

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MUNIB AKHTAR

(MR)
Crl.M.A.62-P/2018 in Crl.O.P.82/2010 AND
Crl.O.P.55/2018 in Crl.O.P.82/2010 in C.P.103-P/2010
(Contempt of Court/Non-compliance of Court Order)

Saeeda Sultan

...Petitioner(s)

VERSUS

Liaqat Ali Orakzai and others

...Respondent(s)

For the Petitioner(s): Mr. Hamid Khan, Sr. ASC
a/w applicant

For Respondent-3: Mr. Abdul Lateef Afridi, ASC

Date of Hearing: 04.11.2020

ORDER

Mushir Alam, J.- Through the instant Criminal Miscellaneous Application, the Petitioner seeks action in contempt for non-implementation of order of this Court dated 17.3.2010. The facts leading to instant proceedings are that the Petitioner, Mst. Saeeda Sultan, filed Civil Suit No. 208/1 of 1970 against Respondents No. 1 to 4 for the declaration, permanent injunction, and partition of suit property to the extent of her $\frac{1}{4}$ th share, that was gifted to the Petitioner by her husband Dost Muhammad Khan as dower. After hearing the parties, the trial court granted a preliminary decree for partition on 12.12.1972 which remained unchallenged by the Respondents.

2. However, one Munawar Khan intervened by claiming to be a bona fide purchaser of some share in the suit property whose application was dismissed by the Honorable Peshawar High Court on 04.09.1994. A Civil Revision was then filed by the legal heirs of Munawar Khan which was accepted vide Order dated 04.05.1995, whereby, the decree was set aside and the matter was remanded back to the trial Court for impleadment of

legal heirs of Munawar Khan. Upon being impleaded, the legal heirs of Munawar Khan abandoned their claim, but the current Respondents contested the suit by filing an amended written statement. The trial Court then passed another preliminary decree of partition in the favor of the current Petitioner vide Order dated 31.10.2006. The decree was then affirmed by the Addition District Judge-IX, Peshawar vide Order dated 29.10.2007.

3. The Respondents then filed a Revision Petition to the Honorable Peshawar High Court which was dismissed vide Order dated 18.12.2009 with the observation to the trial court to conclude the matter within two months and:

"10. As the Plaintiff herself has prayed for a partition decree besides declaration of title and when the principles on the mode of partition are well settled which insist on equitable division albeit long standing possession is always well recorded if no serious prejudice is caused to the other side and there is also no great disparity in the classes of the two properties. In nutshell, the cardinal principle of partition is that each co-share is to be placed on equal pedestal and no one should be given too much preference over the other which principle has to be followed in this case too, however, while drawing the mode of partition, the property is not to be divided into small parcels rendering it of less value for each co-sharer.

11. The trial/executing Court is expected to keep in view the above principle relating to the mode of partition while allowing the mode of partition"

4. The current Petitioner, being aggrieved only from Paras No. 10 and No.11 of the aforementioned judgment, filed an appeal before this Court which was disposed of in the following terms vide order dated 17.03.10:

"2. After having extensively heard the learned counsel for the parties and the parties present in person on 16.3.2010 and today, in view of the facts, as these reflect from the record, as well as, none has objection to the full and effective execution of the preliminary decree dated 31.10.2006 passed by the learned Civil Judge-IX, Peshawar in Civil Suit No. 208/1 (Neem) of 1970. The parties had been litigating for the last about 40 years without any final and effective determination of their rights by the Courts, therefore, as above expressed by

the parties, the preliminary decree for doing complete justice is directed to be put into execution by the Tehsildar, Peshawar. The Tehsildar is further directed to take alongwith him for his assistance well-experienced Patwari and the entire revenue record, maps, Aks-e-Shajra Kishtawar etc as may be deemed requisite for the execution of the above noted decree. The parties are directed to appear in person or as the case may be through their learned advocates or duly authorized attorneys before the Tehsildar to any of the parties. Copies of the preliminary decree, plaint, amended plaint and this order for compliance be transmitted to the Tehsildar for the purpose. Compliance report, after completion of the process as directed be sent to the Officer Incharge of this Court, Branch Registry at Peshawar for our perusal in Chambers.

In above terms, the Petition stands disposed of."

5. This Court was then pleased to confirm that the aforementioned Order was executed successfully vide Order dated 23.04.10 which stated as follows:

"Order of this Court dated 17.03.2010 passed in Civil Petition No. 103-P of 2010, as per report of Tehsildar, stands executed in the presence of the parties including the Petitioner Ms. Sajida Sultan, who acknowledged and accepted the same as correct and to her satisfaction, she made statement to such effect under her signatures and thumb mark, therefore, no action is contemplated pursuant to the application directly sent to the Honorable Chief Justice of Pakistan."

6. The Petitioner then filed a Criminal Original Petition No. 82 of 2010 on 06.09.2010 for contempt of the Orders of this Court against the Respondents, alleging that she had not been handed possession of the property to the extent of her share on the pretext of obtaining a warrant of possession, which, according to the Petitioner, was not issued, and that the Revenue Staff has failed to comply with the Order of this Court. Meanwhile, the current Respondents also filed a Criminal Original Petition No. 89 on 01.10.10 for Contempt of the Orders of this Court against the Petitioners, alleging that the Petitioner had interfered in the dispensation of the duties entrusted to the Tehsildar.

7. The Criminal Original Petition No. 82 of 2010 filed by the current Petitioner was then dismissed vide Order dated 29.08.2012. The relevant extract is reproduced below:

"2. The learned Counsel for the Petitioners now states that the Tehsildar has modified his report subsequently. We need not go into this question as the same is not before us. Since the Order of 17.03.2010 has been complied with, the learned counsel did not press this Petition. If the Petitioner has any grievance, she may seek any remedy available to her under the law. The Petition is, therefore, dismissed as not pressed."

8. The Petitioner then filed a Criminal Miscellaneous Application No. 6-P of 2013 and expressed reservations over the implementation of the Order of this Court. The then counsel for the Petitioners made allegations of corruption against the Tehsildar, criticized the then Assistant Registrar of the Branch Registry, Peshawar of this Court. Then, another Criminal Miscellaneous Application No. 8 of 2013 was moved under Order XXXIII of the Supreme Court Rules, 1980 asking for the reopening of the case as the decree passed in favour of Mst. Saeeda Sultan has remained unsatisfied.

9. It will be pertinent to mention here that Mr. Haroon Adnan Orakzai, the previous counsel for Petitioner, is her own son who has previously tendered unconditional apology stating that he regrets the errors and mistakes made by him. He was present on 24.01.2013 during the hearing of Criminal Original Petition No. 89 of 2010 and assured the Court that he would not reagitae or make any attempt to reopen the issue of implementation which now stands closed by this Court. The relevant extract of the Order dated 24.01.2013 is reproduced below, whereby, the Criminal Original Petition No. 89 of 2010 was disposed of:

"6. Today Haroon Adnan Orakzai had tendered unconditional apology stating that he regrets the errors made by him. He was present and assured the Court that he would not reagitae or make any attempt to reopen the issue of implementation which now stands closed by this Court. In view of this unconditional written apology and assurance given by Haroon Adnan Orakzai, Advocate, we withdrew the notice of contempt of Court. Mst. Saeeda Sultan, who was also in attendance, tried

to reopen the issue of implementation of this Court's order expressing dissatisfaction over the implementation of the Court's order dated 17.03.2010. It may be reiterated that the Order of this Court dated 23.04.2010 has become final.

7. *No review has been filed against the above Order. The record and the replies submitted by Mst. Saeeda Sultan and her son, Haroon Adnan Orakzai, show clearly that they were aware of the above Order dated 23.04.2010. The matter now stands closed. All officials in whatever department, particularly the revenue, shall take note that the matter of execution of preliminary decree granted to the Respondent, Mst. Saeeda Sultan, stands concluded in the light of the report of the Tehsildar duly confirmed by this Court. The allegation in the application for contempt of Court, the documents appended to it and the various replies submitted by the Respondents depict a sad story of people holding responsible positions have allowed themselves to be manipulated in the endeavor of interested party to reopen the issue already closed by this Court...."*

10. The Respondents then filed Criminal Original Petition No. 08 of 2016 against the current Petitioner for Contempt of Court on the ground that the Tehsildar, despite the order dated 24.01.13 of this Court, has separated land from the share of one of the present Respondents. The aforementioned Petition was disposed of as not pressed vide Order dated 31.03.2017. Although, it was mentioned that the current Petitioner is entitled to make an application but has to do so within the bounds of the law, and not in violation of any law or the judgment/decision of this Court that has already been given.

11. The current Petitioner then filed a Criminal Original Petition No. 55 of 2018 in Criminal Original Petition No. 82 of 2010 to reagitate the matter, reneging on prior promises, for contempt of Court. Subsequently, the current Petitioner then also filed a Criminal Miscellaneous Application No. 62-P of 2018 to reinstitute the Contempt of Court proceedings against the current Respondents. The matter was heard by a bench of this court and the learned Sessions Judge, Peshawar was entrusted with the responsibility of visiting the spot, along with senior member of the Board of Revenue to ensure that the preliminary decree

dated 31.10.2006, passed in favor of the Applicant/Petitioner, which has attained finality, is duly executed and the Applicant-decree holder is delivered the possession of the suit property strictly in terms of the said decree vide order dated 20.04.2018. A compliance report by the learned Sessions Judge, Peshawar was submitted and, prima facie, the order of this Court has already been complied with.

12. We have noted that in a large number of civil cases, emanating from orders, judgements, and decrees, reach this court as a final arbiter. In many a case, one or the other party seeks the implementation of the final order and/or judgement of this Court through Contempt proceedings rather than seeking execution as provided for under the Code of Civil procedure, 1908. When this matter was lastly fixed on 01.10 2020, the attention of the learned counsels for the petitioner was drawn to Order XLV CPC, read with Section 38 of the CPC, wherein, a complete procedure to enforce and execute orders of the Supreme Court is provided for. The learned counsels for the Petitioner then sought time to assist the court.

13. Today when the matter came, the learned counsel was confronted with above facts and so also quoted provision. Mr. Hamid Khan, the current learned counsel for the Petitioner, could not controvert the stated factual position and on legal score, he requested that the Petitioner may be given permission to avail of the remedy as may be available to her.

14. We have heard the learned Counsel for the Petitioner and perused the record.

15. The present controversy revolves around the bifurcation between Contempt of Court proceedings and Execution proceedings. The narration above demonstrates that the Petitioner, decree holder, instead of seeking remedy before the executing Court, chose to invoke the contempt jurisdiction of this court to seek implementation of Decree in the partition suit, as modified by this court, and has subsequently made successive contempt applications.

16. It seems that the Petitioners son, who was also a counsel for the Petitioner in this case, has repeatedly abused the process of the court by putting her fragile and old mother as a shield to get an undue favour from this Court due to which a cost was also imposed on him. It is clear from the report of the Tehsildar and the learned District Judge that her share in the property was duly partitioned and she was put in possession. Yet time and again contempt proceedings were invoked.

17. As a matter of general principle, where an order, judgement, and decree originating from the lower court reaches the apex Court for final adjudication of the judgment or decree of the court below, such final order, judgement, or decree is to be implemented and executed by the Court of first instance¹ under Section 38, read with Rule 15 of Order XLV of the Code of Civil Procedure, 1908 ("CPC") and not through contempt. For sake of convenience Rule 15, Order XLV CPC runs as follows:-

"Procedure to enforce orders of the Supreme Court.

(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Courts, was preferred.

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(4) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place."

¹ Section 37 to 47 CPC. Order XXI CPC and Rule 15 of Order XLV, CPC.

18. Where a decree and/or Order of this Court is to be implemented, the appropriate remedy would lie in execution proceedings. Whereas, contempt would only lie under the circumstances enumerated under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 as reproduced below:

"204. Contempt of Court.-

- 1) In this Article, "Court" means the Supreme Court or a High Court.*
- 2) A Court shall have power to punish any person who-*
 - a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;*
 - b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;*
 - c) does anything which tends to prejudice the determination of a matter pending before the Court; or*
 - d) does any other thing which, by law, constitutes contempt of the Court.*
- 3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court."*

19. In pursuance of authority conferred under sub-article 3 of Article 204 of The Constitution, the Contempt of Court Ordinance, 2003 was promulgated. It lays down three kinds of contempt proceedings, namely Civil Contempt, Judicial Contempt, and Criminal Contempt. The present case is one of Civil Contempt which is defined under S.2(a) of the Ordinance as:

- (a) "civil contempt" means the willful flouting or disregard of,-*
 - (i) an order, whether interim or final, a judgment or decree of a Court;*
 - (ii) a writ or order issued by a Court in the exercise of its Constitutional Jurisdiction;*
 - (iii) an undertaking given to, and recorded by, a Court;*
 - (iv) the process of a Court;'*

20. The aforementioned Ordinance does not contain any provisions for execution of the orders, judgments, or decrees of the Court in the contempt jurisdiction. Instead, Section 5 highlights penal consequences for committing contempt of court. The relevant extract is reproduced below:

"5. Punishment.—(1) Subject to sub-section (2), any person who commits contempt of Court shall be punished with imprisonment which may extend to six months' simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both.

(2) A person accused of having committed contempt of Court may, at any stage, submit an apology and the Court, if satisfied that it is bona fide, may discharge him or remit his sentence.

Explanation.—The fact that an accused person genuinely believes that he has not committed contempt and enters a defense shall not detract from the bona fides of an apology.

(3) In the case of a contempt having been committed, or alleged to have been committed, by a company, the responsibility therefore shall extend to the persons in the company, directly or indirectly, responsible for the same, who shall also be liable to be punished accordingly.

(4) Notwithstanding anything contained in any judgment, no Court shall have the power to pass any order of punishment for or in relation to any act of contempt save and except in accordance with sub-section (1)."

21. Civil contempt proceedings cannot be initiated to have a judgment, decree, or order of the Supreme Court executed. These proceedings are quasi-criminal in nature, as is evident from the penal consequences from the Contempt of Court Ordinance, 2003, and are, therefore, not warranted in each case² or cases where the appropriate remedy lies elsewhere, such as execution proceedings in this case. The dicta laid down by this Court in Dr. Muhammad Tahir-ul-Oadri v. Federation of Pakistan through Secretary Ministry of Law, Islamabad³ has also clarified

² (2013) 9 SCC 600. AIR 2020 SC 2100..

³ 2014 PLD 367 SC

that contempt proceedings are to be used sparingly by the Courts on a case-to-case basis.⁴

22. In contempt proceedings, unless the Petitioner/Decree holder successionally and clearly sets down relevant facts constituting contempt of court, in addition to being able to demonstrate that the matter complained of is "*willful disobedience*" of any judgement, decree, direction, order, writ, other process of the Court, or breach of an undertaking given to court, no interference is warranted under contempt proceedings.

23. 'Willful disobedience' carries a mental element that must be examined by the Court after initiating contempt proceedings. The intricacies of the mental element were delved upon in the Indian Supreme Court case of Ram Kishan v Tarun Bajaj⁵, the relevant extract of which is reproduced as follows:

"10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'willful'. The word 'willful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Willful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability... The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely"... The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part."

24. After having established the mental element, it is to be seen if invoking the contempt Jurisdiction would effectively cause the cessation of an act that adversely effects the administration of justice. The limits of this extraordinary jurisdiction are perhaps aptly described in the case of

⁴ 2013 SCMR 461

⁵ (2014) 16 SCC 204

Supreme Court Bar Association v Union of India⁶ which illustrates the point as:

"42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

25. It is noted that the tool of contempt is often and rampantly misused as a substitute for execution and implementation of the final orders, judgment and decree of the trial Court as may be upheld, reversed, modified or varied by the apex Court. Where it is a case for implementation of order, judgement, and decree of the Court below simpliciter, the course available is to seek execution in the manner provided for exhaustively in the Code of Civil Procedure and not by way of contempt either under Article 204 of the Constitution of Pakistan, 1973 or Contempt of Court Ordinance, 2003, or under Order XXVII of the Supreme court Rules 1980.

⁶ (1998) 4 SCC 409, (2004) 4 SCC 573.

30. The remedy to enforce order of Supreme Court in terms of Rule 15 of order XLV CPC or Order XVL-A CPC and/or other enabling provisions of the Code of Civil Procedure, 1908. In R.N. Day & Ors. vs. Bhagyabati Pramanik & Ors.,⁷ the Indian Supreme Court was confronted with a somewhat similar situation and did not approve invoking contempt proceedings where the appropriate remedy was to file execution proceedings. It was held as follows:

"7. Weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

8. It is further clarified that the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment debtor and hence the court should not normally lend help to a party who refuses to take legally provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree."

⁷ (2000) 4 SCC 400

31. In light of the aforementioned discussion, it is apparent that the Petitioner, under the influence of her son, is badgering the Court with frivolous litigation to attain a larger share of the suit property than what was originally granted to her. Had it not been an old woman, this Court would have been inclined to impose costs. The miscellaneous application is, therefore, dismissed.

Sd/ — J
Sd/ — J

ISLAMABAD
4th November, 2020
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"Approved for reporting"