

**Judgment Sheet.**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT.**

**Case No. W.P.No.22688/2021**

**Adnan**

**Versus**

**Superintendent Jail, Gujrat etc**

**JUDGMENT**

Date of hearing	<b>04.5.2021.</b>
Petitioner by	Mr. Muhammad Irfan Malik, Advocate.
Respondents No.3 and 4 by	Mian Haseeb-ul-Hassan, Advocate.
Respondent No.1 by	Mr. Zafar Rahim Sukhera, Assistant Advocate General, Punjab.

**Abid Aziz Sheikh, J.-** Through this constitutional petition, the petitioner has challenged the order dated 08.9.2020 and subsequent orders passed by learned Executing Court, pertaining to the detention of the petitioner in civil prison.

2. Relevant facts are that respondents No.3 and 4 filed suit for recovery of maintenance allowance along with dowry articles against the petitioner. The said suit was decreed on 10.6.2019 and in appeal, the judgment

and decree was partially modified by learned Appellate Court on 07.10.2019. The respondent No.4 filed execution on 06.11.2019 before learned Executing Court, Kharian District Gujrat. In execution petition, the petitioner refused to pay the decretal amount. Resultantly, he was sent to civil prison for non-compliance of judgments and decrees on 08.9.2020. The petitioner being aggrieved has filed this constitutional petition.

3. Learned counsel for the petitioner submits that under section 13(3) of the Family Courts Act, 1964 (**Act**), the amount could only be recovered as arrears of land revenue and under section 82(5) of the Land Revenue Act, 1967 (**Land Revenue Act**), the civil imprisonment cannot exceed 30 days. He therefore, submits that civil imprisonment of the petitioner for the last more than seven months is patently illegal and against the provision of section 13(3) of the Act. He placed reliance on Nasir Khan vs. Tahira Rashida (1986 CLC 2381), Parwaiz Ahmed vs. District Judge etc (1987 CLC 1277), Amjad Iqbal vs. Mst. Nida Sohail etc (2015

**SCMR 128)**, Farzana Rasool etc vs. Dr. Muhammad Bashir etc (2011 SCMR 1361), Dr. Asma Ali vs. Masood Sajjad etc (PLD 2011 SC 221), Shafique Sultan vs. Mst. Asma Firdous etc (2017 SCMR 393), Haji Muhammad Nawaz vs. Samina Kanwal etc (2017 SCMR 321), Muhammad Sadiq vs. Dr. Sabira Sultana (2002 SCMR 1950), Talib Hussain vs. Mst. Parveen Akhtar (PLD 2013 Lahore 129), Muhammad Ashraf vs. Mst. Safia Bibi (2008 CLC 1583) and Ashfaq Hussain vs. Government of the Punjab etc (2011 PLC (C.S) 799).

4. Learned counsel for the respondents on the other hand submits that under section 13(3) of the Act, the procedure prescribed under Land Revenue Act can be followed by Family Court through specific order and in absence of such order, the provision of Code of Civil Procedure, 1908 (CPC) shall be applicable. He submits that in present case, no specific order was passed to follow the procedure provided under the Land Revenue Act, therefore, civil imprisonment will be governed by the provision of CPC, which prescribe civil

imprisonment up to one year for failure to satisfy the decree.

5. Arguments heard. The legal question require determination in this case is that whether under section 13 of the Act, the Family Court for the payment of decretal amount is bound to follow the procedure prescribed under the Land Revenue Act or it may follow the procedure of CPC for execution of decree. To determine this moot issue, it is convenient to reproduce the provision of sub-sections (3) and (4) of Section 13 of the Act hereunder:-

***S.13. Enforcement of decrees.---***

*(3) Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court, [“not exceeding thirty days”] the same shall, if the Court so directs, be recovered as arrears of land revenue, and on recovery shall be paid to the decree holder.*

*(4) The decrees shall be executed by the Court passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

(emphasis supplied)

6. The plain reading of section 13(3) of the Act shows that if the family court so directs, the payment of money and decretal amount to be recovered as arrears of land revenue. The words “if the Court so directs” in section 13(3), give discretion to the Family Court to get the money decree executed as arrears of land revenue. However, it is neither mandatory for the Family Court to follow the procedure of Land Revenue Act nor this provision take away the effect of section 13(4) of the Act, which gives full power to the family court to execute the decree and also allow the execution of said decree by such other civil Courts as the District Judge may direct. Once the legislation has vested the power of execution of a decree with the Family Court, it means that the provision of Order XXI and other related provisions of CPC shall also be applicable for the execution of decree. Regarding term of civil imprisonment, it is relevant to note that for immediate execution of decree, Order XXI Rule 11 CPC provides arrest and detention of judgment debtor and under section 55 of CPC, the civil imprisonment can be for one year.

7. The holistic reading of section 13 of the Act shows that where decree relates to payment of money and decretal amount is not paid, the same will be recoverable in ordinary manner provided under the provisions of CPC but through specific order, the special procedure under the Land Revenue Act can also be followed by learned Judge Family Court. The same view was also expressed by Sindh High Court in Ijaz Ahmed Siddiqui vs. The District Judge etc (1988 CLC 634) in following terms:-.

*“Subsection (3) of section 13 is a provision which gives a discretion to the Family Court to get the money decree executed as an arrear of land revenue. However, it is not a mandatory provision and in any case it does not take away the effect of subsection (4) of the said section which gives full powers to the Family Court to execute the decree and also allows execution of the said decree by such other Civil Courts as the District Judge may direct. By investing the power of execution of decree with the Family Courts, the legislature has clearly intended to attract the provisions of Order XXI, C.P.C. for the execution of decree and one of the rules of Order XXI is rule 11, which provides for immediate execution of decree by the arrest of the judgment-debtor. The other provisions of Order XXI are also available to the decree-holder in this respect. What is important is that the decree which has been granted in favour of a wife for the recovery of dower should be executable not only in the ordinary manner provided by the C.P.C., but also in the special manner provided in the Land Revenue Act, it was a money decree and was ordered so by the Court in its' discretion. The two*

*provisions namely subsections (3) and (4) of section 13 are not exclusive of each other, but are complimentary to each other. In any case subsection (3) is applicable only if the Court so directs otherwise it is not ordinarily applicable and, therefore, it is not a provision for ordinary execution of money decree by the process of recovery of arrears of land revenue”.*

8. The same view was also expressed by various learned Courts in following case law:-

(i) In Qurban Ali Khan vs. IV Civil and Family Judge etc (PLD 1993 Karachi 159), it is held as under:-

*“8. (i) In Muhammad Ramzan's case contention was that the decree in execution being for recovery of money, it could only be executed by the Collector, under section 13(3) of the Act, as the amount is to be recovered as arrears of land revenue. The learned Judge observed that subsection (3) of section 13 of the Act is in the nature of enabling provision and provides an additional procedure which can be adopted for enforcing the decree under specific order of the Court directing the recovery as arrears of land revenue. It was further observed that subsection (3) does not in any manner, affect the general provision in subsection (4) for execution of the decrees passed by the Family Courts. If subsection (3) and subsection (4) are read together, the inevitable conclusion is that all decrees passed by the Family Court are to be executed by it or by such other Civil Courts as the District Judge may by special or general order direct. In matters where the decree relates to recovery of money an additional power is vested in Court to direct the recovery as arrears of land revenue. There is no warrant, however, for construing subsection (3) as*

*ousting the jurisdiction of the Family Court to execute the decree ----*

*9.The cases of Lai Muhammad and another **and Parvaiz Ahmed** lay down that all the decrees granted by the Family Courts, except the money decree, can be executed in the manner prescribed by the Code of Civil Procedure, notwithstanding the bar contained in section 17 of the Act ”.*

(ii) In Muhammad Ramzan vs. Mst. Afshan Kanwal etc

**(1991 CLC 1823)**, while interpreting section 13 of the

Act, the learned Court held that:-

*“On the plain reading of this provision it is obvious that if the decree relates to payment of money, the decretal amount can be recovered as arrears of land revenue but if the Court so direct. This subsection is in the nature of an enabling provision and provides an additional procedure which can be adopted for enforcing the decree under a specific order of the Court directing the recovery as arrears of land revenue. It does not however, in any manner effect the general provision in subsection (4) for execution of the decrees passed by the Family Court. If subsection (3) and subsection (4) are read together, the inevitable conclusion is that all decrees passed by the Family Court are to be executed by it or by such other Civil Court as the District Judge may by special and general order direct. In matters where the decree relates to recovery of money an additional power is vested in Court to direct the recovery as arrears of land revenue. There is no warrant, however, for construing subsection (3) as ousting the jurisdiction of the Family Court to execute the decree”.*



- (iii) In Tahir Farooq vs. Judge Family Court etc (2002 MLD 1758), it is held as under:-

*“This provision is provided where the decree in execution is a decree for payment of money. In the present case the statement of judgment-debtor shows that he is desperately unwilling person to satisfy the decree of maintenance granted by learned Judge Family Court and confirmed by the learned Appellate Court. Under section 13 of the West Pakistan Family Courts Act, 1964 the Family Court has powers to adopt procedure for satisfying the decree granted by it, as section 13(3) starts with the words "where a decree relates to payment of money and decretal amount is not paid within the time specified by the Court" and then the words "if the Court so directs". In section 13(4) it is also provided that decree shall be executed by the Court passing it or by such other Civil Court as the District Judge may by special or general order direct, therefore, the Family Court being executing Court is also empowered as a executing Court to order for recovery of decretal amount otherwise than as arrears of land revenue”.*

- (iv) In the case of Abdul Majeed vs. Additional District Judge etc (2019 YLR 2924), this Court held as under:-

*“Upon deeper examination of section 17 of West Pakistan Family Courts Act 1964 (Act of 1964) it is evident that exclusion of Code of Civil Procedure 1908 ("Code of 1908"), envisaged therein, is not applicable to the execution proceedings, which shall be regulated and proceeded with through Order XXI of Code of 1908. The exclusion is only meant for matters in respect of the Part I of the Schedule thereof”.*

9. From the above discussion and case law, it is evident that under section 13(3) of the Act, the special procedure prescribed under Land Revenue Act can be followed by the family Court through a specific order and in absence of such order, the ordinary mode for execution prescribed under CPC shall be applicable. Perusal of impugned order dated 08.9.2020 and subsequent orders passed by learned Executing Court shows that no specific order was passed by the learned Executing Court to follow the procedure provided under the Land Revenue Act, therefore, civil imprisonment terms of petitioner will not be governed under section 82 of the Land Revenue Act but will be governed under section 55 read with Order XXI of CPC, under which, civil imprisonment for failure to pay the decretal amount can be up to one year. The case law relied upon by learned counsel for the petitioner is distinguishable and not applicable to the facts and circumstances of this case.

10. In view of above discussion, it cannot be said that petitioner detention in civil prison for more than one

month is illegal or against the provision of section 13(3) of the Act. Therefore, this petition being merit-less is **dismissed.**

**(ABID AZIZ SHEIKH)**  
**JUDGE**

**Approved for Reporting**

**JUDGE**

*Rizwan*