

Form No: HCJD/C-128
ORDER SHEET
LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.
JUDICIAL DEPARTMENT.

Writ Petition No. 9483 of 2017.

Chiragh Din Vs. A. D. J., etc.

<i>S. No. of order/ Proceeding</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of parties or counsel, where necessary</i>
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29.06.2017. Ch. Khawar Siddique Sahi,
Advocate for petitioner.

Through this constitutional petition, the petitioner has challenged the validity of impugned orders dated 09.03.2017 and 10.04.2017 passed by learned Executing Court and order dated 14.06.2017 passed by learned Additional District Judge Chichawatni, District Sahiwal whereby the objection petition filed by the petitioner was concurrently dismissed.

2. The necessary facts are that respondents No.3 & 4 filed a suit for recovery of maintenance allowance and recovery of dowry articles against respondent No.5 Muhammad Riaz son of Chiragh Din, who is husband and father of said respondents respectively. The suit was decreed by the learned Judge Family Court, Chichawatni vide judgment and decree dated 11.11.2011. Thereafter respondents No.3 & 4 filed an execution petition for the recovery of decretal amount. During the pendency of the execution petition, the judgment debtor-respondent No.5 disappeared, hence, the learned Executing Court issued bailable warrant of arrest of the judgment debtor. The petitioner gave surety for the judgment debtor but later on filed an objection

petition against the proceedings of the learned Executing Court which was dismissed vide order dated 10.04.2017, against which an appeal was filed which also met the same fate vide judgment dated 14.06.2017. Hence, this petition.

3. Learned counsel for the petitioner contends that when the judgment debtor is available and was also sent to imprisonment by the learned Executing Court, therefore, the liability of surety is relinquished and he cannot be held liable for satisfaction of the decree. He relied upon "Muhammad Ramzan vs. Ali Hamza and others" (PLD 2016 Lahore 622).

4. **Arguments heard. Record perused.**

5. Perusal of record reveals that the present petitioner appeared in the Court and filed his surety bond with regard to the payment of decretal amount. The learned trial Court also recorded his statement whereby he alongwith the judgment debtor stated that the surety bind himself for the satisfaction of the decree. On the statement of the surety of the judgment debtor the court fixed the proceedings for 26.04.2014 when the parties agreed that if brother of surety namely Noor Mehnga stated on oath of Holy Quran that the dowry articles were delivered to the decree holder, the dispute between the parties would be resolved accordingly. At this stage, the learned Executing Court proceeded further for payment of remaining decretal amount and for the settlement of offer tendered by the decree holders. But thereafter on 05.05.2014 the judgment debtor as well as the surety have not put their appearance before the learned Executing Court when the learned Executing

Court re-started the proceedings of the execution against the judgment debtor as well as against the surety. The Executing Court attached the property which was placed by the surety for the purpose of satisfaction of decree. The learned Executing Court further proceeded with the proceedings of attachment of property of surety by issuing *Robkar* to the concerned Tehsildar on 09.03.2017.

6. There is no denial that the petitioner stood surety in place of judgment debtor at his own option with his volunteer consent. At this stage, the words specified in the surety bond are relevant for the purpose of satisfaction of decree which are reproduced below: -

حکم عدالت جناب کی تعمیل کرتے ہوئے ضمانت نامہ داخل عدالت بے درخواست اجرا ڈگری کی بابت ضمانت داخل کر رہا ہوں اور اس کی مکمل ذمہ داری قبول کرتا ہوں جہاں کہیں بھی من مقرر (ضمانتی) کی ضرورت ہوگی تو من مقرر حاضر ہونے کا پابند ہوگا اور من مقرر عدالتی فیصلے کا احترام کرے گا۔

The above quoted reference reveals that the surety bond was not only submitted for the production of the judgment debtor but also the responsibility and liability of the judgment debtor was assumed and opted by the surety for the satisfaction of the decree, therefore, the supra citation did not attract to the facts of the case in hand. (emphasis provided)

7. It is also evident from the record of the learned Executing Court that the petitioner and the proforma respondent No.5/judgment debtor have recorded their statements voluntarily before the learned Executing Court. The petitioner

also tendered his surety bond with his free will and consent before the learned Executing Court. The petitioner who is also father of the judgment debtor, has given the undertaking before the learned Executing Court that he is fully responsible for the satisfaction of the decree. In this manner the surety have stepped into the shoe of the judgment debtor voluntarily.

8. Learned counsel for the petitioner has further argued that as the judgment debtor has been produced by the petitioner and on production before the Court, he was arrested and sent to imprisonment for one year, therefore, on his appearance, the surety is not liable to further satisfy the decree and under no compulsion he can be ordered to further proceed in the matter, hence, the order of attachment of his property dated 09.03.2017 is also illegal. The arguments advanced by the learned counsel for the petitioner is totally misconceived as it is evident from the order of the executing Court dated 19.04.2014 that the petitioner stood surety for the payment of decretal amount and not for only the appearance and production of the judgment debtor. It is also manifest from record that the petitioner did not stand surety for appearance of the judgment debtor rather he stood surety for the payment of the decretal amount, therefore, he cannot be absolved from his liability on account of mere arrest of the judgment debtor. The case law relied upon by the learned Courts below "BAHADUR KHAN versus KANEEZ FATIMA and others" (2003 CLC 1620) and "AKBAR versus MUHAMAMD IKHTIAR and 3 others" (2010 CLC 444) are rightly applicable to the case in hand. In addition to

this the citation titled "AMANULLAH KHAN versus DISTRICT JUDGE and 3 others" (2012 CLC 679) has also discussed the supra situation which is as under: -

"It is manifest from the perusal of above mentioned provisions of law that action for recovery of decretal amount can validly be taken against a surety of a defaulter. The petitioner stood as a surety. He was under no obligation to bind himself but he did bind himself to pay the decretal amount, therefore, no interference is required by this court in the impugned order passed by the learned Civil Judge/Judge Family Court, as well as, in order dated 11.10.,2011 passed by the learned Additional District Judge, Sheikhpura."

9. For the foregoing reasons, learned counsel for the petitioner has failed to point out any jurisdictional error and defect or any illegality in the impugned orders passed by learned lower Courts calling for any further interference by this Court through its constitutional jurisdiction, therefore, this petition is hereby **dismissed in limine**.

**(ABDUL RAHMAN AURANGZEB)
JUDGE.**

Approved for reporting.

JUDGE.