

2013 C L C 1529

[Peshawar]

Before Qaiser Rashid Khan and Rooh-ul-Amin Khan, JJ

MUHAMMAD JAMEEL----Petitioner

Versus

Mst. TAHIRA BIBI and 4 others----Respondents

Writ Petition No.712 of 2011, decided on 5th March, 2013.

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

----S. 5, Sched. & S.13---Constitution of Pakistan, Art.199---Constitutional petition---Execution of decree---Issuance of non-bailable warrants of arrest against special attorney of judgment-debtor---Petitioner as special attorney of ex-husband used to appear before the Trial Court---Petitioner had never undertaken to pay the decretal amount to ex-wife of judgment-debtor in the event of decree in her favour---Validity---Suit was decreed against 'N' the ex-husband---Mere pursuance of a case by an attorney did not warrant such a harsh and punitive action as was resorted to by the Executing Court---Execution petition was instituted against judgment-debtor with no mention of the petitioner in the same---Order of Executing Court against the attorney (petitioner) was without lawful authority and jurisdiction---Constitutional petition was allowed.

Haji Muhammad Shakeel for Petitioner.

Ahmed Ali Khan for Respondents.

Date of hearing: 5th March, 2013.

JUDGMENT

QAISER RASHID KHAN, J---Through the instant petition, the petitioner has called in question the judgments and orders dated 27-5-2011, 27-7-2011 and 29-7-2011 of the learned Judge Family Court/Civil Judge-IX, D.I. Khan whereby non-bailable warrant of arrest was issued against the petitioner and he was directed to pay the decretal amount to the respondents Nos.1 to 3/decreet-holders.

2. Learned counsel for the petitioner argued that the impugned judgments and orders of the learned court are against the settled principles of law and without jurisdiction; that neither the petitioner was defendant in the main suit nor for that matter judgment-debtor in the execution petition before the learned executing court as he was only pursuing the case as a special attorney on behalf of the judgment-debtor namely, Nadeem that the respondents Nos.1 to 3/decreet-holders had filed an execution petition only against the judgment-debtor namely, Nadeem, but the learned executing court in excess of jurisdiction, proceeded against the petitioner so much so that a non-bailable warrant of arrest was issued against him and he was even confined in a judicial lock-up till he was bailed out and, therefore, the impugned orders being illegal and unwarranted are liable to be set aside.

3. The learned counsel for the respondents Nos.1 to 3 on his turn defended the impugned judgments and orders of the learned executing court and argued that all along, it was the petitioner who was pursuing the case before the learned trial Court as well as before the learned appellate court and, therefore, in the absence of the judgment-debtor namely, Nadeem, the learned executing court has rightly proceeded against the petitioner in order to recover the decretal amount from him.

4. Arguments heard and record perused.

5. As the record reveals, the respondent No.1 filed a suit for dissolution of marriage, dower amount of Rs.50,000/-, maintenance etc. for herself as well as for the respondents Nos.2 and 3 against Nadeem son of Hameedullah. The suit was decreed on 5-12-2009 which was challenged before the appellate court and vide judgment and decree dated 9-3-2010, the impugned judgment and decree dated 5-12-2009 was modified in terms that the respondent No.1 was not held entitled to the damages amount of Rs.5,00,000/-. Thereafter the respondents Nos.1 to 3 filed an execution petition against the judgment-debtor namely, Nadeem on 5-7-2010 and in accordance with law, notice was issued to the judgment-debtor. Since the petitioner as a special attorney for Nadeem had been appearing before the learned trial court as well as before the learned appellate court, therefore, he accordingly put appearance before the learned executing court on 11-5-2011. On 20-5-2011, the learned executing court on the one hand issued non-bailable warrant of arrest against the judgment-debtor and simultaneously directed the petitioner to furnish the list of the movable and immovable property of the judgment-debtor. It was on 27-5-2011 when the judgment-debtor as usual remained absent from attending the court and the learned executing court issued notice to the petitioner being attorney of the judgment-debtor during trial. On 8-6-2011, besides the judgment-debtor, non-bailable warrant of arrest was also issued against the present petitioner which order was repeated on 22-7-2011 as well. On 27-7-2011, the petitioner appeared before the learned executing court, submitted bail bond and was directed by the executing court to pay the decretal amount. On 29-7-2011, the petitioner paid a sum of Rs.500/- to the decreet-holders and was accordingly directed by the learned executing court to pay the entire decretal amount.

6. It needs no reiteration that the petitioner being the step-father as well as special attorney

of Nadeem used to appear before the learned trial Court on his behalf. However, nowhere was it undertaken by the petitioner at any stage of the proceedings to pay the decretal amount to the respondents Nos.1 to 3 in the event of decree in their favour. The language of the special power of attorney executed in favour of the petitioner is abundantly clear in this respect.

7. The suit as decreed was only against Nadeem and moreover, the appeal as preferred before the learned appellate court was signed by Nadeem himself. Mere pursuance of a case by an attorney never warranted such a harsh and punitive action as was resorted to by the learned executing court. The execution petition was also instituted against Nadeem with no mention of the petitioner in the same. Even the record is silent as to any request made by the respondents Nos.1 to 3/decreet-holders at any stage to the learned executing court to realize the decretal amount from the petitioner. The impugned orders of the learned executing court typify an age-old proverb "Rob Peter to pay Paul". Such being the case, the impugned orders are not sustainable in the eye of law.

8. For the reasons mentioned above, we allow this petition, set aside the impugned orders dated 27-5-2011 and 29-7-2011 being without lawful authority and jurisdiction. Simultaneously, the petitioner is discharged from the liability under the bail bond.

JJK/210/P

Petition allowed.