

Writ Petition No. 18134 of 2018.

Form No.HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 18134 of 2018.

Shakoor Ahmad vs. District Judge Okara & others

Sr. No. of order/ proceedings	Date of order/ proceedings	Order with Signature of Judge, and that of parties or counsel, where necessary.
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12.12.2018. Mr. Shameem Riaz Ahmad Langrial, Advocate for the petitioner.

The petitioner by invoking constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has assailed the legality and propriety of orders dated 18.09.2018 and 01.10.2018 passed by the learned District Judge, Okara mainly on the grounds of against facts, law and as such not sustainable.

2. The brief facts of family litigation culminating into this writ petition and necessary for its fair adjudication are that Mst. Hamida Bibi/respondent No.7, wife of present petitioner alongwith her two minor daughters in year 2015, filed suit for maintenance allowance, recovery of dowry articles and dower, which was ex-parte decreed on 04.04.2016 by the learned Judge Family Court, Depalpur, District Okara. Mst. Hamida/respondent No.7 alongwith other decree holders moved application for execution of decree, but the decretal amount Rs.3,25,500/- could not be recovered and at the instance of decree holders, learned Judge Family Court, Depalpur transferred the decree to the learned Senior Civil Judge, Sahiwal as present petitioner was residing in District Sahiwal and had landed property in that District. At the instance of the petitioner, vide order dated

Writ Petition No. 18134 of 2018.

11.09.2018 passed by this Court in W.P.No.1251/2018, order of the learned executing Court, Depalpur and the learned District Judge, Okara were set-aside and the learned District Judge, Okara was directed to pass appropriate order on the reference, remitted by the learned executing Court/transferor Court.

3. In pursuance of that order, learned District Judge, Okara, on 01.10.2018 passed the impugned order, which reads as under:-

“6. Admittedly, learned Judge Family Court Depalpur was not competent to transmit/transfer the decree of maintenance allowance etc to the learned Senior Civil Judge Sahiwal, directly, without adopting proper channel of this Office, therefore, execution petition titled above is sent to the learned Senior Civil Judge Sahiwal, in compliance of order of Hon’ble High Court, Multan Bench, for further proceedings, in accordance the law”.

By approaching this Court, the petitioner has assailed the legality and property of above orders mainly on the grounds of against facts, law and as such not sustainable.

4. The main contention of learned counsel for the petitioner is that the decretal amount can be recovered by the learned Judge Family Court, Depalpur under Section 13(3) of the West Pakistan Family Courts Act, 1964 as arrears of land revenue and as such there was no need to transfer the decree to the Civil Court, Sahiwal. In support of this contention, learned counsel for the petitioner has relied on case Muhammad Sadiq vs. Dr. Sabira Sultana (2002 SCMR 1950), Amjad Iqbal vs. Mst. Nida Sohail and others (2015 S.C.M.R. 128), Muhammad Pervez vs. Mst. Nabila Yasmeen and 2 others (2004 SCMR 1352), Farooq Ahmed & another vs. Additional District Judge, Samundari, District Faisalabad and 5 others (PLJ 2015 Lahore 774), Abdul Matloob vs. Zarqa Kalsoom and others (2003 CLC 1458 Lahore), Nasir Khan vs. Tahira Rashida (1986 CLC 2381 Lahore), Lal

Writ Petition No. 18134 of 2018.

Muhammad and another vs. Mst. Niaz Parwara (PLD 1970 Peshawar 52), *Syed Maqsood Ali vs. Mt. Soofia Noushaba and 2 others* (1986 CLC 620 Karachi) and *Muhammad Ramzan and others vs. Civil Judge and others* (2003 YLR 2767 Lahore).

5. Contention heard.

6. The petitioner is judgment debtor of a family decree for maintenance, dowry, dower etc. passed in favour of petitioner's wife and two daughters. It is legal and moral obligation of the petitioner to pay maintenance to them, but neither from averments in the writ petition nor from submissions of learned counsel for the petitioner, it is established that till date, the petitioner has paid even a penny to satisfy that decree. As per petitioner's own case, he is resident of Tehsil & District, Sahiwal, whereas, at the instance of respondent-Mst. Hamida Bibi, the decree has been transferred to the Civil Court/Family Court, Sahiwal so as to ensure execution of decree as per law against the person and property of present petitioner (judgment debtor in that decree). Of course, it will be difficult for the respondent/mother of two minor kids, residing in Tehsil Depalpur to pursue her execution petition at District headquarter, Sahiwal, whereas, it is quite convenient and feasible for the petitioner to join proceedings before the learned executing Court and to make payment of decretal amount or contest the execution petition in accordance with law. As such, by the impugned orders, no right whatsoever of the petitioner stood infringed. Rather it may be observed that the cause and apprehensions if any of the petitioner are pre-mature and so far the learned executing court has not passed any orders towards mode and manner of recovery of decretal amount.

7. The petitioner by invoking constitutional jurisdiction of this Court has approached this Court for equitable relief. It is well settled that he, who seeks equity, must do equity. In case *Abdul*

Writ Petition No. 18134 of 2018.

Rashid Khan and 8 others vs. President, Services Institute P.A.F. Base, Lahore, through its Incharge and 2 others (1999 MLD 1870), this Court has laid down following principle:-

“Constitutional jurisdiction of High Court being discretionary, could only be pressed into service to foster cause of justice and public good and was not to be exercised to perpetuate injustice or would refuse to exercise its Constitutional jurisdiction if by doing so, instead of advancing ends of justice, same would be defeated”.

In another case Secretary to the Government of the Punjab, Forest Department, Punjab, Lahore through Divisional Forest Officer vs. Ghulam Nabi and 3 others (PLD 2001 Supreme Court 415), while discussing the scope of exercise of constitutional jurisdiction by this Court, following principle has been laid down:-

“Superior Courts have ample jurisdiction to refuse a relief where granting it would tantamount to injustice”.

In case Muhammad Abdullah vs. Yatim Khana Khalqia, Sargodha through its Manager and others (2004 SCMR 471), the difficulties of the decree holder have been noted as under:-

“This is sorry state of affairs. In spite of all these facts, he succeeded in an illegal manner to thwart the execution proceedings for more than two decades. Even the learned Executing Court had not taken notice of all these aspects and dragged the execution proceedings for such a long period. This is unfortunate state of situation of litigation in this country. At this juncture it would be appropriate to reproduce the observations of the Judicial Committee of Privy Council made as far back as in the year 1872 in the case titled The General Manager of the Raj Durbhunga, under the Court of Wards v. Maharajah Coomar Ramaput Singh 14 MIA 605= 17 WR 459=10 BLRPC 294=2 Suth. PCJ 117 respecting the plight of litigants in this part of the world which are as under:--

“The Right Hon. Sir James Colville:--These proceedings certainly illustrate what was said

Writ Petition No. 18134 of 2018.

by Mr. Doyne and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a decree. When, whoever, the actual question which is at issue between the appellant and the respondent on this appeal is eliminated from the rest of the record. It does not appear to their Lordships to present any very great difficulty.” (underline is mine)

The process of execution as in vogue in our system has totally shattered the confidence reposed by the general public in our judicial system. Firstly, it takes years for a suit of any kind to reach its logical conclusion. Thereafter, the decree-holder has to file execution proceedings, which more or less is contested like a suit. Sufficient time is spent before the Executing Court and the matter is contested by the judgment-debtor like a suit by filing number of applications just to prolong the matter. It takes years to finalize the same”.

8. In Muhammad Pervez’ case supra relied by learned counsel for the petitioner, the apex Court observed that the Courts were aware of their authority and obligation to implement the decrees passed by them. Judgment-debtor was bound to satisfy the decree either himself or through the attorney.

9. In Farooq Ahmed’s case referred above, this Court has held as under:-

“5. Scanning the above case law I am convinced to hold that the judgment debtor, his attorney as well as his surety cannot frustrate the execution of the decree for the reason that the Family Court’s proceedings are special in nature, therefore, the Executing Court will try and put in all efforts to execute the decree. In my humble opinion, the Courts are well aware of their powers to ensure the execution of their judgments and decrees which are not passed in vacuum and have full support of the law and the procedure of the country.”

10. Worth-mentioning that in this petition, the petitioner has not even impleaded his minor daughters so as to camouflage his case

Writ Petition No. 18134 of 2018.

only against Mst. Hamida Bibi/respondent No.7. This fact also indicates petitioner's mala-fide.

11. When confronted with the well-reasoned orders passed by the learned District Judge, Okara, learned counsel for the petitioner has failed to point out any illegality, perversity or any jurisdictional defect and, as such, no valid ground exists for interference in the orders impugned herein.

12. For what has been discussed above, I am of the view that the petitioner has not approached this Court with clean hands and his main object by filing this constitutional petition is to deprive the decree holders from the fruits of the decree. As such, instant petition being devoid of merits is dismissed *in limine*.

(Mujahid Mustaqeem Ahmed)
Judge

Approved for Reporting:

Judge

M.AYYUB