

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Writ petition No.361 of 2023,  
Date of Institution.24.01.2023,  
Date of Decision. 07.06.2024.*

Altaf Hussain S/o Habib Ullah Mir R/o Tehjain P.O Dhodnial Tehsil  
Sharda District Neelum AJ&K.

*... Petitioner.*

**VERSUS.**

1. Additional District judge/Family Judge Neelum Athmuqam District  
Neelum AJ&K.
2. Muhammad Yousaf S/o Habib Ullah Mir R/o Village TEhjain Tehsil  
Sharda District Neelum AJ&K.
3. Rafiqa Bibi D/o Inyat Ullah R/o Tehjain P.O Dhodnail Tehsil  
Sharda District Neelum AJ&K present at Mohallah Zairat Chak  
Maqam Athmuqam.

*... Respondents.*

**WRIT PETITION**

Before:- *Justice Syed Shahid Bahar, J.*

**PRESENT:**

*Asma Shabbir Malik, Advocate, for the petitioner.*

*Waheed Bashir Awan, Advocate, for respondent No.3.*

**ORDER:**

Through the instant writ petition filed under Article 44 of the AJ&K Interim Constitution, 1974, the petitioner seeks a direction against the respondents to set aside the impugned order dated 18.01.2023 through which warrants were issued against the petitioner alongwith a further prayer to exclude the name of the petitioner from the list of judgment debtors in the interest of justice.

Brief facts of the case are that suits for maintenance allowance and recovery of dower filed by respondent No.3 herein,

Rafiq Bibi, were pending adjudication in the Court of learned Additional District Judge/Judge Family Court Athmuqam District Neelum, which were decided/settled in view of compromise on 18.10.2018 and a consent decree was passed on 31.10.2018, according to which, the suit for recovery of maintenance of respondent No.3 and her daughters was decided in their favour on the basis of compromise wherein it was settled that the amount of Rs.17,000/- will be provided to respondent No.3 as maintenance but according to the petitioner, mistakenly enhancement of 20% was mentioned in decree sheet which was not decided by the parties in the compromise deed. The settled amount was given in the Court to respondent No.3 by respondent No.2 regularly but respondent No.3 filed an execution petition on 21.07.2020 where she mentioned the name of the petitioner as judgment debtor even no decree passed against the petitioner, but learned Family Court Athmuqam District Neelum/respondent No.1 issued non-bailable warrant of arrest against the petitioner and respondent No.2 vide order dated 18.01.2023 for not depositing the decretal amount, hence, the instant revision petition.

Miss Asma Shabbir Malik Advocate, learned counsel for the petitioner vehemently argued that petitioner is not a party in the suits before the Court below, however, he was pursuing the suits as an attorney, whereas he was not a surety regarding the matter pending before the Court below. It was argued that warrant of arrest against the petitioner is illegal because he is not a judgment debtor in the

proceedings before the Court below. It was argued that respondent No.2 is a judgment debtor and is responsible for payment of the decretal amount. Thus, he stressed for setting aside the impugned order of issuing the warrant against the petitioner by declaring the same against the law in this regard.

While controverting the arguments advanced by learned Counsel for the petitioner, Mr. Waheed Bashir Awan Advocate for respondent No.3, argued that arguments of the petitioner are based on misconception and are not correct because he has clearly been mentioned in the decree sheet as surety and has been pursuing the cases before the Court below as a special attorney. It was maintained that petitioner is real brother of respondent No.2 who pursued the cases and put his efforts for compromise decree, whereas after passing the compromise decree, he succeeded to get cancel his attorney. It was contended that the impugned order of the Court below is just and proper in view of the proposition involved in the case at hand. Thus, he stressed not to set aside the impugned order as the petitioner now wants to get rid of his responsibility for depositing the decretal amount for respondent No.3 and others in a proper way. Finally, he stressed to dismiss the instant revision petition.

I have heard learned counsel' for the parties and gone through the record of the case. A perusal of record reveals that petitioner was pursuing the suits before the Court below on behalf of

respondent No.2 by way of special power of attorney and he tried for compromise between the parties and has succeeded to do so, resultantly, a compromise decree was accordingly issued by the Court below. Thus, by his conduct, he took the responsibility of depositing the decretal amount on his shoulders, on default in this regard, he alongwith respondent No.2 were issued warrant of arrest by the Court below. It seems that petitioner participated in whole the proceedings before the Court below on the basis of special power of attorney and after compromise, he moved for cancellation of his special power of attorney, which shows his conduct. He also filed an application for deletion of his name from the execution petition because he was attorney for proceedings in the cases and nothing more. The petitioner regularly joined the proceedings and at the end of proceedings during the execution proceedings he cannot take the version that he is not responsible after the conclusion of the suits in the execution proceedings. The contents of the application, on the basis of which, the compromise between the parties was effected clearly shows that petitioner herein was authorized a special power in order to compromise the matter and conditions leveled in the compromise have been accepted by the petitioner as special attorney as his name has clearly been mentioned in the decision of the Court below on application for issuance of compromise decree. A perusal of Annexure "D" application for execution of decree attached with the file clearly indicates that name of the petitioner has been written as surety/special

attorney alongwith respondent No.2, thus, petitioner cannot take the stance that he was given the only responsibility of pursuing the suits before the Court below, whereas the record shows that he participated in the proceedings as surety/special attorney and after getting compromise decree, on the basis of deletion of his attorney, he cannot be left not to comply with the conditions he took on his shoulders. The petitioner admits through objections filed in the Court below during the proceedings of execution of decree that he was a special attorney and surety for respondent No.2 and also got recorded his statement in this regard. No doubt, petitioner is not directly responsible for payment of decretal amount, but his conduct in the matter shifts some responsibility over him, thus, he cannot be allowed to take refuge from the proceedings so far. However, as the petitioner Altaf Hussain is not surety in the matter, he was only attorney on behalf of the judgment debtor, thus, his subsequent conduct reveals that he is facilitating the judgment debtor to escape from the consequences of the decree passed against him.

Family Court, as a special Court, is empowered to take into consideration the conduct of the petitioner in appropriate manner but as a last resort. First of all, execution proceedings should be initiated against the judgment debtor strictly. Relief claimed is declined. Conduct of the petitioner is not satisfactory enough to satisfy the conscious of this Court qua extending extra ordinary relief in his favour. The Executing Court itself can resolve such like ancillary

matters. Petitioner himself get recorded his statement pertaining to payment of maintenance allowance (agreed amount) thus, subsequent action through which ousted from the position of special attorney is seemingly collusive and engendered with certain designs to deprive the judgment debtor from the agreed amount.

Writ petition is not competent against each and every order of the Family Court. If this Court liberally started entertaining writ petitions against the interim orders of the Family Courts, it will definitely frustrate the very purpose, intend and wisdom of the legislator qua not providing any remedy by way of appeal, review or revision against the interlocutory orders of the Family Court. Reversal of interlocutory orders of the Family Courts in routine, that too without indicating violation of any codal provision amounts to derail the trial already on a way before the special Court. The petitioner may apply for withdrawal or pendency of warrant of arrest before the Family Court after duly surrendering before the Court.

Epitome of the above is that the petition at hand is bereft of merits, therefore, dismissed. File shall be consigned to archive.

Order announced.

Muzaffarabad,  
Jun 07, 2024. (RA)

**JUDGE**

**Approved for reporting.**

**JUDGE**