

**2017 Y L R 827**

**[Lahore]**

**Before Jawad Hassan, J**

**WAHEED ANWAR---Petitioner**

**Versus**

**ADDITIONAL DISTRICT JUDGE and others---Respondents**

W.P. No.1042 of 2017, decided on 13th January, 2017.

**Family Courts Act (XXXV of 1964)---**

---S. 13---Decree for maintenance allowance, execution of---Conditional compromise---Wife withdrew earlier execution petition on basis of conditional compromise---Subsequently husband failed to honour terms of compromise, therefore, his warrants were issued---Husband objected to warrant contending that "once compromise was always a compromise" therefore his warrants should be cancelled---Circumstances demonstrated that decree was not satisfied in letter and spirit, rather parties entered into a compromise on conditional statement of wife i.e. that if husband again deserted her from his house, she reserved the right to re-file execution petition---Judgment-debtor being father of minors and husband of the lady was under legal and moral obligation to maintain them---Judgment and decree was not assailed before appellate court, therefore, it had attained finality and no exception could be taken to that---Executing court could not go beyond the decree---Contention of judgment-debtor that "once compromise was always a compromise" was misconceived and ill-founded because compromise inter se parties was conditional which was revoked by husband/father himself---Constitutional petition was dismissed accordingly.

Ch. Shahbaz Ahmad Sandha for Petitioner.

## **ORDER**

**JAWAD HASSAN, J.**---Through this constitutional petition, the Petitioner has called in question order dated 19.12.2016 passed by learned Additional District Judge, Sialkot, whereby he dismissed the appeal of the petitioner filed against orders dated 21.11.2016, 14.11.2016 and 10.11.2016, whereby the petitioner was directed to pay the decretal amount and his warrant of arrest was issued and his objection petition was dismissed.

2. Arguments heard and record perused.

3. It is reflected from the perusal of record that as a consequence of Family Suit, judgment and decree dated 9.7.2013 was passed whereby the Respondent/Decree Holder was held entitled to receive Rs.5000/- as maintenance allowance from the date of institution of suit till his legal

entitlement. Whereas in execution proceedings, a compromise between the parties was arrived at, wherein the Petitioner/Judgment Debtor made the following statement:--

"Between parties, compromise has been affected. The decree holder has been rehabilitated in my house. I will keep paying maintenance to the decree holders. Between parties, no dispute is left."

While on the other hand, the Respondent/ Decree Holder made the following statement:--

"I have heard and understood the statement of the judgment debtor, admitted to be true. If the Judgment Debtor deserted me, I will again have the right to re-file the execution petition. The execution petition may kindly be dismissed as having been withdrawn."

4. On the above statements of the parties, the execution petition was dismissed as withdrawn. Subsequently, the Respondent No. 3 again moved an application for execution of the above said judgment and decree contending therein that the petitioner/judgment debtor neither rehabilitated him nor paid maintenance allowance which now being increased has come to Rs.2,50,000/- payable towards him and that the judgment debtor has defrauded her and with mala fide intention in order to avoid the consequence of the decree, has played the drama of compromise and after compromise the Petitioner/Judgment debtor has decamped from the scene. The said application was contested by the Judgment Debtor by filing objection petition contending therein that "Once compromise is always compromise", the restoration of the dismissed execution petition and in such eventuality the arrest of judgment debtor is illegal. The said objection petition filed by judgment debtor was dismissed and in execution proceedings vide order dated 21.11.2016, learned Judge Family Court, Sialkot directed the judgment debtor to pay 1/3rd of the decretal amount and to submit the surety bound for the remaining decretal amount, if so complied, he be released or otherwise be sent to judicial lock up and be produced again before the court on 8.12.2016. Subsequently, the petitioner moved cancellation of warrants, which was turned down by Judge Family Court, Sialkot vide order dated 7.11.2017 (sic).

6. The above said facts and circumstances demonstrate that the decree was not satisfied in letter and spirit, rather the parties entered into a compromise and in that the statement of the Respondent/Decree Holder was conditional i.e. that if the judgment debtor again deserted her from his house, she reserved the right to re-file the execution petition. The Judgment Debtor being the father of the minor Wasif Ali and being he husband of Zarqa Bibi is under legal and moral obligation to maintain them. Since the judgment and decree was not assailed before the Appellate Court, therefore, the same had attained finality, therefore, no exception can be taken to it. Further it is settled principle of law that Executing Court cannot go beyond the decree. The contention of learned counsel for the petitioner that once compromise is always compromise is misconceived and ill founded because the compromise inter-se the parties was conditional which was revoked by the petitioner himself. The impugned orders passed by two courts below are well reasoned and learned counsel for the petitioner has failed to point out any illegality or irregularity warranting interference by this Court in its constitutional jurisdiction. Writ petition being devoid of merit is hereby dismissed in limine.

