Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No. **1830/2026/BWP**

Pathani Mai **Versus** District Judge Lodhran etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	02.04.2026	Mr. Asif Saeed Nohani, Advocate for the petitioner.

The petitioner has filed the instant constitutional petition seeking setting aside of Mutation No.4300 dated 20.09.2024 (wrongly written as 20.10.2024) executed in favour of respondent No.7 and restoration of Mutation No.1693 dated 29.07.2009 in her favour with the following prayer:-

> *"Under the above circumstances, it is, therefore, humbly prayed that by accepting instant writ petition, the mutation No. 1693 dated 29.07.2009 may kindly be ordered to be restored and the mutation No.4300 dated 20.10.2024 sanctioned in the name of respondent No.6 may kindly be cancelled in the interest of justice. Further prayed that respondent No.3 to 6 may be directed not to interfere into the lawful possession of petitioners and not to dispossess from her land till the final decision of writ petition.*
> *Any other relief, which this Hon'ble Court deems fit may also be granted to the petitioner, in the interest of justice."*

2. At the very inception of hearing, learned counsel for the petitioner has been confronted with the fact that the impugned Mutation was sanctioned on 20.09.2024 whereas this petition has been filed with an inordinate delay of more than 01 Year 05 Months for which no explanation or justification has been provided, even date of knowledge of the impugned Mutation has not been mentioned in this petition and as such the same is hit by principle of *laches*.

3. Notwithstanding his sincere efforts, learned counsel for the petitioner has not been able to answer the Court's query, however, a feeble attempt has been made by him to cover the question of *laches* by arguing that valuable rights of the petitioner are involved and she should not be knocked out on this very point. Learned counsel has insisted to argue his case on merits as well. In this regard, he has contended that cancellation of Mutation in favour of the petitioner was affected without issuance of notice, thus offended the settled principle that no one should be condemned unheard. It is further submitted that Mutation No. 1693 dated 29.07.2009 had been sanctioned in favour of the petitioner prior to institution of the suit by respondent No.7, which was filed on 01.09.2009, therefore, doctrine of *lis pendens* is not attracted. It is also argued that the executing court acted beyond its jurisdiction while cancelling the said Mutation. Learned counsel has further averred that direct transfer of property in favour of respondent No.7 through Mutation No.4300 dated 20.09.2024, without first restoring the same in favour of respondent No. 8, reflects a procedural irregularity on the part of the revenue authorities. It is lastly submitted that the proper course, if any cancellation was warranted, was to first revert the Mutation in favour of respondent No.8 before any subsequent transfer.

4. Preliminary arguments heard. Record examined.

5. While interpreting the principle of *laches*, the *august* Supreme Court of Pakistan in judgment reported as *State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others* (**2012 SCMR 280**) has held as follows:

> *"Laches is a doctrine whereunder a party which may have a right, which was otherwise*

> *enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party."*

6. This view has been endorsed by the Apex Court in judgments reported as *Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary M/O Law, Islamabad and others* (**PLD 2013 SC 413),** *Special Secretary-II (Law and Order), Home and Tribunal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar* (**2023 SCMR 1442)** and *Ex. Col. Muhammad Azad Minhas and another v. Federation of Pakistan through Secretary Ministry of Defence and others* (**PLD 2024 SC 235).**

7. As regards the argument advanced by the learned counsel for the petitioner that valuable rights of the petitioner are involved is not tenable for the reason that in the light of case of *State Bank of Pakistan through Governor and another* (supra), once a right enforceable by a party, if not exercised within the period prescribed by law, becomes extinguished by reason of limitation or *laches*, right in favour of the opposite party accrues.

8. Now coming to the submissions made by learned counsel for the petitioner on merits. At first blush, the arguments of learned counsel appear reasonable,

particularly the contention that principle of *lis pendens* was not applicable and that the transaction took place prior to institution of the suit. However, upon perusal of the record, especially the judgment of learned trial court, it is evident that a suit for recovery of dower and maintenance allowance was filed on 13.07.2009 which indicates that relations between respondents No.7 and 8 had already become strained prior to filing of the suit. Moreover, Mutation No.1693 was sanctioned on 29.07.2009 subsequent to filing of the said suit. In this way, doctrine of *lis pendens* is applicable with full force.

9. Perusal of the record divulges that learned Senior Civil Judge (Family Division), Lodhran/Executing Court adopted a proper procedure to summon the petitioner. Even, the petitioner (subsequent owner) was summoned through substituted service by way of publication in the newspaper and thereafter, she was proceeded against *ex parte* vide order dated 22.07.2024. Even otherwise, any act done with *mala fide* or intent to defeat or abuse the process of the Court does not warrant strict adherence to the procedural formalities such as prior notice, particularly where the transaction itself appears to be tainted with ill intent.

10. It is noteworthy that respondent No.7 filed two suits before learned Family Court, one on 13.07.2009 for recovery of dower and maintenance allowance and another later in 2009 for recovery of dowry articles. Surprisingly, only the latter suit has been attached with this petition, while the earlier suit, being prior in time to the impugned transaction has not been placed on record. This omission does not appear to be inadvertent but rather deliberate, aimed at advancing the argument that the doctrine of *lis pendens* was not applicable.

11. Another significant aspect is that both the suits were decreed through consolidated judgment and decree dated 22.03.2013 passed by learned Judge Family Court, Lodhran and the litigation finally culminated in consolidated judgment and decree dated 08.12.2014 passed by learned District Judge, Lodhran (Appellate Court). Since then, respondent No.7 has been striving to realize the fruits of the decrees and to undo the *mala fide* transaction executed by her former husband (respondent No.8) in favour of the petitioner. Although the transaction took place in 2009, it took approximately 16 years to have it undone. Therefore, no interference is warranted at this stage.

12. Since the matter relates to a consolidated judgment and decree passed more than a decade ago, there is no justification for further delay. Such delay runs contrary to the legislative intent behind the Family Courts Act, 1964 (hereinafter referred to as **"Act 1964"**). In terms of Section 12-A of the Act 1964, a Family Court is obliged to dispose of a case within a period of six months from the date of institution. So much so, under Section 14(4) of the Act 1964, an appeal filed against a decision given or a decree passed by a Family Court shall be disposed of by Appellate Court within a period of four months. In this way, it would amount to mockery of law if decrees, though passed within a stipulated timeframe, remain unexecuted for an indefinite period. If decrees passed within the stipulated timeframe are allowed to remain unexecuted for years, the very object of the law would stand frustrated.

13. A decree is a formal expression of an adjudication that conclusively determines the rights of the parties. However, until it is executed and practically

implemented, it remains merely on paper. The decree-holder can only enjoy its benefits upon its execution. Therefore, executing Courts are duty-bound to ensure expeditious implementation of decrees passed by Family Courts.

14. It is a settled proposition that execution is the fruit of a decree and unless it is enforced in its true letter and spirit, the adjudication remains incomplete. It is indeed unfortunate that the difficulties of a litigant often begin after obtaining a decree and the decree-holder is made to suffer at the stage of execution as protracted proceedings defeat the very purpose of adjudication and undermine the efficacy of the judicial process. The execution stage cannot be permitted to become a fresh round of litigation or a device to frustrate rights already determined by a competent Court. Once the rights of the parties stand conclusively adjudicated, the executing court is under an obligation to ensure prompt and effective enforcement of the decree so that the successful party may enjoy the fruits of the judgment without being subjected to further delay or hardship.

15. There is no cavil to the proposition that conduct of the petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his/her favour. This Court, in exercise of writ jurisdiction, is bound to proceed on the well-celebrated maxim “he who seeks equity must do equity”. Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to this Court to

seek relief has to satisfy the conscience of the Court that he/she has clean hands and he/she has been vigilant enough in pursuing and safeguarding his/her rights. Reliance is placed upon the judgments reported as *Tasnim Jalal and others v. Deputy Director, A.N.F. and others* (**2010 SCMR 72)**, *Muhammad Fiaz Khan v. Ajmer Khan and another* (**2010 SCMR 105)**, *Javed Masih and others v. Additional District Judge, Lahore and others* (**2010 SCMR 795)**, *Moulvi Muhammad Azeem v. Alhaj Mehmood Khan Bangish and another* (**2010 SCMR 817)**, *Dr. Ayesha Sabir v. Fida ul Haq* (**2010 SCMR 1811)** and *Muhammad Arif v. Uzma Afzal and others* (**2011 SCMR 374).**

16. Learned counsel for the petitioner has failed to point out any illegality, material irregularity, or jurisdictional defect in the order passed by learned executing court, nor has any exceptional circumstance been shown warranting interference by this Court.

17. In view of the above, this constitutional petition being meritless is **dismissed in *limine*.**

Signed
09.04.2026

(MALIK WAQAR HAIDER AWAN)
JUDGE

Abis Ali

APPROVED FOR REPORTING

JUDGE