

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

**Present:**

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE  
MR. JUSTICE DR. SYED MUHAMMAD ANWER  
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

**Shariat Petition No.3/I of 2021**

Sardar Ali Khan son of Mustajab Khan,  
Resident of Qambar, Tehsil Badozai, District Swat, Khyber  
Pakhtunkhwa, Pakistan.

..... Petitioner

***VERSUS***

1. Federation of Pakistan
2. Wazirzada son of Taj Muhammad r/o Haya Serai, Tehsil Balambat, District Dir Lower, Khyber Pakhtunkhwa.
3. Registrar Peshawar High Court, Mingora Bench/Darul Qaza, Swat, Khyber Pakhtunkhwa.
4. Registrar Peshawar High Court, Peshawar.
5. District Judge/Zilla Qazi Swat at Gulkada, Saidu Sharif, Swat, Khyber Pakhtunkhwa.
6. Civil Judge-V/Illaqa Qazi Swat at Gulkada, Saidu Sharif, Swat, Khyber Pakhtunkhwa.
7. Civil Judge-IV (Executing Court)/Illaqa Qazi Swat at Gulkada, Saidu Sharif, Swat, Khyber Pakhtunkhwa.
8. Government of Khyber Pakhtunkhwa through Secretary Law and Parliamentary Affairs at Peshawar.

..... Respondents

~~~~~

|                                |      |            |
|--------------------------------|------|------------|
| For the petitioner             | .... | Nemo       |
| Date of receipt of Sh.Petition | .... | 27.01.2021 |
| Date of hearing                | .... | 17.12.2021 |
| Date of Judgment               | .... | 13.01.2022 |

~~~~~

**JUDGMENT:**

**MUHAMMAD NOOR MESKANZAI, C.J---** The present petitioner has called in question the provisions of Order VII Rule 2 and Order XX Rules 12 and 13 of the Code of Civil Procedure, 1908 on the ground that the said provisions are contrary to the Injunctions of Holy Quran and Sunnah of Holy Prophet (ﷺ).

2. After filing of this petition, the petitioner, despite service, remained absent for a couple of dates of hearing, hence, we, after having gone through the contents of the petition, passed the following order:-

*“Despite repeated calls there is no appearance on behalf of both the parties. Even on previous date of hearing petitioner also failed to appear before this Court.*

*We have gone through the petition and find the same non-maintainable, so, for the reasons recorded later on, the petition is dismissed.”*

3. The facts, as gathered from the petition, are that a suit was filed against the petitioner in the Court of Senior Civil Judge/Zilla Qazi, Lower Dir, Taimergarra. The suit was decreed and the petitioner, feeling dissatisfied with the decree, preferred an appeal which too was dismissed and the decree attained finality. The respondent No.2 filed an application for execution of the decree. Perhaps, the grievance of the petitioner against the execution proceedings did not materialize before the relevant forums, hence, he proposed to file this petition before this Court with the following prayer:-

*“It is therefore, very humbly prayed that, on accepting the instant petition, the provisions of Order 7 Rule 2 and Order 20 Rules 12 & 13 alongwith the impugned orders/judgments and decrees mentioned above, may please be declared null and void, repugnant to the injunctions of the Holy Quran, Sunnah, shariah and may graciously be declared inoperative upon the rights of petitioner, being ultra sunnah and shariah.*

*Any other relief which is just, efficacious and in accordance with injunctions of Islam, may also be granted, though not specifically.”*

4. The perusal of the said provisions leave no room for doubt, the petitioner has not been able to comprehend the philosophy behind the said provisions. Order VII Rule 2 speaks how a suit for money is framed and what are the essentials of a money suit. These provisions neither contain an element of Riba or usury nor there is any room or permission to claim and allow interest. For the sake of convenience Order VII Rule 2 is reproduced:-

*“2. **In money suits.** Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed;*

*But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.”*

Similarly, the provisions of Order XX Rules 12 & 13 do not propose for allowing interest nor contemplate “interest” as a subject, rather provide a simple procedure while drawing a decree for immovable property and for rent or mesne profit. For sake of convenience the same are reproduced:

*“12. **Decree for possession and mesne profits. (1)** Where a suit is for the recovery of possession of*

*immovable property and for rent or mesne profits, the Court may pass a decree---*

- (a) for the possession of the property;*
- (b) for the rent or mesne profits, which have accrued on the property during a period prior to the institution, of the suit or directing an inquiry as to such rent or mesne profits;*
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until---*
  - (i) the delivery of possession to the decree-holder;*
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree holder through the Court ; or*
  - (iii) the expiration of three years from the date of the decree, whichever event first occurs .*

*(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profit shall be passed in accordance with the result of such inquiry.*

**13. Decree in administration suit. (1)** *Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.*

*(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estate of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this code.”*

5. Apart from procedural defect i.e. that in a petition at one time only one law or provisions of a law can be assailed before this Court, even otherwise, the provisions mentioned herein above are absolutely procedural in nature meant for drawing a decree covering special circumstances pertaining to immovable property, rent and mesne profit. Furthermore, not a single word regarding interest appears in these provisions. In absence of any provision regarding interest or conferring a right to claim interest, usury or Riba, or empowering the Court to award interest, how such a law or provision of law could be challenged before this Court. The above-stated provisions neither singly nor collectively contemplate interest. Besides, the above-mentioned provisions are entirely procedural in nature and as per the definition of law containing in Article 203B(c) of the Constitution of Islamic Republic of Pakistan, are not amenable to jurisdiction of this Court. Resultantly, this petition being misconceived is not maintainable, hence the same is dismissed

*in-limine.*

**SH. MISC. APP. NO. 07/I OF 2021**

So far as the application for seeking suspension of impugned judgment is concerned, this Court is not proper forum for such relief because neither appeal nor civil revision or Shariat Miscellaneous application against the said judgment lies before this Court. Furthermore, the relief being personam in nature is even otherwise is not allowable by this Court.

6. These are the reasons for our short order dated 17.12.2021.

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI**  
CHIEF JUSTICE

**MR. JUSTICE DR. SYED MUHAMMAD ANWER**  
JUDGE

**MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**  
JUDGE

*Dated, Islamabad, the*  
*13<sup>th</sup> January, 2022*  
*Imran/\*\**