

PESHAWAR HIGH COURT,
BANNU BENCH.

FORM 'A'
FORM OF ORDER SHEET

Date of order or proceedings (1)	Order or other proceedings with signature of Judge (s). (2)
19-12-2018	<p><u>W.P No.1117-B of 2018.</u></p> <p>Present:</p> <p style="text-align:center">Haroon Ur Rashid Advocate for the petitioner. ***</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J.---</u> By way of the instant petition, filed under Article 199 of the Constitution of Pakistan, 1973, the petitioner seeks relief with the following prayers:-</p> <p style="text-align:center"><i>"By acceptance the instant Writ Petition, this Honourable court may very graciously be pleased to declare both the impugned orders and judgments of the learned lower courts as illegal, unlawful, against the law and facts, void ab initio, nullity in the eye of law and has got no legal effect and be set aside; further this Honourable court may kindly be directed to Executing Court/Civil Judge-II, Karak to auction the property of the petitioner and pay the decretal amount to the respondent / decree holder and the petitioner may be released."</i></p>

	<p>2- Aggrieved against the order dated 14/12/2018, passed in Civil Revision of the petitioner by the learned Additional District Judge-II Karak, whereby bail petition of the petitioner was recalled and was arrested to be produced before the Executing court.</p> <p>3- Learned Executing Court on 9/11/2018 had directed the petitioner, who stood as surety for the judgment debtor Muhammad Maqbool for the purpose of execution of a decree passé din favour of respondent No.1.</p> <p>4- I have heard arguments of learned counsel for the petitioner in motion and perused the record.</p> <p>5- The learned counsel for the petitioner submitted that the petitioner is 78 years of age and he has already submitted revenue record pertaining to his ownership for the satisfaction of execution of decree of Rs.12,40,000/-, passed in favour of respondent No.1/decree holder.</p> <p>6- Having considered the arguments of learned counsel for the petitioner, I do not feel inclined to allow the instant Writ Petition and release him on</p>
--	--

	<p>bail on the ground that the Civil court is empowered Under sections 54 & 55 read with Order 21 of the Civil Procedure Code to adopt coercive method to execute a civil decree. The petitioner had given an undertaking to produce the judgment debtor as and when required but he has failed to fulfill the said undertaking. In such like undertaking made by a party before the court of law, has got sanctity while applying the principle of estoppel as well to respect moral and ethical values. the petitioner could not be absolved of the liability, for which he stood surety. When the judgments and orders of courts are not implemented, they simply become a paper decree and would lose its legal value which creates insurmountable difficulties, not only for the courts but also for the decree holder as well, who has got a lawful right and has submitted himself to the jurisdiction of court without taking the law into his own hands. If his trust and confidence is not honoured it would get shatter and that would further weaken the social fabric of the society.</p> <p>7- The nature of grievance of present petitioner is identical to negating the orders of a court and he is morally bound to procure the attendance of the judgment debtor or his sureties be forfeited by the</p>
--	--

learned Executing court, however, the instant Writ Petition is dismissed but the learned trial court is directed to pass an appropriate order keeping in view Sections 54, 55 and order 21 of the Civil Procedure Code and the detention of the petitioner in a civil prison must be for some specific period through a detailed order and also issuing a Show Cause Notice that why he should not be detained in civil prison.

Order accordingly.

Announced.

19-12-2018

J U D G E



