

*Order Sheet*  
 IN THE HIGH COURT OF SINDH, KARACHI  
**Insolvency Petition No.01 of 2019**

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Date	Order with signature of Judge
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**BEFORE:**

**Mr. Justice Arshad Hussain Khan**

1. For hearing of Official Assignee Reference No.01/2019.
2. For orders on CMA No.02/2019.
3. For Orders on CMA No.03/2019.
4. For Orders on Main Petition.

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20.08.2020

None present for the Petitioner.  
 Choudhry Waseem Iqbal, Official Assignee.

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This is a second round of call since morning but none is in attendance on behalf of the petitioner. There is also no intimation although the name of learned counsel for the petitioner has appeared in the Daily Cause List and same is the position since 30.08.2019.

Learned Official Assignee while inviting attention of this Court towards the order of previous date viz. 18.09.2020 submits that his listed References may be taken up for hearing as the same is pending since 2019. For the sake of ready reference, relevant portion of order dated 18.09.2020, is reproduced as follows :-

*“Since, today learned counsel for the petitioner is not in attendance the case is adjourned, however, if, on the next date , learned counsel for the petitioner either failed to appear and/or otherwise, avoided to proceed with the case then, some appropriate order will be passed with the assistance of Learned Official Assignee”.*

From the record of the case, it appears that the petitioner filed present proceedings under the provision of Sections 10,13, and 15 of the Insolvency (Karachi Division) Act,1909 [The Act], with the following prayer :-

- a. *That this Honourable Court may be pleased to make orders to adjudication / adjudging the petitioner as an insolvent under the provisions of insolvency Act III, 1909, and any other relief deemed to be fit and proper under the special circumstances of the case.*
- b. *That the warrant of arrest issued by learned family Judge, Choudhry Muhammad Amin Mayo, Family*

*Judge, Liaquatpur, Punjab, may be suspended in the larger interest of justice.*

c. *An-ad-interim order is prayed to secure the ends of justice.*

Briefly, the facts giving rise to filing of the present petition, as per the memo of the petition, are that the petitioner is a poor person and due to some unavoidable circumstances, he became bankrupt as his business has been destroyed and at present he has no means of earning. It is also stated that the petitioner has sold out all his properties in order to pay the dues, detail whereof are mentioned in para-3 of the memo of petition. It has been further stated that the petitioner has paid all the due amounts to the respondents towards their maintenance as well as dower and as such in view of his poor financial position he has not been able to pay any further amount to the respondents, however, the Family Judge, Liaquatpur, Punjab issued a warrant of arrest against the petitioner in the execution proceedings filed by the respondents for recovery of amount in terms of the decree as he failed to satisfy the decree. It has also been stated that since the petitioner is unable to discharge his liabilities as he is having no assets for adjustment of the same, he has been compelled to file this petition as a last resort.

Upon filing of the present petition, the petitioner was directed to approach the Learned Official Assignee who upon recording the statement of the petitioner filed his Reference, relevant portion [para-7] whereof is reproduced as under :-

“7. The official Assignee respectfully submits that the petitioner has done his entire business in Punjab. He has not produced books of accounts which are mandatory requirement of Sub-Rule (1) of Rule 586 of Sindh Chief Court Rules. He has not sustained any loss in his business. The amount of Rs.39,46,000/- has been spent by the petitioner on his two marriages for which no substantive proof are provided. No books of accounts in respect of outstanding amount to the creditors are provided. The solitary word of the petitioner without producing any documentary proof cannot be accepted as gospel truth. Thus, no certificate as required under Sub Rule (2) of Rule 586 Sindh Chief Court Rules (O.S) can be issued in favour of petitioner. The Official Assignee submits the above facts and prays that the petition is not tenable and is liable to be dismissed.”

From the record of the case, it appears that the present petition was filed in order to defeat the right of respondents [wife and

daughters], in respect of the amount due under the decree for maintenance. Learned Official Assignee while reiterating the contents of his Reference submits that instant petition is not maintainable and as such liable to be dismissed. In this regard, he has placed reliance upon the case reported as *PLD 2016 Sindh 332*. Relevant partitions whereof are reproduced as follows :-

*“9. Before proceeding further, I would like say that though the Insolvency (Karachi Division) Act, 1909 provides a mechanism for 'creditor' and 'debtor'. The terms 'creditor' and 'debtor' are defined by Section 2(a) & (b) of the Act as:*

- a) 'creditor' includes a decree holder;*
- b) 'debt' includes a judgment-debt, and 'debtor' includes a judgment-debtor.*

*The Insolvency (Karachi Division) Act 1909, revolves round the 'creditor' and 'judgment-debtor'. It is necessary to mention that the Act provides an exception to the general principle whereby a 'decree holder' is legally entitled for satisfaction of the decree which do include satisfaction by attachment; sale of movable and immovable property of judgment-debtor and even arrest of judgment-debtor. Worth to keep in mind that one earns the status of 'creditor' after due determination of such rights by a competent court of law hence the law of Insolvency normally should not be allowed to be used as a sword to deprive a 'creditor' from his legally earned right (decree) which may have been result of a long agony of trial. Therefore, the legislature have made presentation of such petition subject to certain criteria (grounds) which are described in Section 11 and 14 of the Act which are referred hereunder:-*

***11. Restrictions on adjudication.*** *The Court shall not have jurisdiction to make an order of adjudication, unless---*

*a) the debtor is , at the time of the presentation of the insolvency petition, imprisoned in execution of decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or*

*b) the debtor, within a year before the date of the presentation of the insolvency petition has ordinarily resided or had a dwelling house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court; or*

*c) the debtor personally works for gain within those limits; or*

*d) in the case of a petition by or against a firm of debtors the firm has carried on business within a year.....*

***14. Conditions on which debtor may petition.-(1)*** *A debtor shall not be entitled to present an insolvency petition unless -*

*a) his debts amounts to five hundred rupees, or*

*b) he has been arrested and imprisoned in execution of the decree of any Court for payment of money, or*

*c) an order of attachment in execution of such a decree has been made and is subsisting against his property;*

The above provisions prima facie affirms that it is giving a right to judgment-debtor to seek protection against the decree (creditor) but while presenting such petition the creditor per Section 15 the Act is legally obliged/bound to give details of his all assets. The object is further evident from Rule 586 of Sindh Chief Court Rules (OS) which reads as:-

**"586. Insolvent to lodge all books and with the official assignee.** (1) Every debtor, who files a petition, shall lodge forthwith in the office of the official assignee in addition to any books produced before the court under section 15(3)(a) of the Act all papers, writings and vouchers relating to his estate with a list thereto signed by himself and also a statement of his movable and immovable property. If the debtor is in jail such list and statement as aforesaid shall be forwarded by the jailor."

From above, it is clear that one, seeking his/her adjudication as insolvent shall not be entitled such adjudication merely by uttering that he/she is insolvent but is required to submit details of estate. By submitting such details the 'debtor' has to show his intention that the petitioner deliberately does not want to defeat a lawful 'decree' but despite willingness to satisfy creditor his means are not sufficient. The certificate of Official Assignee would determine the rights and liabilities of the 'creditor' and 'debtor' which even include an authority to Official Assignee to deal with property or business of debtor for benefit of creditor. The mandatory requirement is further evident from Sub-rule (2) of Rule 586 which says that failure of debtor to make compliance of Rule 586(1) shall relieve the Court from passing any Order on such petition. For convenience the same is reproduced hereunder:-

**"Certificate of Official Assignee.-**(2) On the debtor complying with the provisions of sub-rule (1) of this rule, the Official Assignee shall give to, the debtor a certificate certifying the same, and no order of adjudication shall be made on the petitioner unless such certificate is produced."

Since, in the instant matter the present petitioner remained actively litigating with the 'creditor' (his ex-wife) which is evident from lodgment of number of FIR(s) from either sides which normally an insolvent can't. The petitioner, being an admitted father of children, cannot avoid his legal, moral and bounden obligation i.e. to maintain his children. Worth to add here that such obligation even does not require one (child) to earn the status of 'creditor' first for compelling his/her father to provide maintenance. Therefore, I would say that a father would not be legally entitled to seek exemption to his obligation to maintain his child even under cover of this Act because it is confined to 'creditor' and 'debtor'. Since, as already said, a demand of maintenance of child from father does not require any intervention of court even. In FIR(s), lodged by petitioner, he claimed to be possessing house and valuable articles but he produced no record/details thereof before the Court, as required by Section 15 of the Act, nor before the Official Assignee. There is nothing available on record except bald words of the

*petitioner that he has no means which, I can safely say, would not be sufficient the petitioner to seek his adjudication as 'insolvent'."*

[emphasis supplied]

On the identical issue this Court in case - Insolvency Petition No.03 of 2018 *Re-Abdul Ahad Ansari vs. Mst. Lubna Qaiser*, while dilating upon the issue, vide an unreported order dated 29.09.2020, inter alia, has held as under :-

*"8. According to common-law concept, neglect or refusal to support the wife by making her an allowance suitable to her position during period she remains in matrimonial bond with him, gives right to the wife to sue the husband for maintenance, and the grievance of the wife is redressed by awarding to her proper maintenance and compel the husband to pay it.*

*9. Under Muslim Law, which governs the parties in the instant case, a Muslim husband/father is under obligation to maintain his wife/ children. He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife and children, but because of the policy of the law which imposes the obligation upon the husband/father. Such obligation is personal in character and arises from the very existence of the relationship of the spouses. When a husband refuses or neglects his legal duty, the Court enforces that duty by making a decree in favour of the wife. When the Court awards maintenance to the wife against her husband, it does not enforce the payment of any debt, as the maintenance does not arise from any contract express or implied, but from the relation of marriage and the maintenance is awarded not in payment of debt but in performance of a duty of the husband to support his wife measured by the decree of the court. Unless insolvency releases a man altogether from the obligation to maintain his wife/children, the husband/father cannot obtain discharge of his liability under a decree for maintenance by recourse to insolvency. The object of insolvency law is not to deprive the wife/children of support and maintenance due from the husband/father which has never been the purpose of the law to enforce. Unless expressly required by statutory enactment, the Court should not presume the intention on the part of the Legislature in providing a law for giving relief to unfortunate debtors, to make the law a means of avoiding enforcement of moral and legal obligation devolved upon the husband/father to maintain his wife/children".*

From the record, it appears that the petitioner through instant proceedings has attempted to thwart the rights of respondents (wife and daughters) to realize the amount due under the maintenance decree. It may be observed that the obligation of a husband/father, in the absence of a judgment or order, does not constitute a debt owned by him to his wife and children, when the very same obligation is enforced by decree of a competent

court. In the circumstances, I am of the view that the decree as the one here under consideration is not a 'debt' within the meaning of the Act, and as such keeping in view the dictum laid by this Court referred to supra and in view of the Learned Official Assignee's Reference, it cannot form the basis of adjudication of the petitioner/husband as an insolvent. The instant petition, thus, being devoid of any merit is not maintainable, which is dismissed accordingly.

Petition and the Reference of the Official Assignee as well as listed applications are disposed of.

JUDGE

Jamil\*\*\*