

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH
AT SUKKUR

Const. Petition No. S-25 of 2021

Date	Order with signature of Judge
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1. For orders on CMA No.827/2021
2. For orders on office objection at flag `A`
3. For orders on CMA No.828/2021
4. For hearing of main case
5. For orders on CMA No.829/2021

01-02-2021

Mr. Muhammad Rafique Rajput, Advocate for the petitioner

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1. Granted.
 2. Deferred.
 3. Granted subject to all just exceptions.
- 4 & 5. This Petition under Article 199 of the Constitution impugns the Order dated 04.01.2021 whereby the Presiding Officer of the Model Civil Appellate Court/Additional District Judge-II, Sukkur dismissed Family Appeal No.25/2020 filed by the Petitioner against the Order of the learned Family Judge, Rohri, allowing Execution application No. 03/2020 (the “**Execution**”), seeking implementation of the Judgment in Family Suit No.108/2018 (the “**Underlying Suit**”).

Succinctly stated, the backdrop to the matter is that the Respondent No.1 had filed the Underlying Suit seeking recovery of maintenance and dower, which was decreed as against the Petitioner to the extent of his being adjudged liable to pay maintenance for the care of his minor daughter at the rate of Rs.3000/- per month, as well as to pay the specified dower amount of Rs.198,000/-.

The Petitioner challenged that determination vide Family Appeal No. 9/2020, which was dismissed, whereafter the Petitioner assailed the concurrent judgments before this Court through an earlier Petition under Article 199, being CP No. S-189/2020. However, in absence of any restraining order, the Executing Court was pleased to allow the Execution in due course vide order dated 17.11.2020, with the further Appeal preferred by the Petitioner also culminating in dismissal, as aforementioned, and it being observed and held by the Appellate Court as follows:-

“Perusal of record reveals that the learned Family Court has been pleased to pass judgment and decree on dated 19.02.2019 whereby the maintenance and Haq Mahar amount was allowed in favour of respondent. Since then the appellant is making payment towards the maintenance amount of Rs.3000/- per month in respect of minor Baby girl Bisma but is not paying the amount of Rs.1,98,000/- towards the dower amount imposed by the learned trial Court. Eventually the learned trial Court had been pleased to pass order for execution application filed by the respondent. Muchless the appeal filed against the judgment and decree has also been dismissed by the appellate Court. There is no restraining order against the execution application from the appellate forum. The appellant is reportedly a Railway employee and is avoiding to satisfy the decree since about a year i.e 19.02.2020. Coercive measure adopted by the learned Family Court in executing its judgment and decree is not a surprise. As the overall conduct of the appellant since a year has been to defy the order of the court, then in such circumstances the trial court is justified to issue attachment and warrant against the appellant/judgment debtor vide impugned order. Accordingly I am constrained to endorse view expressed by the learned trial court in the impugned Order, which requires no any interference by this Court at this stage. Hence, the impugned Order stands sustained and as a natural corollary, the instant Family Appeal stands dismissed with no order as to the costs.”

That Order, albeit well-reasoned and unexceptionable, has now nonetheless been assailed inter alia on the ground that C.P No. S-189/2020 has been reserved for judgment on 16.10.2020 but the same has not yet been announced, with it being prayed that the aforementioned Orders dated 17.11.2020 and 04.01.2021 be set aside and modified so that the dower/decretal amount Rs.198,000/- may be received from the Petitioner in easy installment of Rs.3000/- per month. As is apparent from a reading of the prayers, the rationale set forth by the Petitioner in support of that plea is that his stated monthly net salary is about Rs.22000/-, from which he is paying maintenance of Rs.3000/- per month, as well as for paying for the upkeep of his dependent sister, and has to also make payments for utilities charges, food, clothes, medicine, and to also meet the expenses of a further marriage which he intends to contract. On that basis, he has pleaded that an installment of Rs.3000/- per month would be appropriate.

Needless to say, the expenses anticipated by the Petitioner for contracting a further marriage cannot conceivably be accorded primacy over his pre-existing judicially determined obligations and the very plea for payment on installments is even otherwise incompatible with the earlier challenge to the Judgment and decree in the Underlying Suit vide C.P No. S-189/2020, and does not afford a valid cause for maintaining a Petition under Article 199 of the Constitution. Under the given circumstances, such a concession may at best be elicited before the Executing Court, and on query posed learned counsel for the Petitioner conceded that an application for such purpose has indeed been tendered before that forum.

In view of the foregoing the Petition is dismissed *in limine*, along with the pending Miscellaneous Application.

JUDGE

Suleman Khan/PA