consequence of the first execution petition filed by the respondent on 08.10.2016 (hereinafter called as the '**first execution petition**'), under which the claimed amount was Rs. 78,000- and upon payment of the same surety stood discharged. Learned counsel for the petitioner has further submitted that the second execution petition filed on 07.10.2017 (hereinafter called as the '**second execution petition**') contains the amount and liability that accrued after filing the surety bond, which was never undertaken to be paid by the petitioner-surety. Learned counsel for the petitioner has contended that words of surety bond are always required to be given narrow and strict construction and any ambiguity in this regard should be resolved in a way favorable to the surety; that the learned Appellate Court committed serious error while ignoring that the petitioner, at the time of filing the bond, was not clear as to the

extent of the liability that is imposed upon him and the benefit of this ambiguity is also required to be given to the petitioner.

4. Conversely, Ms. Aasia Khan Malezai, learned counsel for the respondents No. 3 to 6 has submitted that the petitioner-surety has undertaken to pay the decretal amount in the surety bond as well as he gave categorical, unequivocal and unconditional statement before the learned trial Court that he is responsible for the decretal amount, which is recorded at the back of the surety bond, by the learned trial Court. The learned counsel for the respondents has further submitted that there is no ambiguity in the statement of petitioner-surety given before the learned Judge Family Court, Multan or in the wording of the bond that may be required to be resolved in favour of the petitioner-surety. It is added by the learned counsel for the respondents that the petitioner has merely filed this petition to avoid the payment of maintenance to the minors and / or to delay the execution proceedings.

5. I have heard the arguments and perused the record with the able assistance of the learned counsel of the parties.

6. The pivotal questions involved in the case are: -

(i) As to whether the liability of the petitioner, under the surety bond tendered upon filing of the *first execution petition* remained in existence to satisfy the claim in the *second execution petition* or the surety was absolved from liability upon payment of Rs.78,000/- involved in the *first execution petition*? and

(ii) As to whether the surety bond contains stipulation or words that are ambiguous in nature

and if such ambiguity is required to be resolved in favour of the petitioner?

7. Here, it is appropriate to have a look at section 145 of the Code of Civil Procedure, 1908 (the '**Code**'), which provides as follows: -

*“145. Enforcement of liability of surety. —*

*Where any person has become liable as surety—*

*a) for the performance of any decree or any part thereof, or*

*b) for the restitution of any property taken in execution of a decree,*

*c) or for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,*

*the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of Section 47:*

*Provided that such notice as the Court in each case thinks sufficient has been given to the surety.*

*(Underlining is added)*

8. A reading of above provision of law clearly reflects that when a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him, to the extent for which surety has rendered himself personally liable in the manners, therein. The wording in

section 145 of the Code, “to the extent of which he has rendered himself personally liable”, depict that it is imperative to see the stipulation(s) in the bond that surety has filed to ascertain the extent to which surety has rendered himself liable.

9. The bond dated 16.11.2017 filed by the petitioner-surety reads as follows: -

#### ضمانت نامہ

منجانب:- محمد اکرم ولد دریام خان قوم راں سکنہ چاہ لشکر والا نواب پور روڈ مکان نمبر 354/C محلہ بستی خیر شاہ ملتان شناختی کارڈ نمبر-36302-9-1241813 کی ہوں بدرستی ہوش و حواس خمسہ بلا جبر واکراہ اپنی آزادانہ رضامندی سے بدرستی عقل اس بات پر لکھ کر دیتا ہوں کہ من مقرر ایک قطعہ سکنی مکان برقبہ 4M-20Y (چار مرلہ بیس گز) از کھیوٹ نمبر 14 بقلم سیاہی 11 بقلم سرخی کھتونی نمبر 48 قطعہ سالم کھاتہ-11K 17M حصہ منقولہ 140/7110 برقبہ منقولہ 4M-20Y واقع چاہ قطب شاہی والا موضع طرف مبارک اول تحصیل و ضلع ملتان مالیاتی مبلغ- 10,00,000/ روپے کا مالک ہوں۔ درخواست اجرا ڈگری بعنوان بالا عدالت جناب والی زیر سماعت ہوئی جس میں عدالت جناب والا نے فیصلہ فرمایا کہ مسئول علیہ / محمد وسیم مبلغ- /78000 (اٹھتر ہزار روپے) کا ضمانت نامہ داخل عدالت کرے بدیں وجہ یہ ضمانت نامہ عدالت جناب میں داخل کیا جا رہا ہے۔ اگر مسئول علیہ / محمد وسیم زرڈگری ادا نہ کرے گا تو عدالت جناب والا کو اختیار حاصل ہو گا کہ وہ من مقرر کی جائیداد متذکرہ بالا قرق کر کے زرڈگری کر رقم پوری کرے۔ جس پر من مقرر کو کوئی عذر و اعتراض نہ ہوگا۔

10. The front side of the surety bond contains two independent stipulations; (i) that the petitioner is filing the surety in furtherance of some order of the learned Court to deposit surety bond of Rs.78,000/-, and (ii) that in case of failure of the judgment-debtor to pay the decreed amount, he

rendered himself liable for the satisfaction of the decree by sale of his property, mentioned in the bond.

11. The first part appears to be result of some confusion for the reason that the record reflects that there was no order of the learned Court for filing of any surety bond. As a matter of fact, the petitioner-surety, in absence of any order by the learned Court, voluntarily entered appearance and filed the surety bond in order to rescue the judgment-debtor from the consequences of civil imprisonment, as being reflected in order dated 17.11.2017 of the learned Judge Family Court, Multan. The latter part, whereby, he has bound himself to satisfy the decree by sale of his property, mentioned in the bond, finds support and gains further clarification from his statement that was recorded by the learned Court at the back of the surety bond, which is as follows: -

17.11.2017: بیان از اں محمد اکرم ولد ملک وریام خان ذات وریام  
بمر 55 سال پیشے کریانہ دوکان ساکن بستی خیر شاہ ملتان۔  
بر حلف بیان کیا کہ مجھے ضمانت ضمانت نامہ پڑھ کر سنا دیے گئے ہیں۔ مجھے  
درست تسلیم ہیں۔ میں ان کی پابندی کروں گی۔ میں اور میری جائیداد ادائیگی  
زر ڈگری کی ذمہ دار ہوگی۔۔۔۔۔

12. It is well settled principle of construction that stipulation(s) and / or words in surety-bond must be read in their ordinary meaning and when words contained therein are unambiguous, there is no reason to apply any other construction. Reference in this regard can be made to the cases titled “Chaganti Veerasalingam Versus Mallampalli Subbarayudu and Others” (A.I.R. 1937 Madras 229), “Firm Mukat Behari Lal Tejpal Versus Khushi Ram and Others”

(A.I.R. 1935 Lahore 21) and “Karimbhai Versus Hatimbhai” (PLD 1994 Karachi 311).

13. It will be advantageous to reproduce the following extract from “Chaganti Veerasalingam”, case (*supra*): -

*“.....It is a well known principle of construction that the terms of a surety bond are to be construed, where there is ambiguity, in a way favour-able to the surety. But if the words in a bond are not ambiguous, but make it clear that the liability is only to come into force upon the stated conditions, there is no reason for putting a construction upon the bond other than according to its clear and unambiguous language....”*

14. The decree passed by the learned Judge Family Court, Multan on 06.09.2016 in favour of respondents No. 4 and 5 provides for payment of Rs.3,000/- per minor, per month from the institution of suit till their legal entitlement. The wording of decree has no uncertainty contained therein. Although, the surety bond was tendered upon filing of the *first execution petition* and by then liability was of Rs.78,000/-, however, second part of the surety bond, when read in the light of wording contained at the back of the surety bond, is also not ambiguous and its plain reading leads to no other meaning but that the petitioner held himself responsible for the entire decreed amount and offered his property, mentioned in the surety bond, to be sold/auctioned, in case of default of the decree by judgment-debtor. The *second execution petition* is

filed with respect to the same decree for which surety rendered himself liable.

15. I, therefore, disagree with the interpretation of the surety-bond put forth by learned counsel for the petitioner. There is no ambiguity in the undertaking given in the surety-bond that may be required to be resolved in favour of the petitioner or needs any benefit to be given to the petitioner.

16. The contention of Mr. Muhammad Masood Bilal, learned counsel for the petitioner that the petitioner was not certain, at the time of filing of surety-bond, as to extent of liability he was undertaking, is also not tenable, in view the decision of the Honourable Sindh High Court, in case titled “Manik Versus Haji Lakhano” (PLD 1967 Karachi 155) wherein, almost in similar circumstances, following was observed: -

*“Mr. Salahuddin says that the surety has now become a practicing lawyer and does not wish to continue to be a surety in this case. The surety, who is present himself, says that he accepted to be the surety in this case on the inducement of his friends, but adds that he does not know as to what he was undertaking at that time. These two excuses are not sufficient to relieve the surety of his responsibility because, according to counsel for the applicant, and Mr. Naimuddin, Advocate, a stay order was issued and to safeguard the produce a surety was required”.*

*(Emphasis supplied)*



17. The learned counsel for the petitioner has failed to convince this Court as to any illegality committed by the learned Appellate Court. Consequently, the present petition is *dismissed*. No order as to costs.

**(SULTAN TANVIR AHMAD)**  
**JUDGE**

APPROVED FOR REPORTING

*J.A.Hashmi*

*JUDGE*