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**IN THE FEDERAL SHARIAT COURT**  
( Original Jurisdiction)

**PRESENT**

MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN  
MR. JUSTICE SHEIKH NAJAM UL HASAN  
MR. JUSTICE ZAHOR AHMED SHAHWANI

**SHARIAT PETITION NO.04/L OF 2013**

Nadeem Siddiqui

..... Petitioner

Versus

Islamic Republic of Pakistan through Secretary, Ministry of Law,  
Justice & Parliamentary Affairs, Islamabad

.... Respondent

Counsel for Petitioner

.... Ch. Bashir Hussain Khalid,  
Advocate

Date of Institution

.... 07.09.2013

Date of hearing

.... 16.04.2015

Date of decision

.... 16.04.2015

Date of Judgment

.... 30.04.2015

  
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JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- The Petitioner

has challenged Order XXI, Rules 32 and 33 of the Code of Civil Procedure and has prayed that the same may be declared as repugnant to the Injunctions of Islam as contained in the Holy Qur'an and Sunnah of the Holy Prophet (صلی اللہ علیہ وسلم). The impugned Order and Rules read as under:-

*"32. Decree for specific performance, for restitution of conjugal rights, or for an injunction.—(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in prison, or by the attachment of his property, or by both.*

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or with the leave of the Court, by the detention in prison of the directors or other principal officers thereof, or by both attachment and detention.

(3). Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the process aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

33. *Discretion of Court in executing decrees for restitution of conjugal rights.*—(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree [against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree [shall be executed in the manner provided in this rule].

(2) Where the Court has made an order under sub-rule (1) it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money”.

2. We have heard learned counsel for the petitioner at great length. He contended that Islam believes in the dignity of human beings attaches great sanctity to the matrimonial ties and has given specific guidelines for this purpose. He further submitted that the divorce is one of the most undesirable action which has been permitted only in extreme situations because unfortunately sometimes circumstances happen when the spouses cannot live together within the limits prescribed by Almighty Allah. He contended that under section 5 of the West Pakistan Family Court Act, 1964, the husband sometimes proceeds to file suit for restitution of conjugal rights whereupon the Qazi summons the spouses and tries to make the parties reach a reconciliation and in case it fails the husband proceeds to lead evidence and might succeed in getting a decree for restitution of conjugal rights. He submitted that after obtaining a decree in this respect, he moves a petition for execution of the decree and thereafter the impugned order comes into force. He further contended that the attachment of the property of wife puts her to immense misery and intolerable torture. According to Rule 33 the Court directs the wife to pay

certain amount to the husband, on non compliance of the restitution decree, just to coerce her to yield to her husband's desire for forcing her to his house.

3. Learned counsel placed reliance on Verse 231 of Surah Al-Baqarah and two Ahadith narrated from the Holy Prophet (صلى الله عليه وسلم).

4. We have given our anxious consideration to the contentions raised by the learned counsel. Here we may point out that decree of a Court has much sanctity in Islam and great significance and sanctity has been attached to a decree passed by a competent court. The parties go to the court to settle disputes including matrimonial matters. If a decree/judgment loses its sanctity or its force the whole exercise in judicial process would become futile.

5. The competent courts have been established for the expeditious settlement of disposal of disputes relating to marriage and family affairs and have been empowered to entertain, hear and adjudicate upon matters specified in the schedule i.e. dissolution of marriage, divorce, maintenance, restitution of conjugal rights, custody of children,

guardianship and jactitation of marriage. All these issues are to be settled one way or the other by the competent court but, if after the whole exercise, a decree passed or a judgment delivered is not complied with or not taken to its logical end, the whole exercise becomes meaningless. Therefore, there should be some mechanism to execute the judgment so delivered or decree passed. The relevant impugned Order and Rules are just for the same purpose.

6. In case a wife after willingly entering into the bond of Nikah, in presence of witnesses, and expresses her willingness in writing also, she is bound by the terms and conditions mutually agreed upon. In case she is unwilling to live with her husband, she can resort to the judicial process and move a petition for obtaining decree for dissolution of marriage on the basis of 'Khula'. That is the legal option provided for her release from the bond of marriage. The Verse of Surah Al-Baqarah, relied upon by the learned counsel pertains to a situation where a divorce has been pronounced, as is obviously incorporated in the text of the same Verse which reads as under:-

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ  
بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ  
نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا  
أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ  
اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ - (2:231)

"When ye divorce women, and they fulfil the term of their ('Iddat) , either take them back on equitable terms or set them free on equitable terms; but do not retain them against their will in order to hurt them; if any one does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things".

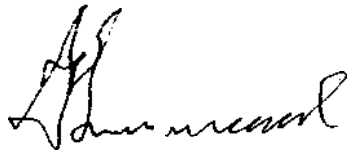
The two Ahadith relied upon by the petitioner also relate to the subject of 'Khula' and divorce and do not discuss the issue under consideration. Thus even on merits, the learned counsel has not been able to refer to any specific provision in the Holy Qur'an, Hadith or even Fiqh which could support his contentions.

7. In addition to what has been discussed above, we may point out that under Article 203-B(c) this Court is empowered to examine any law or provision of law on the touch stone of Injunctions of Islam as contained in the Holy Qur'an and Sunnah of the Holy Prophet (صلی اللہ علیہ وسلم). However, jurisdiction of this Court is excluded in matters

pertaining to Muslim Personal Law. Since the said Order and Rules are not only Procedural but fall within the category of Muslim Personal Law as well, these are excluded from the jurisdiction conferred on this Court by the Constitution, as mentioned herein above.

8. For reasons stated above, this matter is beyond the jurisdiction of this Court and is, therefore, accordingly dismissed in limine.

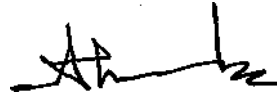
9. These are the reasons of our Short Order dated 16.04.2015.



MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN



MR. JUSTICE SHEIKH NAJAM-UL-HASAN



MR. JUSTICE ZAHOOR AHMED SHAHWANI

Dated 30.04.2015

Umar Draz/

*Approved for reporting*

