

**PESHAWAR HIGH COURT, MINGORA BENCH/
DAR UL QAZA, SWAT**

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary. 3
	01.08.2017	<p><u>W.P. No. 469-M/2017</u> <u>With CM No. 825-M/2017.</u></p> <p>Present: Rooh-ul-Amin, petitioner, in person *** <u>MUHAMMAD NASIR MAHFOOZ, J:-,</u> Late Muhammad Karim Durrani now represented by his legal heir Rooh-ul-Amin, petitioner herein, by imploring the constitutional jurisdiction of this Court has prayed for different reliefs briefly enumerated in the concluding prayer of his writ petition.</p> <p>2. Brief facts of the case that initially the respondent/plaintiff instituted a suit for pre-emption cum possession against the petitioners/defendants Muhammad Karim deceased and 1 another with regard to suit property fully described in the head-note of the plaint. On appearance, the defendants hotly contested the claim of plaintiff/respondent and on conclusion of the trial, the suit was dismissed by the learned Senior Civil Judge Malakand at Batkhela on 14.06.1978. Feeling aggrieved, the plaintiff/respondent preferred an appeal, which was also</p>

	<p>dismissed by the learned appellate Court on 15.07.1980. Thereafter, judgments of the <i>fora</i> below were assailed before this Court through C.R. No. 427 of 1980, which was allowed by this Court on 15.01.1985 and suit for pre-emption cum possession was decreed against the petitioners/defendants. Being dissatisfied, the petitioners/defendants filed Civil Appeal bearing No. 75-P of 1987 before the Hon'ble Supreme Court of Pakistan, which was dismissed on 27.04.1991 and Review Petition filed before the august Supreme Court of Pakistan by the petitioners/defendants also met the same fate on 26.02.1992.</p> <p>3. The respondent/decreed-holder filed execution petition, which was resisted by the other side by raising objections with regard to construction, improvements over the decretal land and cutting of trees etc. The learned executing court appointed the local commissioner, who visited the spot and submitted his report by fixing the value of entire improvements including trees etc to the tune of Rs. 1,57,820/-. The defendants filed their objections against the commission report, which were dismissed by the learned executing Court and the commission report was confirmed. The defendants challenged the order of confirmation of commission report till the august Supreme Court of</p>
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	<p>Pakistan. The respondent/plaintiff deposited the amount of Rs. 1,57,820/- determined by the local commission vide application dated 04.10.2005. During execution proceedings the defendants raised objection in respect of procurement of excess land by the plaintiff/respondent. The said objection was also answered in negative by the learned executing Court vide order dated 09.12.2003. The defendants filed revision petition before the learned revisional Court, which was dismissed on 13.01.2004 and finally possession of the decretal property was handed over to the respondent/plaintiff through Bailiff of the Court. Subsequently, as per stance of the plaintiff/respondent the defendants took forcible possession of the decretal property and in this regard he lodged an FIR No. 4 under sections 447,448,506,148,149 PPC against the defendants, but despite all these hectic efforts the decretal property was not handed over to the plaintiff/respondent, therefore, he filed another suit for possession of the decretal property. The said suit was also decided in favour of the plaintiff/respondent up to this Court on merits. Hence, the present writ petition has been preferred by the petitioner by almost alleging the same facts, which have been decided on merits up to the august Supreme Court of Pakistan.</p> <p>4. Having heard arguments of the Petitioner in</p>
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motion, available record with his valuable assistance gone through.

5. In the light of above chequered history of the case in hand and in view of the evident provision of the doctrine of '*laches*', the Petitioner was asked to satisfy judicial conscious of this Court, as it seems that the petitioner/defendant on the one pretext or the other wants to delay the execution of valid decree passed in favour of the plaintiff/respondent after long and protracted litigation, which prevailed over a period of almost half century. It is further evident from the available record that the petitioner is using delay tactics or in other words he is harboring assumptions that his efforts to drag the other party will succeed and they will be restrained from enjoying usufructs of the lawful decree and this maneuvering in shape of present writ petition is an attempt in that context.

6. Besides, through present writ petition, the petitioner has impugned the last order dated 23.09.2016 passed by learned appellate court whereby his review application No.03 of 2016 filed in civil appeal No.14/13 of 2015 against order dated 18.03.2016 was dismissed besides orders of different Courts, which were passed right from the year 1976 till the year 2010 yet this writ petition has been preferred before this Court on 01.07.2017 after considerable

lapse of time, hence the law of *laches* will come into field.

7. As this Court is the Court of equity and Petitioner for equitable relief was supposed to put-forth some convincing materials which would have justified the filing of this Petition after considerable delay. As it is well settled principle of equity that only vigilant not the indolent is to get the relief from Court of equity or law respecting his right which has been violated or infringed. Petitioner could not satisfy this Court as to why he remained in deep slumber for such long period for realization of his legal rights before this Court which he alleges to have been violated by the Respondent/plaintiff.

8. In view of what has been stated above *being a fait accompli*, this writ petition alongwith CM being bereft of merits stand dismissed in *limine*. Since this writ petition is being dismissed on ground of laches, therefore, there shall be no order as to costs.

Announced
Dt.01.08.2017.

JUDGE

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