

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.216 of 2020  
Civil Misc. No.100 of 2020  
(Filed on 21.10.2020)

1. Mst. Sabiran Bibi w/o Muhammad Latif,
  2. Muhammad Latif s/o Muhammad Khan, r/o Kalyal Bainsi, Tehsil and District Mirpur.
- ....PETITIONERS

**VERSUS**

1. Malik Shahid,
2. Malik Abid,
3. Malik Sohail,
4. Malik Saeed s/o Muhammad Sadiq,
5. Mst. Shaheen Akhtar,
6. Nahida Parveen,
7. Nighat Parveen,
8. Rifhat Kousar, daughters,
9. Sarian Bibi w/o Muhammad Sadiq, r/o House No.556/557, Sector F/1, Mirpur, Rehmani Mohalla, Mirpur.
10. Collector, District Mirpur,
11. Tehsildar, Tehsil Mirpur.

.....RESPONDENTS

(On appeal from the judgment/order of the High Court dated 03.09.2020, in Revision Petition No.22 of 2020)

FOR THE PETITIONERS: Ch. Muhammad Afzal,  
Advocate.

FOR THE RESPONDENTS: Malik Qadeer Hussain,  
Advocate.

*Date of hearing:* 23.11.2020.

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been filed against the judgment/order of the Azad Jammu & Kashmir High Court dated 03.09.2020, passed in revision petition No.22 of 2020.

2. The facts forming the background of the captioned petition for leave to appeal are that a decree of Rs.16,00,000/- was passed in the money suit titled *Muhammad Sadiq vs. Sabiran Bibi* by the learned District Judge Mirpur against the petitioner, herein, on 30.09.2010. On 11.05.2019, the decree holder filed an application for execution of the decree. The application

was contested by the other side by filing objections. The learned District Judge Mirpur vide order dated 20.02.2020, accepted the application for execution of the decree and directed to attach the property of the judgment debtor consisting of plot No.365, Sector F/3, Part 1, Mirpur. The legality and correctness of the order dated 20.02.2020, recorded by the learned District Judge Mirpur, was challenged by the judgment debtor/petitioner, herein, before the Azad Jammu & Kashmir High Court through revision petition on 26.02.2020. The learned High Court after hearing the parties through the impugned judgment/order dated 03.09.2020, has dismissed the revision petition.

3. Ch. Muhammad Afzal, the learned Advocate appearing for the petitioners argued that a decree of Rs.16,00,000/- was passed by the Court of first instance, whereas, in the impugned judgment/order, the learned High Court has mentioned the decretal amount as Rs.24,00,000/-, erroneously. The learned Advocate submitted that if the judgment/order passed by the learned

High Court remains in field then excessive amount would be recovered from the petitioner, herein. The learned Advocate further submitted that the impugned judgment/order has been passed by the learned High Court against a dead person which is illegal.

4. Malik Qadeer Hussain, the learned Advocate appearing for the other side argued that it is true that a decree of Rs.16,00,000/- was passed by the learned trial Court, however, the legal heirs of the deceased decree holder have been impleaded, therefore, the defect, if any, stood cured. The learned Advocate submitted that he has no objection if the amount of decree is corrected without touching the merits of the case.

5. In rebuttal, Ch. Muhammad Afzal, Advocate submitted that the decretal amount may be ordered to be recovered in instalments.

6. I have heard the learned counsel for the parties and have gone through the record of the case appended with the petition. Admittedly, the amount of decree which

was originally granted by the learned trial Court is Rs.16,00,000/-, has inadvertently been mentioned by the learned High Court in the impugned judgment/order as Rs.24,00,000/-. The same is hereby corrected and modified as Rs.16,00,000/-. Moreover, the legal heirs of the decree holder have been impleaded and even otherwise their non-impleadment does not make the execution proceedings infructuous, therefore, in my estimation, no purpose would be served in grant of leave.

The impugned judgment/order of the learned High Court dated 03.09.2020, is modified in the terms indicated above. The PLA as well as application for interim relief stands consigned to record. The question of fixation of instalment is left open for decision of the executory Court.

**JUDGE**

Mirpur.  
23.11.2020