

JUDGMENT SHEET
PESHAWAR HGIH COURT, BANNU BENCH
(Judicial Department)

WP No. 303-B of 2025

Rafiullah

Versus

Mst. Qamar-un-Nisa

JUDGMENT

Date of hearing: **03.11.2025**

For petitioner: **Muhammad Ishaq Khan Khattak advocate.**

For respondent: **Umar Daraz Khan Khattak advocate.**

MUHAMMAD TARIQ AFRIDI, J.- Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality and validity of the judgment and decree dated 06.03.2025 passed by the learned Additional District Judge, Takht-e-Nasrati, District Karak. By the said judgment the appellate Court upheld the order dated 03.10.2023 of the learned Civil Judge-II/Judge Family Court, Takht-e-Nasrati, District Karak, whereby the petitioner's application for setting aside the ex parte judgment and decree dated 29.04.2017 was dismissed.

2. Concise facts of the case are that, the respondent, Mst. Qamar-un-Nisa, instituted Family Suit No. 35/FC of 2015 against the petitioner, Rafiullah, before the learned Civil Judge-II/Judge Family Court, Takht-e-Nasrati, District Karak, seeking recovery of maintenance, dowry articles, and dower, etc. The suit was decreed ex parte judgment dated 29.04.2017. Subsequently, the

respondent filed Execution Petition No. 14/10 of 2017. The petitioner appeared on 27.02.2023 and filed an application bearing No. 17/6 of 2023 for setting aside the ex parte judgment and decree dated 29.04.2017. The learned trial court, after hearing both parties, dismissed the said application vide order dated 03.10.2023. Aggrieved thereby, the petitioner preferred an appeal before the learned Additional District Judge, Takht-e-Nasrati, District Karak, which too was dismissed vide judgment dated 06.03.2025. Hence, this writ petition.

3. Arguments of the learned counsel for the parties have been heard and record perused.

4. The record reflects that the petitioner was abroad at the relevant time and had no knowledge of the proceedings. There is no evidence that summons were personally served upon the petitioner nor is there any indication that publication was effected at his correct address. The alleged substituted service appears to have been made through a local newspaper that was not in circulation at the petitioner's place of residence. Furthermore, no copy of the newspaper issue containing the purported publication was ever dispatched to the address mentioned therein. The petitioner asserts that he executed a power of attorney in favour of his brother, Mehmood Alam, on 19.02.2023 and the application for setting aside the ex-parte decree was filed on 27.02.2023. The record reveals that the suit was instituted on 30.10.2015 and that the order sheet dated 15.01.2016 mentions the defendant as being abroad. There is nothing on record to establish personal service upon the petitioner,

nor is there any evidence of due service through any substituted service, including service by registered post.

5. Under Article 164 of the Limitation Act, 1908, an application to set aside an ex parte decree must be filed within thirty days of the decree, or, where summons were not duly served within thirty days, from the date when the applicant acquired knowledge of the decree. In the present case, no evidence of due service upon the petitioner is available on record. The petitioner appears to have filed his application immediately upon obtaining knowledge through his attorney. Accordingly, the application is to be treated as filed within time. It is a settled principle that courts lean towards decisions on merits rather non-suited litigants on technicalities.

6. For the foregoing reasons, this writ petition is allowed. The impugned orders dated 03.10.2023 and 06.03.2025 are hereby set aside, and the ex parte judgment and decree dated 29.04.2017 is recalled. The case is remanded to the learned trial court for a fresh decision on merits after providing both parties a fair opportunity of hearing. The petitioner immediately upon entering appearance before the trial court shall furnish a surety bond with two sureties to the satisfaction of the trial court, covering the entire claim, if decreed. Since the ex-parte decree dated 19.04.2017, has been set aside after approximately eight years, the petitioner shall also deposit the arrears of maintenance for his son and two daughters from 2015 till date. However, any amount already deposited or paid before the Court shall be duly adjusted. It is also observed that the petitioner claims custody of his minor son; therefore, the issue of his maintenance shall

also be determined by the learned trial court strictly in accordance with law. The learned trial court is directed to conclude the proceedings within four months from the date of receipt of the attested copy of this order.

Announced.

Dt: 03.11.2025

12 am C.S

(S.B)
Hon'ble Mr. Justice Muhammad Tariq Afridi

SCANNED

29 NOV 2025

Khalid Khan

02/11/2025