

Form No.HCJD/C-121  
ORDER SHEET  
IN THE LAHORE HIGH COURT  
BAHAWALPUR BENCH, BAHAWALPUR.  
JUDICIAL DEPARTMENT  
**EFA No. 13 of 2018/BWP**  
Khadim Hussain  
vs  
Muhammad Tariq etc

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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28.09.2018 Mr. Asif Mehmood Pirzada, Advocate for appellant.

Through this appeal, the appellant/surety has called in question order dated 27.09.2017 passed by executing court whereby his property was ordered to be auctioned in execution of decree passed in a suit for recovery of Rs.5,00,000/- filed by Muhammad Tariq/respondent No.1/decree holder against Ehsan Elahi/respondent No.2/judgment debtor for whom the appellant stood as surety and has further called in question the order dated 26.06.2018 passed by ADJ, Chishtian whereby the appeal/revision filed by the appellant against the said order was dismissed.

2. The brief facts of the case are that the suit titled “*Muhammad Tariq vs. Ehsan Elahi*” was decreed on 23.11.2016 in favour of Muhammad Tariq/respondent No.1, whereafter in the execution petition on 22.06.2017, the executing court issued warrants of attachment of

appellant's property and on 27.09.2017 ordered to auction the property of the present appellant who on 19.05.2017 stood as surety of the judgment debtor in execution proceedings of the aforesaid decree. Feeling aggrieved of the said order, the appellant filed a revision petition/appeal which was dismissed vide order dated 26.06.2018. Both the aforesaid orders are under challenge through instant appeal on the ground that the appellant has not been provided proper opportunity to defend his case.

3. From perusal of record, it is seen that the decree amounting to Rs.5,00,000/- was passed in the recovery suit against respondent No.2 who was arrested in execution thereof and produced in the court on 19.05.2017 where the judgment debtor/respondent No.2 deposited Rs.1,00,000/- and agreed to deposit the remaining outstanding amount in four equal monthly installments and the present appellant stood as surety for the payment of the said installments and case was adjourned to 22.06.2017. However, the judgment debtor and the present appellant failed to abide by the said terms and conditions fixed on 19.05.2017, where-after vide order dated 22.06.2017 the court issued warrants of arrest

of the judgment debtor and warrants of attachment of property against the appellant. Subsequently, on 27.09.2017 the learned executing court attached the property of the appellant for the purpose of satisfaction of the decree and appointed Naib Tehsildar, Halqa Chishtian as court auctioneer. The said order was called in question by the appellant by filing a revision petition/appeal which was dismissed vide order dated 26.06.2018. The appellant has throughout the proceedings in all courts admitted that he had stood surety for the judgment debtor and the said judgment debtor instead of complying with his undertaking to make payment of decretal amount in four equal monthly installments had disappeared from the court, where-after proceedings have been initiated against the appellant. The appellant has called in question the order of proceeding against him by attaching his property and putting the same to auction by claiming therein that the order had been passed without issuing any notice to him and, therefore, was of no legal effect. A surety is proceeded against for enforcement of his liability as provided under Section 145 of CPC which is reproduced below:

**“S. 145 Enforcement of liability of surety.—**

*Where any person has become liable as surety –*

- a) for the performance of any decree or any part thereof, or*
- b) for the restitution of any property taken in execution of a decree, or*
- c) for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,*

*the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of Section 47:*

*Provided that such notice as the Court in each case thinks sufficient has been given to the surety.”*

The perusal of the record shows that on the day when the appellant stood as surety on 19.05.2017, he had agreed to make payment of monthly installments in case of failure of judgment debtor to do so and had sufficient notice that on the due dates he was liable to make payment in default on the part of the judgment debtor. At the most, the appellant was entitled to receive notice from the court which in the opinion of the court is sufficient for

proceeding against the surety in terms of section 145 CPC. Vide order dated 22.06.2017, the executing court issued warrants for attachment of the appellant's property which also amounted to notice to the appellant in terms of Section 145 of the CPC where-after on non-appearance of the judgment debtor as well as the surety, the court proceeded to attach appellant's property and initiated proceedings for its auction for satisfaction of the decree. Before the said property could be put to auction, the appellant challenged the order by filing a revision petition/appeal before the appellate court where stay was granted and the matter remained pending for about nine months and during said period, the appellant remained unable to persuade the judgment debtor to satisfy the decree. In the said court, the appellant had admitted that he had stood as surety of the judgment debtor. Proper opportunity of hearing was provided to him before dismissal of his revision/appeal.

**4.** Although the appellant claims that notice was not served upon him by the executing court but in his revision, where the matter remained pending for about nine months, sufficient opportunities of hearing had been provided to the appellant to defend himself and produce

judgment debtor for satisfaction of the decree or in case of default clear the outstanding liability but the appellant did not make any effort to abide by his aforesaid undertaking. The revisional court provided sufficient opportunities of hearing to the appellant to establish his case, therefore, even if the earlier order was passed by the executing court could be treated to be without notice or hearing, the said defect, if any, stands cured by the hearing provided by the revisional court and also by this Court. Reliance in this regard is placed on **Muhammad Rafiq and others vs. Ralley Khan through legal heirs** (1989 MLD 3823) wherein it has been provided that if non-service of a notice only, would constitute violation of principles of natural justice, hearing in appeal or revision would operate to cure that defect. Even otherwise, appellant is bound by his undertaking given before the court whereby he stood as surety for payment in case of judgment debtor's default. Moreover, the liability of the surety is coextensive with that of the judgment debtor unless it is otherwise provided by the contract, as provided in Section 128 of the Contract Act, 1872. Reliance in this regard is placed on **Rafique Hazquel Masih vs. Bank Alfalah Ltd and others** (2005

SCMR 72), Industrial Development Bank of Pakistan vs. Hyderabad Beverage Company Private Limited and others (2016 SCMR 451) and Messrs Platinum Insurance Company Limited, Karachi through Managing Director vs. Daewoo Corporation, Shaikhupura through Director, Administration and Finance (PLD 1999 S.C. 01). In the present case, the appellant has failed to establish that the said liability has been discharged. Besides, no prejudice has been caused to the appellant as he was fully aware of his duty to satisfy the decree and had notice of proceedings against him as is evident from the revision petition filed by him. No misreading, non-reading, illegality or jurisdictional defect in the orders passed by the courts below is pointed out.

5. Resultantly, this appeal being devoid of any force is *dismissed*.

**(MUZAMIL AKHTAR SHABIR)**  
**JUDGE**

Approved for reporting