

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**Constitution Petition No. S – 1407 of 2024**

Mr. Abdul Haleem Siddiqui ..... Petitioner.

Versus

Sidra Ali & others ..... Respondents.

Ms. Naila Kausar Sheikh, Advocate for the Petitioner.

Mr. Muhammad Khalid Hayat, Advocate for the Respondents 1 and 2 a/w  
M/s. Muhammad Arshad and Tariq Hussain Advocates.

Ms. Deeba Ali Jaffri, A.A.G.

Date of hearing : 23.04.2025.

Date of announcement : 22.05.2025.

**J U D G M E N T**

**MUHAMMAD JAFFER RAZA – J**: The instant petition has been preferred against the judgment and decree dated 26.11.2024 in Family Appeal No.246/2024. The said Family Appeal emanated against the orders passed by the learned Family Court in Family Suit No.3051/2018 and Execution Application No.01/2021.

2. Learned counsel for the Petitioner has argued that the Respondent No.1 filed Execution Application mentioned above against the son of the Petitioner for execution of the judgment and decree dated 13.03.2021 in the above noted Family Suit. Thereafter Respondent No.1 filed the above noted Execution Application which was allowed against the son of the Petitioner who subsequently died on 18.11.2023.

3. The Petitioner is primarily aggrieved with the orders passed in Execution Application noted above, for the reason that the Execution Application was not preferred against him and he was not the Judgment Debtor in the said Execution Application. Learned counsel for the Petitioner further states that the orders

passed by the learned Courts below regarding issuance of warrants against the Petitioner and attachment of his immovable property are beyond the scope of the execution proceedings in which the Petitioner was not a party.

4. Conversely learned counsel for the Respondent has argued that the Petitioner was the attorney of his deceased son, and in that capacity, he may be directed to satisfy the decree of the learned Family Court. Learned counsel has further stated that the decree passed by the learned Family Court was primarily for maintenance of the minor and in that respect, he has again reiterated his stance that the decree can be executed against the present Petitioner.

5. I have heard both the learned counsels and perused the record. Prior to delineating into the matter, I have specifically asked the counsel for the Petitioner that irrespective of the decree not being against the Petitioner, the Petitioner being the grandfather of the minor should contribute towards the maintenance of the said minor. The learned counsel for the Petitioner has categorically stated that the Petitioner does not have the financial resources to satisfy the decree as significant sums of money were spent on the treatment of his son, who subsequently expired. Learned counsel has further stated that his deceased son/Judgment Debtor also left behind another wife and two children and it is not possible for the Petitioner to support family members of his deceased son.

6. Whilst I wholeheartedly empathize with the predicament of the Respondent, it is trite law that a decree which was not passed against the person, cannot be executed against him or his property. Similar circumstances came before the Hon'ble Supreme Court in the case of **Bashir Ahmed vs. Addl. District Judge, Hafizabad & others<sup>1</sup>**, in which the Hon'ble Supreme Court held as under:-

*“4. Under the Islamic Law of maintenance of the children, if the father of a child has died or the father, being a poor person, has no financial resources to maintain his child, the obligation to maintain such child passes on to his grandfather provided he is financially in easy circumstances. This statement of Islamic law is not disputed before us. The matter of contention between the parties that requires determination by us is: whether a decree for maintenance*

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<sup>1</sup> PLD 2024 Supreme Court 67

passed against the father of a child can be executed against the grandfather or the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree.

5. As it is evident from the above statement of the Islamic law of maintenance of the children, the obligation of a grandfather to maintain his grandchild is dependent upon two conditions: (i) the father of the child must be a poor person who has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances. In case either of these conditions is not fulfilled, the grandfather is not under any obligation to maintain his grandchild. These two conditions are thus also the grounds of defence available to a grandfather against whom his grandchild makes a claim of maintenance.

6. A child who claims his maintenance from his grandfather has to prove these two conditions, and the grandfather must be provided with an opportunity to defend the claim made against him by rebutting the existence of either of these two facts. This is the requirement of the fundamental right, guaranteed by Article 10A of the Constitution of Pakistan, which mandates that for the determination of his civil rights and obligations, a person shall be entitled to a fair trial and due process. The matter of providing maintenance to his grandchild is a matter of civil obligation, for its determination, the grandfather must be provided with a fair trial and due process. Both the above conditions, the fulfillment of which brings a grandfather under obligation to maintain his grandchild, are factual propositions, not legal ones. Their existence or non-existence can, therefore, only be proved through producing their respective evidence by the parties in a properly instituted suit for maintenance. Such evidence cannot be recorded in the execution proceeding nor can any determination be made therein by the executing court on these facts. The recording of evidence and making of findings on these facts in an execution proceeding would be a useless exercise, as despite making a positive finding, an executing court cannot modify the decree nor can it execute the decree against a person who was not a party to the suit. Further, the Family Courts Act 1964 prescribes a procedure for how the claims of maintenance are to be entertained and decided by the Family Courts. Such a claim made against a grandfather operates against his property; he is, therefore, entitled to be dealt with the procedure prescribed by law, i.e., the Family Courts Act, as per Article 4 of the Constitution.

7. We, therefore, hold that a decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree. The case of Mavra Arshad relied upon by the respondents does not advance but rather contradicts their stance as in that case, the grandfather was a party to the suit as a defendant, along with the father of the child. (Emphasis added)

7. It is evident that the decree passed by the courts below cannot be executed against the Petitioner, being the grandfather of the minor. The said Petitioner only appeared before the courts below in his capacity as the attorney of his deceased

son. The learned Executing Court in its endeavor to impart substantive justice, went beyond the ambit of the decree and redetermined the liability of the parties. That, with respect, is not permissible as the end doesn't justify the means. The legal premise of the same has already been expounded by the Hon'ble Supreme Court in the case of **Bashir Ahmed** (supra).

8. The only legally permissible option to recover maintenance of the minor from the Petitioner, available to the Respondent, is to institute proceedings against the present Petitioner and the same shall be adjudicated on its own merits, under the criteria laid down in the judgement noted above. Should the Respondent opt for the same, given the peculiar nature of the present case, the learned Family Court is directed to decide the case expeditiously preferably within three (3) months.

9. I have not been assisted by either counsel regarding the estate, if any, left behind by the deceased son of the Petitioner. In that respect it is held that the learned Executing court can adopt the procedure/s outlined under Section 13 of the Family Courts Act 1964. The same is reproduced below for the sake of convenience.

*“13. Enforcement of decrees.— (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.*

*(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment [or] the delivery of property, as the case may be, in the aforesaid register.*

*(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court, the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.*

*(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

*(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.”*

10. The present decree is a debt against the estate, if any, left behind by the deceased son of the Petitioner (judgment debtor). In that respect, the Executing

court is fully empowered to adopt its own procedure<sup>2</sup> to enforce the said decree, including making enquires as to the estate of the deceased Judgment Debtor. Sections 49 and 50 of the Civil Procedure Code 1908 shed light on the issue at hand and the same are reproduced below: -

*“49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.*

*50.-(1) Where a judgment-debtor dies before the decree has been fully satisfied; the holder of the decree may apply to the Court which passed it to execute the same against the legal Representative of the deceased.*

*(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree holder, compel such legal Representative to produce such accounts as it thinks fit.”*

11. No further deliberation in this regard is warranted whilst adjudicating the instant petition. In view of what has been held above, the Impugned Judgment and Decree is set aside and the instant Constitutional Petition is allowed with no order as to cost.

J U D G E

Nadeem Qureshi “PA”

<sup>2</sup> C.P. No. S-83 of 2023, order dated 31.08.2023 authored by Mohammad Abdur Rahman J.