

31st Oct. 2023 1. Petitioner in person present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Amir Sayyaf, DSP (Legal) for the respondents present.

2. The learned AAG pointed out that the Deputy Superintendent of Police Headquarters (Legal) City Traffic Police, Peshawar has filed objection petition, which is not only groundless, but with flimsy stand. This Tribunal vide order dated 05.06.2023 on an Objection Petition filed by the Judgment Debtors/Objectors Inspector General of Police and other in Execution Petition No.50/2023 in Service Appeal No.9408/2020 titled "Farmanullah versus Inspector General of Police and others" had already held in the following manner:

1. Petitioner in person present. Mr. Muhammad Jan, District Attorney for judgment debtors/objectors present.

2. It is also observed that the office ought to have a separate file but instead it has been placed on the same file. The office is directed that henceforth all the objection petitions be placed in separate file.

3. Nobody is present on behalf of the judgment debtors/objectors nor implementation report has been submitted. Learned District Attorney has, however, pointed out that judgment debtors/objectors No.1 to 3 had filed an objection petition, the same is found placed on file. In violation of the judgment of august Supreme Court of Pakistan, there is no name written under the signature of any of the three judgment debtors/objectors in order to ascertain as to who has actually signed the petition. Yes, there is an authority letter annexed at page 7 of the objection petition, issued in favour of DSP Syed Amir Abbas, but that is also shown to have been signed by the Judgment Debtors/Objectors with no names under the signatures and the authority is only for the purpose of submission of the objection petition. The learned Additional Advocate General and learned District Attorney were given some time to contact the judgment debtors/objectors but they could not come up with any satisfactory reply regarding the genuineness of the signatures put on the petition.




4. The Objection Petition mainly contends that:

"No notice of the execution petition was received by the objectors till 04.04.2023; that the objectors received a letter No.1141-46 dated 11.04.2023 from the Additional Advocate General regarding the execution petition whereafter their representative attended the Tribunal and that their salaries were attached without providing them opportunity; that issuance of notice and doing justice were the responsibility of the Tribunal; that Farmanullah was directly charged in a murder case and being

Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 605/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	31.08.2023	<p>The implementation petition of Mr. Azmat Ullah is submitted today by Mr. Javed Iqbal Gulbela Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>06-09-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>
05.09.2023		<p>1. Learned counsel for the petitioner present. Mr. Asad Ali Khan learned Assistant Advocate General for the respondents present.</p> <p>2. Notice be issued to the respondents for submission of implementation report. To come up for implementation report on 29.09.2023 before S.B. P.P given to the parties.</p> <p> (Rashida Bano) Member.(J)</p>
	29-9-23	<p>Due to Public Holy Day of Eid-M. Therefore case is adjourned to 31-10-23</p> <p> Registrar</p>

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member of a disciplined force involvement in heinous criminal case and absence without prior permission were gross misconduct; that a proper departmental enquiry was initiated against him and all the allegations leveled against him were proved and he was awarded major penalty of removal from service; that acquittal from criminal case would not absolve Farmunallah from departmental proceedings; that the objectors had preferred CPLA No.480-P/2022 before the august Supreme Court against the judgment (18.01.2022) of the Tribunal; that as per court judgment dated 18.01.2022, Farmanullah was reinstated into service with all back benefits, which was totally against the law and rules; that there was possibility of acquittal on the basis of weak investigation, evidence or some other lacuna but he was declared guilty in departmental proceedings; that the execution petition was not maintainable.”

It is prayed in the objection petition that execution proceedings might be stayed till the outcome of CPLA filed in the august Supreme Court of Pakistan.

5. The objection petition is moved under sections 47 and 48 read with Order XXI rule 10 of the Code of Civil Procedure. The said provisions as reproduced below:

“Section 47. **Questions to be determined by the Court executing decree.** (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation. For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.”

“Section 48 **Execution barred in certain cases.** (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of [six years] from-

(a) the date of the decree sought to be executed, or

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed-

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of [six years,] where the judgment-debtor has, by fraud or force, prevented the execution of the decree at sometime within [six years] immediately before the date of the application; or

(b) to limit or otherwise affect the operation of Article 183 of the First Schedule to the Limitation Act, 1908 (IX of 1908).”

“Order XXI Rule 10. Application for execution. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.”

6. From plain reading of section 48 and Order XXI rule 10 it would reveal that these do not pertain to filing objections to the execution. Whereas section 47 (1) is regarding determination of all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. The objections raised in the petition have been enumerated in paragraph 4 of this order. In the entire objection petition no such question was raised by the objectors which could be dealt with or decided under this provision of the Code of Civil Procedure, 1908. The contents of the objection petition reflect that these are the contentions which pertain to and were all duly raised at the pre-judgment stage i.e. at the time of pendency of appeal, which were duly discussed in the judgment dated 18.01.2022 passed by this Tribunal. Therefore, the same cannot be made basis to thwart the execution of the judgment. Even otherwise the executing court cannot go behind or beyond the terms of decree/judgment/order or grant relief which has not been allowed. The court cannot reopen the matters which had been heard and decided in proceedings in which the decree was granted or judgment was passed. The court cannot question the validity of the decree/order for which purpose an appeal can be filed. However, the court can determine a question of the substance of decree/order for which purpose it may look into the Judgment and also pleadings and can also determine whether a decree/order is a nullity on account of the fact that the court passing the decree/order suffers from an inherent lack of jurisdiction, apparent on the face of the decree/order. The court has to ensure the complete execution of the decree/order. The court has to execute the judgment in its true spirit and cannot travel an inch beyond that. Reliance is placed on 2019 YLR 1756 titled “Muhammad Irfan through Special Attorney versus Naseer Ahmad and

others”, wherein the Lahore High Court in almost similar situation has observed as under:

“15. It is a settled rule that all questions that pertain to the pre-decretal matters shall be raised in defence during trial and could not be allowed to be raised in execution proceedings. Executing court cannot go behind or beyond the decree. In a similar case "Mst. Naseem Akhtar and 4 others v. Shalimar General Insurance Limited and 2 others" (1994 SCMR 22) wherein a decree for recovery of money granted in a suit against insurance company as well as the truck driver in an accident case, the civil court granted decree against both of them jointly and severally for the suit amount. In the execution proceedings an objection was raised that the liability of the insurance company was limited to the extent of Rs. 16,000/- and therefore, the decree pertaining to insurance company with full decretal amount of Rs. 400,000/- was without jurisdiction and impermissible. The objection sustained at the High Court level but the order was set aside by the August Supreme Court on the ground that the executing court could not go beyond the decree, and that pre-decretal matters/ questions could not be agitated in execution proceedings. The operative part of the judgment for facility of guidance is reproduced hereunder:

"After hearing the learned counsel for the parties at length and perusing the record and the precedents we are of the view that no doubt that the liability of the appellants was limited under the relevant statute. In the suit filed by the appellants, the respondent No.1 filed the written statement. It did not take the plea of limited liability. It produced its Manager as D. W.1, however decree was passed in favour of the appellants and against the respondents. The respondent No.1 filed an appeal but did not prosecute it and it was dismissed for non -prosecution. The respondent No.1 then filed an application for restoration but did not prosecute. This too, was dismissed. Thus, the decree became final. In the execution proceedings, it was not open to the respondent No.1 to take up the plea which he had not taken before the learned trial court during the course of the hearing of the suit which was ultimately decreed and the decree was allowed to become final. In these circumstances, the respondent No.1 itself is responsible for the decree against. It is pertinent to mentioned here that even though its liability was limited it is not open to the respondent No.1 judgment debtor now to contend that its liability has not been correctly assessed or determined. If it were permissible, there will be no end or finality to the judgment and decree which had become final. Precedents noted and analyzed above make quite clear that once a decree is passed it has to be executed in its terms

and it is not open to the executing Court to go behind it and redetermine the liability of the parties. In this view of the matter, there is no option but to allow this appeal and hold that the learned Judge in the High Court fell in error in giving effect to the plea of the respondent No.1 which had not been raised before the learned trial court which granted the decree to the appellants...."

16. In the present case too, whether or not there was any construction on the roof, and if there was, whether the respondent had to remove the same or to claim compensation, could have been raised through the written statement. The respondent neither objected to the maintainability of the suit on this account nor challenged the decree on account of any alleged deficiency. So much so that no claim for compensation of structure, if any, was ever made in the written statement or in the deposition of respondent or even at the stage of appeal or revision against the decree passed in favour of the petitioner. In result, the decree became final whereafter the respondent could not during execution be allowed to raise pre-decretal matters.

19. In the instant case, the decree was not for symbolic possession, rather, it mandated delivery of physical possession of property. The respondent was bound to comply with this directive. Such afterthought claim of construction could not be entertained during proceedings for execution of decree, as the Executing Court is bound to execute the decree strictly in the terms provided therein. Even otherwise pre-decretal questions, if not raised during the trial or in the appeal till the stage of High Court, could not be permitted to be urged as objection to the execution of decree as the conduct of judgment-debtor will preclude him from doing so. The learned Addl. District Judge committed serious error of law in modifying the order passed by the learned Executing Court. In result, the impugned order being without jurisdiction and suffering from serious legal error, cannot be approved."

7. The contents of the objection petition can in no way be considered to avert the execution of the judgment. The scope of objection by the judgment debtor is pertaining to executing, discharge or satisfaction of the decree, and not to go behind the decree to question its validity on the grounds which were open to judgment-debtor at the appropriate stage before the decree was passed. What Section 47 contemplates is that the execution Court must take the decree as it is, according to its tenor and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in an appropriate proceeding in an appeal or revision. Even if it is erroneous, it is binding on the parties. An erroneous decree is as much binding on the parties as a legal decree.

8. The objectors have also raised a ground that they have filed CPLA in the august Supreme Court of Pakistan, therefore, until decision of the same, the execution might be stayed. Order XX of the Supreme Court Rules, 1980 is relevant in this respect. The same is reproduced below:

“ORDER XX MISCELLANEOUS 1. The filing of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, but the Court may, subject to such terms and conditions as it may deem fit to impose, order a stay of execution of the decree or order, or order a stay of proceedings, in any case under appeal to this Court.”

The contention of the Objectors is thus ill-founded because the Supreme Court Rules do not provide that the mere filing would stay the process of execution of judgment impugned before the august apex court.

9. In the circumstances the objection petition is vague, groundless and not well founded and is accordingly dismissed. Last opportunity is granted to the judgment debtors to implement the judgment.

10. There is also a contention in the objection petition that no notice of this execution petition was issued to the objectors and they were for the first time informed by the learned Additional Advocate General on 11.04.2023 about the pendency of the execution petition. This contention is not correct as the Tribunal had adjourned the matter a number of times even before 11.04.2023 on the request of the law officer in order to contact the respondents. On 04.04.2023, the learned District Attorney was asked by the Tribunal to contact the respondents on phone and he had also made calls but nobody did turn up constraining the Tribunal to adopt coercive measures in accordance with law. On 04.05.2023, in utter disregard of the standing instructions of the Government that well conversant officer not below grade 17 should appear before the courts, Faiz Ali, an ASI, was sent, who again sought adjournment for submission of implementation report but the implementation report is awaited.

11. A copy of this order along with the objection petition be sent to the Worthy Inspector General of Police to verify the signatures and to take action against the concerned in case signatures were not found to have been put by the judgment debtors/objectors No.1, 2 & 3, as there is no authority letter issued by the judgment debtors/objectors in favour of anybody to sign the objection petition.

12. Adjourned to 03.07.2023 for implementation report before S.B at Camp Court, Swat. P.P given to the parties.

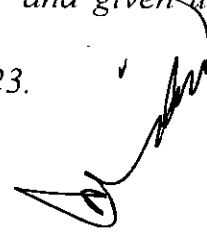
13. *Pronounced in open court at Swat and given under my hand and seal of the Tribunal this 5th day of June, 2023.”*

3. In view of the above findings coupled with the fact that there is nothing in this objection petition which could frame any conformity under Section-47 of the CPC and is, therefore, dismissed with a warning to the respondents to avoid filing such unnecessary and irrelevant objection petitions.



4. The DSP (Legal) is present before the Tribunal and there is nothing with him to explain as to why the judgment has not been implemented. Therefore, salaries of the respondents are attached in the manner as prescribed under Section-60(1)(i) of the Code of Civil Procedure, 1908. The Accountant General Khyber Pakhtunkhwa shall submit report in writing that the salaries of respondents are actually attached. To come up for implementation report on 21.11.2023 before S.B. P.P given to the parties.

5. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 31st day of October, 2023.*



(Kalim Arshad Khan)
Chairman

**Mutazem Shah **