

Stereo.HCJDA 38.  
**Judgment Sheet**  
**IN THE LAHORE HIGH Court**  
**BAHAWALPUR BENCH BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

....

**WRIT PETITION NO.9155 of 2017**

MUHAMMAD AMIN

**Versus**

ADDITIONAL DISTRICT JUDGE, KHAIRPUR TAMEWALI and  
2 others

**JUDGMENT**

Date of hearing: 28.10.2020

Petitioner by: Rao Muhammad Ashraf  
Idrees, Advocate.

Respondent No.3 by: Ch. Muhammad Ejaz Arshad,  
Advocate.

**MIRZA VIQAS RAUF, J.** The petitioner namely Muhammad Amin is father of Muhammad Imran, who married to Asima Sadiq i.e. respondent No.3 (hereinafter referred as “respondent”). On account of some differences between the spouses “respondent” instituted two suits, one for recovery of maintenance and the other for dower whereas Muhammad Imran instituted a suit for restitution of conjugal rights. The petitioner was arrayed as one of the defendants in the suit for recovery of dower. Suits were consolidated and multiple issues from the divergent pleadings of the parties were framed. After recording of evidence from both the sides suits instituted by the “respondent” were partly decreed whereas suit for restitution of conjugal rights was dismissed through judgment dated 30<sup>th</sup> November, 2011. Feeling aggrieved, the “respondent” as well as Muhammad Imran preferred two

separate appeals before the learned Additional District Judge, Khairpur Tamewali. The appeal filed by Muhammad Imran was dismissed whereas appeal preferred by the “respondent” was partly allowed vide judgment dated 08<sup>th</sup> May, 2012. The “respondent”, feeling dissatisfied filed Writ Petition No.4952 of 2012 which was accepted through judgment dated 14<sup>th</sup> July, 2015 and case was remanded to the learned Additional District Judge with a direction to give its findings on issue No.4. In post-remand proceedings learned Additional District Judge decided issue No.4 in negative holding the petitioner as necessary and proper party to the lis vide judgment dated 14<sup>th</sup> September, 2015. The “respondent” challenged the said judgment through Writ Petition No.9416 of 2015, however, same was dismissed as having not been pressed vide order dated 19<sup>th</sup> May, 2016. This followed an execution petition which was resisted by the petitioner through an objection petition asserting therein that decree is not executable against him. His objections were, however, turned down vide order dated 10<sup>th</sup> June, 2017, which was though assailed in appeal before the learned Additional District Judge but of no avail and the same was dismissed through judgment dated 20<sup>th</sup> October, 2017, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Though this petition is still at pre-admission stage but in view of controversy involved in the same, learned counsel for both the sides have agreed to treat the same as *pacca* case, so it is to be decided as such.

3. Learned counsel for the petitioner contended that the petitioner was though initially made party to the suit but on his objection that he is not a necessary party a specific issue to this effect was framed. Added that the learned Judge Family Court on conclusion of trial decided issue No.4 in affirmative and held that the petitioner is unnecessary party in the suit, who is liable to be

deleted. Submitted that after decision in the appeals preferred by the “respondent” and son of the petitioner, the matter came up before this Court through Writ Petition No.4952 of 2012 which was decided on 14<sup>th</sup> July, 2015. While making reference to the said decision, learned counsel emphasized that matter was remanded to the learned Additional District Judge for a limited purpose to the extent of decision on issue No.4 only. Learned counsel maintained that though in terms of judgment dated 14<sup>th</sup> September, 2015, learned Additional District Judge held that the petitioner is a necessary party but even then there is no decree against him. It is emphatically argued that objection petition has been dismissed in a perfunctory and illegal manner.

4. Conversely, learned counsel for the “respondent” submitted that the petitioner being father of the groom was a necessary and proper party to the suit. He added that in the light of decision on issue No.4, the petitioner also becomes a judgment debtor and decree was executable against him.

5. Heard. Record perused.

6. It is an admitted fact that the petitioner is father of groom and he is owner of property find mentioned in the Nikahnama, which was agreed to be given to the “respondent”. The petitioner in this capacity was made party (defendant No.2) to the suit for recovery of dower. He resisted the suit and resultantly several issues were framed including issue No.4 to the following effect :-

4. Whether defendant No.2 is unnecessary party in the suit and liable to be deleted? OPD

7. Leaving aside unnecessary details it is observed that suit was decreed vide judgment dated 30<sup>th</sup> November, 2011, however, issue No.4 was answered in positive declaring the petitioner as unnecessary party in the suit and accordingly his deletion from the array of defendants. The “respondent” as well as Muhammad

Imran, feeling aggrieved from the said judgment and decree preferred their respective appeals, however, appeal preferred by “respondent” was partly allowed whereas appeal filed by Muhammad Imran was dismissed through judgment dated 08<sup>th</sup> May, 2012 but findings on issue No.4 were maintained with the following observations :-

“14. The upshot of the above discussion is that the appeal of the appellant Muhammad Imran has no force, the same is hereby dismissed while the appeal of respondent Asima Sadiq is hereby partially allowed to the extent of her claim for the payment of Rs.50,000/- in violation of condition mentioned in column No.18 of Nikah Nama while appeal to the extent of recovery of 5 tola gold dower and enhancement of maintenance is dismissed. The decree sheet be drawn accordingly. There is no order as to costs. Record of learned trial Court be sent back immediately whereas files of both appeals be consigned to record room after due completion.”

The “respondent” then filed Writ Petition No.4952 of 2012 which was accepted through judgment dated 14<sup>th</sup> July, 2015 and case was remanded to the learned Additional District Judge with the direction to give its findings on issue No.4, however, findings given by the learned Additional District Judge on remaining issues were kept intact. In post-remand proceedings learned Additional District Judge while forming a contra view decided issue No.4 in negative holding the petitioner as necessary party through judgment dated 14<sup>th</sup> September, 2015. The “respondent” again preferred Writ Petition No.9416 of 2015 challenging the *vires* of said judgment but same was dismissed as having not been pressed vide order dated 19<sup>th</sup> May, 2016.

8. The question thus arises as to **“whether decree is executable against the petitioner or otherwise?”** As already observed that suit was initially decreed vide judgment dated 30<sup>th</sup> November, 2011. It is apparent therefrom that while decreeing the suit learned Judge

Family Court had specifically mentioned that the decree is against defendant No.1 (Muhammad Imran). A decree always follows the judgment. Perusal of the decree also reveals that suit was decreed to the extent of Muhammad Imran whereas claim of the “respondent” was dismissed to the extent of petitioner. Though in appeal learned Additional District Judge while partly allowing the appeal of the “respondent” modified the judgment of the learned Judge Family Court but there was no change qua the impact of the decree. The matter when came up before this Court in Writ Petition No.4952 of 2012 same was remanded to the learned Additional District Judge with a direction to give its findings on issue No.4 while keeping the findings on the remaining issues as intact. This fact clearly signifies that no modification was made with regard to the findings on other issues. This was the reason that the learned Additional District Judge in post-remand proceedings while deciding issue No.4 has specifically held as under :-

“16. This court is only deciding this controversy whether defendant No.4 is necessary party to the suit or not?”

9. It is trite law that executing court cannot go beyond the decree. In view of discussion made hereinabove there can be no second opinion that decree was only against Muhammad Imran and despite contra finding on issue No.4 as the findings on the other issues were kept intact so there will be no change qua the dictates of the decree. It is apparent from the judgment and decree of learned Judge Family Court that with regard to the property/land decreed in favour of “respondent” as dower alternate price is also fixed, which clearly removes any impediment in the way of execution of decree against Muhammad Imran. Reliance in this respect, if needed, can be placed on “Ch. AHMED NAWAZ versus PROVINCE OF PUNJAB through Land Acquisition Collector, Jhelum and others” (2015 SCMR 823) and “IRSHAD MASIH and others versus EMMANUEL MASIH and others” (2014 SCMR 1481).

10. The nutshell of above discussion is that the petitioner cannot be termed as judgment debtor and as such his objection petition was tenable. The courts below have grossly misread the record and concurrent findings to this effect are tainted with illegalities and perversities, resultantly this petition is **accepted**, consequently impugned judgment as well as order is set aside, as a sequel thereof, objection petition filed by the petitioner stands **allowed** with no order as to costs.

**(MIRZA VIQAS RAUF)**  
**JUDGE**

*Shahbaz Ali\**

**APPROVED FOR REPORTING**