

2. Learned counsel for the petitioner submits his apology in respect of the conduct shown in the impugned order requesting the same may be accepted, whereby he had failed to submit the documents, and without submitting the documents, required the Court to pass the order which was eventually passed and the said revision application was dismissed, however, the conduct was remarked upon. Learned counsel having shown his regret the same is overlooked with a note of caution for him to be careful in future. It is thereafter contended by the learned counsel for the petitioner that the learned appellate Court in the first round allowed the appeal, however, the executing Court on the basis of technical consideration dismissed the execution application.

3. Learned counsel for the respondent presents a photocopy of an order dated 09-12-2006 said to have been passed in respect of the said parties. The said order not present in the record and as such is not liable to be considered especially where the learned Additional District Judge has entertained Family Appeal No.01/2009 since attained finality between the said parties as the present circumstances the earlier orders merge into the subsequent orders.

4. Learned AAG, present, does not support the impugned order.

5. I have called upon the learned counsel for the petitioner to explain how a Civil Revision was filed from an order of a family Court to which he replied that impugned order was passed on an execution application. I find it very difficult to accept the reply as all the proceedings of family matters are entertained under the family laws where though the principles of civil law may be applied but the special law retain their paramount status.

6. Having heard the learned counsels and gone through the record, prima facie, the executing Court in the matter has not considered that these proceedings were taking place under the family laws. No doubt the executing Court is required to consider the execution application which should be in accordance with the decree but in this case it seems that the executing Court has preferred to keep in view the execution application more than even the decree and the pleadings which can be looked into if so required. The executing Court has perhaps confined itself to execution application and not considered the decree / order providing benefit to the decree holder which was liable to be considered along with the pleadings if required to determine the amount payable by the judgment debtor. It is observed that the learned executing Court has preferred to stress upon the mistake/s of the execution application, whereas, it was required to

consider the substance i.e. the claim / amount as allowed to the decree holder. It was open to the executing Court to pass appropriate order considering the substance of the matter while pointing out the mistakes of the execution application.

As to the impugned order of the learned appellate Court the same passed on default and failure of proper conduct and not on merits to which the said advocate has expressed his apologies the same is not liable to be discussed, irrespectively not coming in the way of this remand.

7. In these circumstances, the present petition is allowed to the extent that the matter is remanded to the learned executing Court with directions to ensure that the directions given by the learned Additional District Judge in the matter by its order dated 07-10-2009 in Family Appeal No.01/2009 are complied with in letter and spirit. In this regard, the amounts already referred to in the matter be accordingly considered, in failure of correct amounts being demanded, the executing Court to proceed with the matter by directing amendments to the pleadings (execution application) as available in law or to even proceed considering the legal and available right of the decree holder as determined but strictly in accordance with law.

Matter stands **disposed of** in the above terms.

J U D G E

Abdul Basit