

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

Civil Revision No.845-P of 2023

Haji Zahid and another
Versus
Mst. Neelam Gul and another

Date of hearing 19.02.2024

Petitioner (s) By: Qazi Jawad Ehsanullah, advocate
Respondent (s) By: Mr. Sawar Khan, advocate.

JUDGEMENT

IJAZ ANWAR. J:- This revision petition is filed against the judgement and decree dated 09.09.2023, passed by the learned Additional District Judge-VIII, Peshawar whereby the appeal filed by the petitioner against the order dated 06.3.2023 passed by the learned Executing Court Peshawar was dismissed and maintained the order of the learned Executing court, Peshawar by which the Objection Petition filed by the petitioner was dismissed.

SCANNED

2. Brief facts, as per averments in the petition are that the respondent No.1 filed a suit No. 638/2018 for the recovery of her dower, maintenance and with other prayers mentioned in the heading of the plaint against the respondent No.2 which was decreed in respect of dower only to the extent of one Lac rupees vide judgement and decree dated 10.1.2022. The respondent No.1/plaintiff feeling aggrieved of the said judgement and decree filed an appeal before the Additional District Judge-III/MCAC, Peshawar which was modified to the extent of future maintenance of the minor from Rs. 7000/- per month to Rs. 10,000/- with 10 percent increase while the rest of the judgement and decree the learned family Court was maintained vide judgement dated 25.5.2022. The respondent No.1/decreed holder filed an execution petition before the Executing Court against the respondent

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No.2/judgement debtor for execution of decree and the Executing Court issued warrant of possession. The petitioner filed an objection petition before the learned Executing Court which was dismissed vide order dated 06.3.2023. The petitioner filed an appeal against the said order before the learned Additional District Judge, Peshawar which too was dismissed vide order dated 09.09.2023. Hence this revision petition.

3. Arguments of learned counsel for the parties heard and record gone through.

4. Perusal of the record reveals that the family suit filed by the respondent No.1 against the respondent No.2 for dower, maintenance, medical expenses and dowry articles was decreed vide judgement and decree dated 10.01.2022 to the extent of recovery of Rs.100,000/- as cash dower, possession of 0.93 marla (255.5 Sqft) situated at Sheikh Abad No.3, Moza Shah Dhand,

Peshawar, maintenance of respondent No.1 and her minor daughter including dowry articles. The appeal filed by the respondent No.1 against the denial of certain prayer by the trial court was modified only to the extent of enhancement of maintenance of minor vide judgement and decree dated 25.5.2022.

5. The present dispute between the parties pertains to the share in the dower house of respondent No.1 regarding which the objections filed by the petitioners were turned down by the two courts below.



6. In the instant case, firstly, it is to be decided as to whether a revision petition under section 115 CPC is maintainable against the order of the Executing Court and secondly, the execution petition regarding the subject house is maintainable or not as according to the petitioners, the orders of both the courts below

about the warrant of possession and specification of share of respondent No.1 is against the record.

Section 13 of the Family Court Act, 1964 deals with the enforcement of decrees. It being relevant in the matter is reproduced as under:

“13. Enforcement of decrees.— (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.

(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment 3[or] the delivery of property, as the case may be, in the aforesaid register.

(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court 2[not exceeding thirty days], the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.

(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.

(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it

be paid in such installments as it deems fit.”

7. In support of his contention, learned counsel for petitioners has placed reliance upon PLD 2012 Peshawar 139 “Gul Sarwar Khan and 8 others Vs Muhammad Wali Khan and 2 others”, 2021 CLC 749 “Mst. Bibi Roza Vs Wali-ur-Rehman and 11 others”, 2013 YLR 1487 “Akhtar Abbas Vs Muhammad Anwar and others”, and PLD 2011 Lahore 450 “Mst. Razia Bibi vs Muhammad Shareef and another” which pertain to the fact that in a suit for declaration, merely a decree for symbolic possession can be granted and to separate the share, a decree holder has to file a partition suit while on the question of maintainability of the revision petition, he has placed reliance on 2023 CLC 1300 “Mst. Amman Gul Vs Judge Family Court, Rawalpindi and 2 others” and PLD 2022 Lahore 600 “Sawera Ikram Vs Amir

Naveed". In later set of judgements, Section 13 of the Family Court Act, 1964 has been considered and it has been held that the Family Court while executing a family decree could adopt any of the modes of execution of the decree as provided under the Civil Procedure Code, 1908.

8. I am in complete agreement with the findings and observation of the honourable Lahore High Court to the effect that section 13 of the Family Court Act 1964 does not provide a detailed mechanism for execution of a decree nor it caters to the eventualities arising from the execution proceedings and also that the Family Court enjoys all the powers of the Executing Court as provided under Order XXI of the Civil Procedure Code, 1908. However, the exercise of powers by the Executing/Family Court is for a limited purpose and that limited purpose is to adopt the mode provided under Order XXI of the

CPC for execution of such decree but to say that since it can adopt the procedure as provided under Order XXI CPC can also open venues for questioning the order of the Executing Court in the mode and manner which is provided in the CPC i.e. appealable orders or revisional jurisdiction is not legally tenable because Section 17 of the Family Court Act, 1964 specifically excludes the application of provisions of Qanon-e-Shahadat Order 1984 and the Code of Civil Procedure, 1908 except section 10 and 11 of the CPC. The right of appeal as well as revision being substantive rights and until specifically provided cannot be invoked merely because the Executing Court was applying provision of Order-XXI for the execution of decrees. Section 14 of the Family Court Act, 1994 provides for right of appeal against the decision given or a decree passed by the Family Court. Similarly, Sub

Section 3 of Section 14 excludes even maintainability of appeal and revision against interim orders passed by the Family Court. The intention of legislature seems to place a full stop on the family litigation after the appeal is decided by the Appellate forum.

9. In view of the above, I am of the view that the dismissal of appeal against the order of Executing Court cannot be questioned in Revision Petition under Section 115 of the CPC. Similarly, after the decision of the appeal, no further second appeal or revision is competent. Thus, in such circumstances, I am of the considered opinion that revision petition filed by the petitioners is not maintainable.

10. Though, it has not been specifically claimed that the revision petition can be converted into constitutional petition under Article 199 of Constitution of Islamic Republic of

Pakistan, 1973, yet even if it is converted into constitutional petition, still the factual controversy decided by the two courts below cannot be brought under scrutiny in the constitutional jurisdiction of this Court. Recently, the honourable Supreme court of Pakistan in the case titled “Arif Fareed vs Bibi Sara and others” (2023 SCMR 413) held that:

“7.Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No

doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts prioritise the disposal of family cases by constituting special family benches for this purpose. Accordingly, leave to appeal is refused and petition stands dismissed."

11. Even otherwise, the main plea which was raised in the objection petition by the petitioners pertains to the decision by the Jirga which was allegedly executed between the petitioners and the respondent No.2. Such decision cannot be applied to the case of petitioners because the same was never produced in the family suit filed by the respondent No.1 nor the respondent No.1 was signatory to the same. The entitlement/ entrustment of the dower portion of the house made by the petitioners apparently seems to be unreasonable and that's why it was not accepted by the Executing Court.

Even otherwise, as stated above, in a family matter, when once the matter is decided upto the Appellate forum, exceptional grounds are required to interfere in the matter by the High Court while exercising writ jurisdiction.

12. For the reasons stated above, I am of the view that this revision petition being not maintainable besides having no merit is accordingly dismissed.


JUDGE

Announced.
Dated.19.02.2024