

ORDER SHEET
LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR

Writ Petition No. 5510 of 2012/BWP

Mst. Nadia Bibi **Versus** Additional District Judge Etc.

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2.	23.10.2012.	Mikan Izhar Ahmad Joyia, Advocate for the petitioner. Nemo for respondent No.2.
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By virtue of this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question *vires* of judgment dated 18.6.2012 passed by the learned Additional District Judge, Liaquatpur, district Rahim Yar Khan (respondent No.1).

2. Short of unnecessary details, facts of the case, forming factual canvass of instant petition, are that the petitioner filed a suit for dissolution of marriage as well as for maintenance allowance before the learned Judge Family Court, Liaquatpur, district Rahim Yar Khan. During pendency of the proceedings of the said suit respondent No.2 filed an application for recovery of minors, house and articles received by the petitioner in lieu of marriage which was dismissed vide order dated 21.7.2011. Vide order dated 25.7.2011 suit of the petitioner qua

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dissolution of marriage was decreed on the basis of Khula. Respondent No.2 filed a petition for execution of order and decree dated 25.7.2011 for return of benefits of Khula which was dismissed by the learned Executing Court vide order dated 4.11.2011. Aggrieved by the said order respondent No.2 filed revision petition before the learned Additional District Judge, Liaquatpur, which was allowed vide impugned judgment dated 18.6.2012; hence this petition.

3. The resume of arguments advanced by learned counsel for the petitioner is that as the suit of petitioner was decreed on the basis of Khula without any condition, therefore, the execution petition was not maintainable as no order or decree was passed in favour of respondent No.2; that while passing the impugned order the learned revisional court did not consider that not only in the order but in the decree nothing has been ordered to be paid by the petitioner in lieu of Khula to respondent No.2; that while passing the impugned order the revisional court totally overlooked order dated 21.7.2011 passed by the learned Judge Family Court whereby the application of respondent No.2 for return of

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articles received by the petitioner in lieu of marriage was dismissed and the said order having not been challenged any further attained finality; that according to section 13 of the West Pakistan Family Court Act, 1964, only judgment/order of money decrees can be executed; that though respondent No.2 filed revision petition before the learned Additional District Judge Liaquatpur but the irresponsible attitude of the revisional court is apparent from the fact that in the heading of the judgment it has been treated as an appeal; that the lack of legal acumen and judicial approach on the part of the revisional court is also manifest from the fact that in the heading of the judgment the date of decision has been mentioned as 20.6.2012 whereas in the end the same has been mentioned as 18.6.2012 and that the impugned order is result of misapplication of law on the subject.

4. Respondent No.2 declined to receive notice so he was served by way of affixation but despite that none has entered appearance on his behalf today. Consequently, he is proceeded against *ex-parte*.

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5. I have heard learned counsel for the petitioner at considerable length and have also gone through the documents appended with this petition in particular the impugned order passed by the learned Additional District Judge, Liaquatpur.

7. A perusal of the order and decree passed in favour of the petitioner shows that her suit for dissolution of marriage was decreed on the basis of Khula without any condition for return of anything in lieu of said Khula. The operative part of the order dated 25.7.2011 is reproduced herein below: -

“In the light of above said discussion, Nikah of the plaintiff Nadia Bibi D/o Naeemullah with the defendant Husnain Raza S/o Jam Baggo is hereby dissolved on the basis of Khula. Necessary notice be issued to the concerned Union Council for further proceedings.”

8. Further a glance on the decree sheet prepared pursuant to the said order confirms that the marriage between the parties was dissolved on the basis of Khula simplicitor without directing the petitioner to return anything in lieu thereof. Even otherwise, in appropriate cases the court can dissolve marriage on the basis of Khula without

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fixing any condition qua return of the benefits got by the wife as result of the said marriage.

9. The procedure regarding execution of decrees passed by the learned Judge Family Court is governed under section 13 of the West Pakistan Family Court Act, 1964, which for convenience is reproduced herein below: -

“Endorsement of decrees.--(1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particular in the prescribed register.

(2) If any money is paid, and any .property is delivered in the presence of any Family Court, in satisfaction of the decree, it shall enter the fact of payment and the delivery of property, as the case may be, in the aforesaid register.

(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 decree shall be executed by the Court passing it or by such other Civil Court as the

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District Judge may, by special or general order, direct.

(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.

A perusal of the afore-quoted section makes it clear that execution only lies against a judgment/order and decree in favour of a party. Insofar as the case in hand is concerned as no order or decree especially a money decree was passed in favour of respondent No.2 the execution petition filed by him was rightly dismissed by the learned Executing Court.

10. It is interesting to note that while filing execution petition respondent No.2 under column No.7 of the petitioner has written as under: -

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A perusal of afore-quoted portion from the execution petition filed by respondent No.3 belies the stance of respondent No.2 and the entire superstructure based on said petition falls on the ground. If such execution petitions are allowed to be filed the frivolous litigations which is already on its peak would be increased manifold, therefore, the said practice should be nipped in the bud.

11. For what has been discussed above, I am of the view that while passing the impugned judgment the learned revisional court did not go through the contents of the execution petition and committed material illegality while allowing the same. Consequently, this petition is **accepted** and the impugned judgment dated 18.6.2012 passed by the learned Additional District Judge, Liaquatpur, is

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hereby set aside and that of the learned Executing Court is restored.

12. Before parting with this order it is observed that I have gone across a number of cases wherein either the description of the appeal or revision is not properly described or the judgment bears different dates regarding the institution of the suits, appeals and revisions. The said fact shows lack of interest on the part of the Judicial Officers concerned which practice cannot be approved rather deserves to be deprecated with full vigor while putting the delinquents at guard. Consequently, Office is directed to transmit a copy of this petition to the District & Sessions Judge Rahim Yar Khan for information of the Additional District Judge concerned and for future reference.

(SHUJAAT ALI KHAN)
JUDGE

Approved for Reporting

JUDGE