

2023 C L C 2169**[Lahore (Rawalpindi Bench)]****Before Jawad Hassan, J****GHULAM SHABBIR----Petitioner****Versus****Mst. TANZEELA NUSRAT and others----Respondents**

Writ Petition No.2669 of 2023, decided on 12th September, 2023.

(a) Civil Procedure Code (V of 1908)---

----S. 145---Contract Act (IX of 1872), S. 128---Execution of decree---Decretal amount, non-payment of---Liability of surety, enforcement of---Section 145 of the Civil Procedure Code, 1908, stipulates that when a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him to the extent for which surety has rendered himself personal lyliable in the manners provided therein--- After default has occurred there is no reason to absolve the surety from his liability to pay the agreed amount which has become due against him in view of principles laid down in S.128 of the Contract Act, 1872 and S. 145 of the Civil procedure Code, 1908.

Muhammad Muzamal Riaz v. Additional District Judge, Shorkot, District Jhang and 6 others 2020 CLC 970 ref.

(b) Civil Procedure Code (V of 1908)---

----S. 145---Contract Act (IX of 1872), S. 128---Family Courts Act (XXXV of 1964), S. 13---Execution of decree passed by Family Court---Decretal amount not paid by judgment-debtor---Liability of surety, enforcement of---Proceedings against the surety---Contention of the petitioner /surety was that he stood surety only for a certain amount and not for entire satisfaction of decree, while said /certain amount had already been paid by him during execution proceedings, therefore, he was liable to be released and his property de-attached---Validity---Record revealed that the judgment-debtor was sent to civil prison due to non-payment of decretal amount and thereafter, the petitioner, being surety, was summoned to satisfy the decree---It was also evident from the contents of the surety bond as well as the statement recorded before the Court by the petitioner/surety, that he himself had made him liable to pay the decretal amount in place of the judgment-debtor on his failure to satisfy the decree, thus, the petitioner later could not wriggle out of his own undertaking---However, High Court directed the Executing Court to decide the pending objection petition of surety after framing of issues and recording of evidence of parties regarding the amount paid or to be paid by the petitioner/surety to the decree-holder---Constitutional petition was disposed of accordingly.

Messrs State Engineering Corporation Ltd. v. National Development Finance Corporation and others 2006 SCMR 619; Shafiullah v. Saifullah and 7 others PLD 2017 Pesh. 203 and Ahmad Ali and another v. Sheikh Amman Elahi 2015 CLC 1704 ref.

(c) Civil Procedure Code (V of 1908)---

----S. 145---Contract Act (IX of 1872), S. 128---Family Courts Act (XXXV of 1964), S. 13---Constitution of Pakistan, Art. 199---Execution of decree passed by Family Court---Non-payment by the judgment-debtor---Proceedings against the surety---Concurrent findings---Constitutional jurisdiction of the High Court---Scope---Contention of the petitioner/surety was that he stood surety only for a certain amount, and not for entire satisfaction of decree, while said /certain amount had already been paid by him during execution proceedings, therefore, he was liable to be released and his property de-attached---Validity---High court could not interfere with the findings recorded by the Family Court which later were concurred with by the Appellate Court, and both were in accordance with the law/evidence---In the present case, neither any jurisdictional error of the Courts below had been challenged nor conduct of proceedings by the Courts below had been called in question---No illegality was found in the impugned concurrent judgments of the Courts below, which could not be interfered with especially when the same were based upon substantial evidence which the petitioner had not been able to controvert during the proceedings before the Courts below---Both the Courts had recorded findings of facts assigning cogent and sound reasoning which did not warrant any interference by the High Court---Constitutional petition was dismissed, in circumstances.

Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another 2023 SCMR 246; M. Hamad Hassan v. Mst. Isma Bukhari and 2 others 2023 SCMR 1434; Mst. Nusrat and others v. Dr. Cap. Shahzad Riaz and others 2011 SCMR 1325 and Waqar Haider Butt v. Judge, Family Court and others 2009 SCMR 1243 ref.

Shahid Mehmood Abbasi, ASC for Petitioner.

Mirza Asif Abbas for Respondent.

Arshad Mehmood Malik, Assistant Attorney General.

Date of hearing: 12th September, 2023.

JUDGMENT

JAWAD HASSAN, J.---The petitioner namely Ghulam Shabbir through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") calls in question the order dated 01.08.2023 passed by the Additional District Judge, Pind Dadan Khan, District Jhelum, whereby while dismissing civil revision of the petitioner, order dated 25.07.2023 passed by the learned Civil Judge, Class-I, Pind Dadan Khan, District Jhelum was affirmed.

2. Precisely the facts necessary for adjudication of instant petition are that Respondent No. 1 instituted a suit for recovery of maintenance allowance against her husband namely Abdul Khaliq, who is Respondent No.2 in the instant petition. The suit was ultimately decreed vide judgment and decree dated 01.04.2017. An execution petition was filed and during the proceedings Respondent No.2 was asked to pay the decretal amount but on his failure, he was sent to civil prison. The petitioner stood surety for the judgment debtor and submitted surety bond accordingly, however, on failure by the judgment debtor to satisfy the decree, proceedings were initiated against the Petitioner (surety) and due to non-fulfillment of his undertakings, he was sent to civil prison and his property was ordered to be attached through order dated 25.07.2023. This followed civil revision before the Additional District Judge, Pind Dadan Khan, District Jhelum but same was dismissed by way of order dated 01.08.2023.

3. Learned counsel for the Petitioner inter alia contends that impugned orders are the result of mis-reading and non-reading of material available on record; that the Petitioner stood surety only for an amount of Rs.300,000/- which has already been paid by him before the Executing Court but instead of discharging him from responsibility, he was sent to civil prison for one year while his property was also attached; that the judgment debtor/Respondent No.2 has been released from the prison after serving out one year imprisonment thus he should satisfy the decree by paying the decretal amount and his property should have been attached instead of the Petitioner/surety. He relied on "Ahmad Ali and another v. Sheikh Amman Elahi" (2015 CLC 1704), "Shafqat Ibrar v. Judge Family Court and another" (2014 MLD 1809) and "Mirza Shahid Baig v. National Bank of Pakistan and 8 others" (2002 CLD 623).

4. Conversely, learned counsel for Respondents supports the impugned orders and contends that the Petitioner has undertaken to pay the decretal amount in the surety bond and has categorically and unequivocally stated before the Executing Court that he was responsible for the decretal amount, which was also recorded at the back of surety bond. He further contends that there is no ambiguity in the statement of the Petitioner/surety given before the Executing Court therefore, the impugned orders do not require any interference by this Court. He relied on "Industrial Development Bank of Pakistan v. Hyderabad Beverage Company Private Limited and others" (2016 SCMR 451), "Rafique Hazquel Masih v. Bank Alfalah Ltd. and others" (2005 SCMR 72), "Zulfiqar Ali and others v. Liaqat Ali and others" (PLD 2020 Lahore 350), "Muhammad Akram v. Additional District Judge and 5 others" (2023 CLC 702) and "Khadim Hussain v Muhammad Tariq and others" (2021 CLC 805).

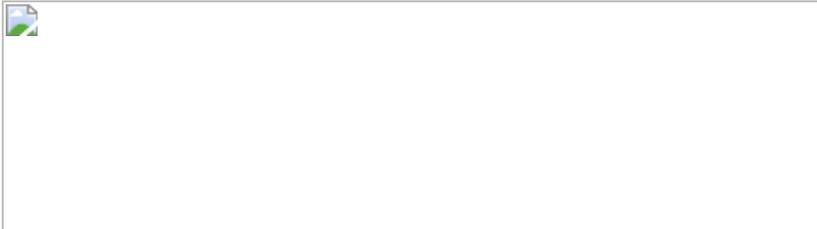
5. I have heard the arguments of learned counsel for the parties and perused the record.

6. It is an admitted position on the record that suit instituted by the Respondent No.1 for the recovery of maintenance allowance was decreed by way of judgment dated 01.04.2017. In execution proceedings, the judgment debtor (Respondent No.2) paid certain amounts on different dates however, on account of failure to pay, he was sent to civil prison for one year vide order dated 04.07.2022. Thereafter, the

proceedings were initiated against the Petitioner/surety for satisfaction of the decree but he raised an objection that he had bound himself only to the extent of Rs.3,00,000/- which he has already paid and as such he is not liable to pay any further amount. The said objection had already been turned down by the executing Court vide order dated 24.02.2023 and thereafter, due to non-payment of decretal amount, the Petitioner/surety was sent to civil prison for one year and his property was also attached vide order dated 25.07.2023. Admittedly, the Petitioner stood surety for the judgment debtor/Respondent No.2 and submitted a surety bond to this effect, which is available at page No.21 of the instant petition. The relevant extract from the said surety bond/undertaking is reproduced below:



7. It is quite obvious from the contents of above said undertaking that he himself bound to pay the decretal amount in case of default of the judgment debtor. His statement to this effect is also recorded on the back side of above said surety bond which reads as:



8. From the above, it is manifestly clear that while submitting surety bond, the Petitioner has undertaken to satisfy the decree if the judgment debtor fails to satisfy the same and he had no objection on selling, auction or attachment of his property for the satisfaction of the decree. Section 145 of the Code of Civil Procedure, 1908 deals with the proposition in hand which reads as under:

"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 fulfilment of any condition imposed on any person, under an Order of the Court in any suit or in any proceeding

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 to be 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.

9. Bare reading of said provision of law reflects that when a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him, to the extent for which surety has rendered himself personally liable in the manners provided therein. After default has occurred there is no reason to absolve the Petitioner from his liability to pay the agreed amount which had become due against him in view of principles laid down in Section 128 of the Contract Act, 1872 and Section 145, C.P.C. Reliance in said regard may be placed on "Muhammad Muzamal Riaz v. Additional District Judge, Shorkot, District Jhang and 6 others" (2020 CLC 970).

10. It is argued by learned counsel for the Petitioner that the Petitioner stood surety only for an amount of Rs.3,00,000/- which amount has already been paid by him during execution proceedings therefore, he is liable to be released and his property should also be detached.

11. Record reveals that the judgment debtor (Respondent No.2) was sent to civil prison due to non-payment of decretal amount vide order dated 04.07.2022 and thereafter, the Petitioner/surety was summoned to satisfy the decree. It is also evident from the contents of surety bond that the Petitioner himself made him liable to pay the decretal amount in place of the judgment debtor on his failure to satisfy the decree. He thus now cannot wriggle out of his own undertaking. It is settled law that decree can also be executed against a surety. Reliance in this regard is placed on "Messrs State Engineering Corporation Ltd. v. National Development Finance Corporation and others" (2006 SCMR 619) and "Shafiullah v. Saifullah and 7 others" (PLD 2017 Peshawar 203).

12. Even otherwise, there are concurrent findings of facts recorded by both the learned courts below which apparently do not suffer from any legal infirmity. Furthermore, when a factual controversy had been settled by the two courts below, unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the findings arrived at by courts below or there was a visible irregularity while deciding the dispute, this Court cannot interfere with that findings. Evidence on record shows that findings recorded by the Family Court later concurred by the lower Appellate Court are in accordance with the evidence/law. Neither any jurisdictional error of the Courts below has been challenged, nor conduct of proceedings by the courts below has been called in question. No illegality having been found in the impugned concurrent judgments of the courts below, same could not be interfered with especially when these are based upon substantial evidence to which the Petitioner has not been able to controvert during the trial. Both the Courts have recorded findings of facts assigning cogent

and sound reasoning which do not warrant any interference by this Court. Reliance is placed on "Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another" (2023 SCMR 246) whereby the Supreme Court of Pakistan has held that "the appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis-reading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.". In "M. Hamad Hassan v. Mst. Isma Bukhari and 2 others" (2023 SCMR 1434), the Supreme Court of Pakistan further held that "once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms". Reliance is also placed on "Mst. Nusrat and others v. Dr. Cap. Shahzad Riaz and others" (2011 SCMR 1325) and "Waqar Haider Butt v. Judge, Family Court and others" (2009 SCMR 1243). This Court is also not ordinarily inclined to interfere with the findings of fact recorded by the learned Courts below, particularly when they are not shown to be contrary to record or arbitrary or whimsical. In the instant case, apart from the bald assertions, no specific instance was brought to the notice of the Court that might be regarded as a case of misreading or non-reading of material evidence, having direct and decisive bearing on the issues. Both the Courts exercised the jurisdiction vested in them, without violating any principles governing the assessment and appraisal of evidence.

13. In view of above, this petition holds no merit hence the same is hereby dismissed. However, the Executing Court is directed to decide the objection petition of surety, if any, pending, after framing of issues, recording of evidence of parties regarding the amount paid or to be paid by the Petitioner to the Respondent No.1 and affording opportunity of hearing to the parties in the light of judgment in the case of "Ahmad Ali and another v. Sheikh Amman Elahi" (2015 CLC 1704).

MQ/G-7/L Petition dismissed.

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