Stereo.HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.71801 of 2019

Muhammad Latif

Vs.

Addl. District Judge, Jaranwala etc

J U D G M E N T

Date of Hearing	16.09.2026
Petitioner by	Mr. Muhammad Shahid Iqbal Qureshi, Advocate
Respondents No.3 to 5 by	M/s. Ghulam Awais Siddiqui, Bilal Ahmad and Muhammad Asghar Mahar, Advocates.
State by	Mr. Khalid Nawaz Ghuman, Deputy Attorney General Barrister Raja Hashim Javed, Assistant Advocate General Punjab. Barrister Zarar Haider Bhatti, Legal Consultant at Office of the Advocate General, Punjab.

Malik Waqar Haider Awan, J. Through the instant Constitutional Petition, the petitioner has called in question the order dated 17.09.2019 passed by the learned Judge Family Court, Jaranwala, whereby his application seeking cancellation of non-bailable warrants of arrest and de-attachment of the amount lying in his pension account was dismissed in execution proceedings arising out of a decree passed by the Family Court.

2. Brief facts of the case are that respondent No.3 instituted a suit for dissolution of marriage and recovery of dowry articles, whereas respondents No.4 and 5, being minor children of the petitioner, sought recovery of maintenance allowance. Both suits were consolidated and decided through judgment and decree dated 22.01.2014. The petitioner was directed to pay maintenance to respondents No.4 and 5 at the rate of Rs.3,000/- per month each from the date of institution of the suit till their marriage or change in lawful custody, with an annual increase of 10%. A decree for recovery of dowry articles excluding gold jewellery valuing Rs.2,48,570/- was also passed. The petitioner as well as

respondents No.3 to 5 preferred appeals against the said judgment and decree, which were dismissed through consolidated judgment and decree dated 28.02.2015. The decree, thus, attained finality. Thereafter, execution proceedings were initiated by the decree-holders. During execution, the learned Family Court issued non-bailable warrants of arrest and proceeded towards attachment of the amount lying in the pension account of the petitioner. The petitioner moved an application seeking cancellation of the warrants and release of his pension, which was dismissed through the impugned order dated 17.09.2019.

The controversy assumes significance on account of divergent views expressed by two learned Judges on the question arising for determination. The learned Single Judge while seized of the matter in *Chamber* noticed that the issue was not res integra and that two apparently conflicting views had emerged in reported judgment of this Court. In case reported as "*Mst. Rehana Rehman v. Family Judge and others*" **(2011 CLC 1040)** attachment of pension of a retired Army official had been disallowed, whereas, in case reported as "Najeeb Ahmad Abbasi v. M.A.G. and others*"* **(PLD 2011 Lahore 334)**, this Court had taken a different view in relation to attachment of salary of an Armed Forces Officer in execution of a maintenance decree passed by a Family Court. Faced with such divergence of judicial opinion and finding that the question required authoritative determination, the learned Single Judge considered it appropriate, rather than choosing between the conflicting views to refer the matter to a learned Division Bench or a Larger Bench for an authoritative pronouncement. It is in these circumstances the matter has been placed before us for resolving the apparent conflict and settling the legal position.

3. The question requiring determination is:-

> *"Whether the pension of a retired Army official/judgment-debtor can be attached in execution of a final decree for maintenance passed by a Family Court, notwithstanding the protection available to pension under Section 11 of the Pensions Act, 1871 and Section 171 of the Pakistan Army Act, 1952 as well as the Code of Civil Procedure, 1908*?"

4. Learned counsel for the petitioner contends that the amount sought to be attached is pension and not salary or pay of a serving member of the Armed Force. Argues that pension is protected under Section 11 of the Pensions Act, 1871 and Section 60 of the Code of Civil Procedure, 1908. Avers that Section 171 of the Pakistan Army Act, 1952 protects the pay and allowances of persons subject to the said Act and that the judgment in *Najeeb Ahmad Abbasi* case **(PLD 2011 Lahore 334)** relates to salary of a serving Army Officer and, therefore, has no application to the present case.

5. Conversely, learned counsel appearing for respondents No.3 to 5, supported by the learned Law Officers submit that the decree under execution is a maintenance decree in favour of minor children and is governed by the special provisions of the Family Courts Act, 1964. Contend that Section 13 of the said Act provides a special mechanism for enforcement of a Family Court decree and that Section 17 excludes the ordinary technical application of the Code of Civil Procedure, 1908 to proceeding before the Family Court. Reliance has been placed upon "*Najeeb Ahmad Abbasi v. M.A.G. and others*" **(PLD 2011 Lahore 334)**. The learned Law Officers have the view that decree of Family Court is not restricted by the above mentioned provisions of aforementioned statutes and referred *Amjad Iqbal v. Mst. Nida Sohail and others*" **(2015 SCMR 128)** and "*Muhammad Muzamal Riaz v. Additional District Judge, Shorkot, etc*" **(2020 CLC 970)**. Argue that the petitioner cannot defeat a final maintenance decree by relying upon the general law relating to execution when the Family Courts Act provides a special mechanism for enforcement.

6. We have heard learned counsel for the parties as well as the learned Law Officers and have gone through the available record with their assistance.

7. The question requiring determination, as referred by the learned Single Judge in *Chamber* is whether the pension of a retired Army official/judgment-debtor can be attached in

execution of a final decree for maintenance passed by a Family Court, notwithstanding the protection available to pensioner under the Pensions Act, 1871, Pakistan Army Act, 1952 and the Code of Civil Procedure, 1908.

8. Section 13 of the Family Courts Act, 1964 provides the mechanism for enforcement of a decree passed by the Family Court and reads as under:-

> *"**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 the time specified by the Court not exceeding thirty days, 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 instalments as it deems fit."*

From the above, it is crystal clear that legislature has widen and enlarged the scope of recovery in pursuance of a decree of the Family Courts and regulated the execution proceedings by maximizing its powers. The provision thus provides a special statutory mechanism for enforcement of a decree passed by the Family Court. In case of a money decree, it further enables recovery of the decretal amount as arrears of land revenue, subject to the direction of the Family Court. It also empowers the Family Court to execute its own decree or have the same executed by adopting the procedure as recovery of Land Revenue or through such other Civil Court as may be directed by the District Judge.

9. Section 17 of the Family Courts Act, 1964 provides:-

> *"**17. Provisions of Evidence Act and Code of Civil Procedure not to apply**.—(1) Save as otherwise expressly provided by or under this Act, the provisions of the Qanun-e-Shahadat, 1984 (P.O. No.10 of 1984), and the Code of Civil Procedure, 1908, except sections 10 and 11, shall not apply to proceedings before any Family Court.*

> *(2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Court [in respect of Part 1 of Schedule].”*

The effect of Section 17 is that the ordinary technical provisions of the Code of Civil Procedure, 1908 are not to be mechanically applied to proceedings before the Family Court, save to the extent expressly provided by the statute. Section 17, however, has to be read with Section 13, which itself prescribes the statutory modes for enforcement of Family Court decrees.

10. Section 11 of the Pensions Act, 1871 provides:-

> *“**11. Exemption of pension from attachment**.—No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court in Pakistan at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.”*

The words used in Section 11 “at the instance of a creditor” are of great significance and, when placed in juxtaposition with a decree of Family Court for maintenance of minors, it becomes necessary to determine whether a minor decree-holder claiming maintenance can be treated as a “creditor” within the contemplation of the said provision. The right of a minor child to maintenance is not founded upon any transaction of lending or borrowing, nor does it arise from any money advanced by the child to the father. It arises from the relationship between father and child and from the legal obligation of the father to maintain his minor children. The decree passed by the Family Court merely quantifies and enforces that pre-existing obligation of father and a right accruing to a child by birth.

The expression “creditor” occurring in Section 11 cannot, therefore, be understood in isolation from the nature of the claim contemplated by the provision. According to Black's Law Dictionary, a creditor is, in its ordinary legal sense, a person to whom a debt is owing and, in a wider sense, a person having a legal right to demand and recover money. The expression nevertheless essentially concerns a creditor-debtor relationship arising from an enforceable debt or monetary obligation. A person who has lent or

advanced money to another is the ordinary example of such a creditor. Therefore, a child asserting a parental right to maintenance does not occupy the position of an ordinary creditor. A family court decree is juridically distinct from an ordinary money claim.

11. Section 171 of the Pakistan Army Act, 1952 further provides:-

> *"171. Property exempted from attachment.—Neither the arms, clothes, equipment, accoutrement or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer, in satisfaction of any decree or order enforceable against him."*

The provision specifically refers to the "pay and allowances" of a person subject to the Pakistan Army Act, 1952. The present case, however, concerns the pension of a retired Army official. The legislature while mentioning "any civil or revenue court" did not include the "Family Court" within the expression employed.

Section 3 of the West Pakistan Civil Courts Ordinance, 1962 reads as under:-

> *"**3. Classes of Courts**.— Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—*
> *(a) the Court of the District Judge;*
> *(b) the Court of the Additional District Judge; and*
> *(c) the Court of the Civil Judge."*

From the plain reading of Section 3 of the Ordinance, it clearly depicts that in clauses of Courts, Family Court is not included. The Family Court is a special Court constituted under the Family Courts Act, 1964 and exercises jurisdiction in matters falling within the scope of that Act.

12. The obligation of a father towards the maintenance of his minor children also finds express recognition in the Holy Qur'an. Allah Almighty has provided in ***Surah Al-Baqarah, Ayat 233***:

> ***وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا***
>
> ***ترجمہ:*** *"اور باپ کے ذمہ ہے کہ دستور کے مطابق ان کے کھانے اور کپڑے کا انتظام کرے۔ کسی شخص کو اس کی وسعت سے زیادہ تکلیف نہیں دی جاتی۔"*

The above injunction establishes the father's responsibility to provide sustenance and maintenance according to his means. This Qur'anic principle is fully consistent with the substantive obligation imposed upon a father to maintain his minor children. The right of maintenance belongs to the minor child, whereas the corresponding obligation rests upon the father.

13. The constitutional framework also recognizes the State's commitment to an order based upon justice and Islamic principles. Article 2-A of the Constitution made the Objectives Resolution as substantive part of the Constitution. Article 2 of the Constitution provides that Islam shall be the State religion of Pakistan. The constitutional framework, also recognizes the importance of the protection of the child and the family. The right of the minor child to maintenance and the corresponding obligation of the father cannot be equated with an ordinary commercial or monetary claim arising between a creditor and debtor.

14. The same principle is recognized in the well-established principles of Muslim personal law as explained by *D.F. Mulla*, according to which a Muslim father is under an obligation to maintain his minor children, subject to the requirements recognized by law.

15. The question referred by the learned Single Judge in *Chamber* is, accordingly, answered by holding that Section 11 of the Pensions Act, 1871 is not attracted to a final maintenance decree passed by a Family Court in favour of minor children. The decree-holder minor children, while enforcing the father's legal obligation of maintenance do not fall within the expression "creditor" as contemplated by Section 11 and the maintenance liability does not constitute an ordinary debt arising out of a debtor-creditor relationship.

16. In the present case, the decree for maintenance in favour of respondents No.4 and 5 had attained finality and was executable under Section 13 of the Family Courts Act, 1964. The petitioner, therefore, cannot claim immunity from execution merely on the

ground that he is a pensioner. The Family Court was, therefore, competent to enforce the final maintenance decree in accordance with Section 13 of the Family Courts Act, 1964 and the applicable legal framework.

17. The petitioner has failed to demonstrate any jurisdictional defect, material irregularity, excess of jurisdiction or violation of a binding statutory provision warranting interference in constitutional jurisdiction. The mere assertion that the petitioner is receiving pension does not, by itself, invalidate the execution proceedings arising from a final maintenance decree.

18. For the foregoing reasons, the impugned order dated 17.09.2019 does not call for interference in constitutional jurisdiction. Consequently, the instant Constitutional Petition is ***dismissed***. The learned Executing Court shall proceed with the execution expeditiously and shall adopt such mode or modes of execution as are lawfully available under the Family Courts Act, 1964 and the applicable legal framework. The execution proceedings shall, as far as practicable, be concluded within thirty days from receipt of a certified copy of this judgment.

19. Before parting with the judgment, we deem it appropriate to place on record our appreciation for the valuable assistance rendered by the learned Law Officers, who have ably assisted the Court through their careful research and submissions.

(MALIK JAVID IQBAL WAINS)
JUDGE

(MALIK WAQAR HAIDER AWAN)
JUDGE

APPROVED FOR REPORTING

(MALIK JAVID IQBAL WAINS)
JUDGE

(MALIK WAQAR HAIDER AWAN)
JUDGE

Signed on
01 .10.2026.
*Jamsahid**