

JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

C.R.No.2081-2016

Tajamal Abbas Vs. Inamullah

JUDGMENT

Date of hearing 28.02.2018
Petitioner by Mr. Fawad Malik Awan, Advocate
Respondent by M/s. Rai Shahid Saleem Khan, Ehsan Ahmed
Bhindar, Ziaullah Khan and Imran Haider
Bhatti, Advocates.

Ch. Muhammad Masood Jahangir ,J:- The present petitioner on 11.12.2013 approached the learned Civil Court, Jhang with a suit for permanent injunction, admitting therein that he occupied the demised house being tenant and his ultimate prayer was that respondent be restrained from snatching its possession through illegal means and during its proceedings on 24.03.2014, he at his own, made a statement as under:-

”24-03-14 مدعی حاضر۔ بر حلف بیانی ہے کہ راضی نامہ ہو گیا ہے اور اراضی متدعوئیہ میں اندر 6 ماہ خالی کر دوں گا۔ راضی نامہ کی وجہ سے دعویٰ ہذا کی مزید پیروی درکار نہ ہے خارج فرمایا جاوے۔ اس بابت دستخط حاشیہ لئے گئے۔ انعام اللہ حاضرہ عدالت کو بھی بیان بالا سنایا گیا جو اس راضی نامہ کو تسلیم کرتا ہے مدعا علیہ کے بھی دستخط حاشیہ لئے گئے۔“

Pursuant thereto, the Court then and there passed the order to the following effect:-

In view of above recorded statement of the parties recorded above, the instant suit of the plaintiff is hereby

dismissed as withdrawn. However, both the parties will abide by and bound to comply with their statement.

Admittedly, the petitioner did not honour his words and the respondent/defendant was compelled to bring an execution petition for its realization, but it failed being incompetent having been rejected by the learned Executing Court on the very first day of its hearing on 31.01.2015. On appeal, the petitioner did not turn up, compelling the Appellate Court to set at naught the view of learned Executing Court and it did so on 15.08.2015 directing the learned Executing Court to summon the present petitioner and decide the Execution Petition strictly in accordance with law. The present petitioner filed an application under Order XLI rule 21 of the Code of Civil Procedure, 1908 before the same Court for recalling his ex-parte order dated 15.08.2015, which was allowed and appeal of respondent was revived for its decision afresh, but again on merit it was allowed on 13.04.2016 and through instant Civil Revision it was attacked.

2. The inaugural argument of Mr. Fawad Malik Awan, Advocate for petitioner that the suit was dismissed as withdrawn and decree sheet was not drawn and that consent of the parties also did not fall within definition of a decree under sub-section (2) of section 2 of the Code, 1908 and that execution proceedings could not be initiated was not tenable. Apart from Order XXI of Code *ibid*, section 36 thereof is the most relevant provision to be applied, which might have escaped notice of Mr. Fawad and it would be advantageous to go through it, which reads as follows:-

36. Application to Orders.—The provisions of this Code relating to the execution of decrees shall, so far as

they are applicable, be deemed to apply to the execution of orders.

A bare perusal thereof in express terms makes all the provisions relating to the execution of decree applicable also to the execution of orders. Moreover, the Court is equipped with the jurisdiction not only to adjudicate upon disputes and pass an order rather it possesses ample powers to get its orders implemented, otherwise machinery of the Courts working under the mandate of law would become dormant. It was not a case of simple withdrawal of the suit, rather same was decided as per undertaking given by the petitioner and he was specifically bounded to comply with it, hence there was no occasion for him to fall back or renege. An undertaking made by a party before the Court of law has to be given sanctity while applying the principle of estoppel as well to respect moral and ethical rules and if retraction therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the Judiciary and would damage the sacred image of the Courts that they are infertile to make implementation of orders passed by them in the judicial proceedings. Reliance can be placed upon *Farzana Rasool and 3 others Vs. Dr. Muhammad Bashir and others* (2011 SCMR 1361). It is again well established that conduct of a party is always considered to be relevant in the Court of law, the latter has to take exception to the conduct of litigant like in case in hand. The petitioner voluntarily opted to surrender himself before the Court of law to evict the rented premises, then it becomes final and absolute for him to vacate it and any retraction cannot be permitted because

sanctity to the judicial proceedings has to be safe guarded at any cost. Full Bench of this Court in a case reported as *Mst. Kishwar Sultan Jehan Begum Vs. Aslam Awais Arw 3 others*(PLD 1976 Lahore 580), observed as under:-

An undertaking given to the Court by a party or his counsel has exactly the same force as an order made or an injunction granted by a Court; once an undertaking is given in the Court by a party or on his behalf by his counsel he becomes bound to fulfill the same.

Whereas, in a case cited as *Izhar Alam Farooqi, Advocate and another Vs. Sheikh Abdul Sattar Lasi and others* (2008 CLD 149) , the apex Court observed as follows:-

It is true that a Court which has the jurisdiction to adjudicate the dispute and pass an order has also implicit power to have the order implemented and mere an erroneous order passed by the Court of competent jurisdiction does not render the order without jurisdiction.

Moreover, this Court in the judgment styled as *Khawar Saeed Raza Vs. Wajahat Iqbal* (2003 CLC 1306) clinched the identical controversy in hand while concluding as under:-

Compromise is admitted which became part of the order, which stipulated the withdrawal of the suit by the respondent. Under section 36 Civil Procedure Code, 1908, the provisions of the Code relating to the execution of decree are also applicable to orders. Even if there was no decree in existence an order disposing of the suit in terms of the compromise is very much there, binding upon and operative qua the parties. In Kilachand Devchand and Co. V. Ajodhuaprasad Sukhamnand and others AIR 1934 Bombay 452, it was observed that if the Court had jurisdiction to make the order it had necessarily the power and jurisdiction to enforce the same and the law does not allow its machinery to be clogged in this respect. Likewise in Ranjit Singh Hazari and others

V. Juman Meah and another PLD 1961 Dacca 842 section 36 of the Civil Procedure Code was considered by the learned Division Bench of the then High Court of Dacca (East Pakistan) and it was observed that the provisions regarding execution of decree were applicable to orders as well.

Hence, apart from reasoning of the learned Addl. District Judge, the above referred precedents also support his view. Reliance of learned counsel for the petitioner on the case law cited as *Shaukat Ali Vs. Muhammad Sharif (2013 CLC 1558)* and *Messrs Singer Pakistan Ltd. Through Director Personal and Administration and another Vs. Nasir Ali Meer and another (2015 MLD 267)* is not apt, because scope of section 36 of Code ibid was absolutely not considered therein. Even otherwise, each case has to be dealt with keeping in view its own peculiar facts and circumstances.

4. As a result of the above, impugned order of the learned Addl. District Judge, Jhang do not call for any interference by this Court and petition in hand being devoid of merit as well as force is accordingly dismissed with costs.

(Ch. Muhammad Masood Jahangir)
Judge

Approved for reporting.

Judge

Syed Zameer