אמאן דלא צייית דינא כולי –

For one who does not comply with a ruling, etc.

Overview

רבה and רב יוסף both ruled that the עדים do not write a מודעא unless the person (who is allegedly accused of forcing the transaction) is one who does not adhere to the ruling of a בי"ד; however if he does adhere to the ruling of בי"ד then the person who is being forced can go directly to בי"ד and tell them what is happening (that he is being coerced) and there is no need for the עדים to write a מודעא.

תוספות asks:

תימה מודעא דמאי –

It is astounding! What type of **מודעא** are we discussing -

אי דגיטין ודמתנה גלוי מילתא הוא[1] דודאי הוא אנוס בשום ענין שאין יכול לבא לבית דין –

If it is a מודעא **regarding** granting **a גט or a gift** (which the person is being coerced to grant), there is no reason why we should not write a מודעה since this מודעא is merely **revealing something** which will become evident, **for he is certainly coerced in some fashion which prevents him from coming to בי"ד -**

ואי דזביני והא אמר רבא[2] לא כתבינן מודעא אזביני –

And if the מודעא is regarding **a sale,** this cannot be, **for רבא ruled that we do not write a מודעא for sales –**

תוספות anticipates and reject a possible explanation:

וכי תימא רבה ורב יוסף לית להו דרבא –

And if you will say that רבה ורב יוסף disagree with רבא and maintain that we do write מודעא אזביני -

מכל מקום הוה ליה למיפרך ולשנויי כדפריך בסמוך אנהרדעי[3] –

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[1] On the עמוד ב' the נהרדעי state that a שטר מודעא must state that the undersigned עדים know the nature of the coercion. The גמרא asks that this cannot be applicable by an אונס regarding גיטין ומתנה, for there it is merely a גילוי מילתא that he was an אונס. Regarding a sale where the seller receives money it is necessary to be aware of the אונס, for generally sellers are coerced to sell because they need the money (however this is not considered a proper אונס), therefore the עדים have to verify beforehand that indeed there was a valid coercion which voids the sale. However by גיטין ומתנה (where he receives nothing in return) why is there a need for the עדים to know the coercion; if he was not coerced why is he making a מודעא and why is he granting the גט ומתנה, therefore when he makes the מודעא it means that he is certainly being coerced (and we will all become aware of it) and (similarly here in our discussion) for some reason he cannot go to בי"ד at this point. There is no reason not to write the מודעא even אמאן דציית לדינא.

[2] See עמוד ב'. (See רשב"ם there ד"ה לא for a detailed explanation.)

[3] See footnote # 1. The גמרא asked what type of מודעא are the נהרדעי discussing; if it is regarding גיטין ומתנה it is merely a גילוי מילתא, and it cannot be regarding זביני, since רבא ruled that לא כתבינן מודעא אזביני. The same questions

Nevertheless the גמרא **should have asked and answered** (regarding what type of מודעא we are discussing[4]) **as the** גמרא **shortly asks on** the ruling of **נהרדעי!**

תוספות has an additional difficulty (with the proposed resolution of the 'וכי תימא'):

ועוד והא אביי ורבא גופייהו דאמרי תרוייהו אפילו עלי ועליך[5] –

And there is an **additional** difficulty **for אביי ורבא themselves both maintain that** a מודעא can be written **even on me and you** (who are ציית לדינא) -

אם כן לא איירי במודעא דזביני –

Therefore since it is (אביי and) רבא who is responding, it is understood that **we are not discussing a מודעא דזביני.** The question remains to which מודעא were רבה ור"י referring to.

תוספות rejects a possible explanation:

וכי ההוא מעשה דפרדיסא[6] לא שייך הכא דאפילו ציית דינא פשיטא דכתבינן:[7]

And it is not feasible to assume that **here** we are discussing an incident **similar to the story of the orchard, for** in such a case **it is obvious that even if** (the coercer) is **ציית דינא**, **we will write** a **מודעא**. תוספות does not answer his question.[8]

Summary

תוספות argues that regarding גיטין ומתנות (as well as כמעשה דפרדיסא) we write even אמאן דציית

Thinking it over

What would be the ruling if there was a מסירת מודעה by גט ומתנה and then it became apparent that there was no אונס; is it a valid גט ומתנה?[9]

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should be posed (and answered) regarding the ruling of רבה ור"י that לא כתבינן מודעא אלא אמאן דלא ציית דינא.

[4] The גמרא could have answered that רבה ור"י are discussing a מודעא אזביני and they disagree with רבא and maintain כתבינן מודעא אזביני (see מהרש"א).

[5] אביי ורבא responded to רבה ור"י (disagreeing with them) that a מודעא can be written even on us. This disagreement cannot be regarding גיטין ומתנה for then everyone agrees that we write a מודעא (even אמאן דציית לדינא) since it is merely a גילוי מילתא בעלמא. It cannot be in regards to זביני for then how can (אביי and) רבא say we can write it even on us, when רבא maintains אין כותבין מודעא אזביני!

[6] See עמוד ב' (and footnote # 1). The גמרא there explained that the ruling of נהרדעי is pertaining to a case similar to מעשה דפרדיסא. The story there is where one mortgaged his פרדס (orchard) for a loan for a period of three years (during which time the lender can eat the fruits for full payment for the loan). After the three years passed the lender told the owner, 'if you sell me this פרדס, fine and if not I will hide the mortgage note and claim that I bought it from you three years ago and since I have שני חזקה I will keep the field for free'. In such a case the owner had no choice but to sell the field for otherwise he would lose it entirely; in such a case we write a מודעא אזביני even according to רבא.

[7] Even if the lender (see footnote # 5) is a ציית לדינא, nevertheless what will it help if the owner goes to בי"ד; the מלוה will claim I bought it and have שני חזקה. In such a case we will write a מודעא even אמאן דציית לדינא.

[8] See בל"י אות שס for possible solutions.

[9] See בל"י אות שס בד"ה והנה הא.