

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 134 OF 2022**

**Abrar Ahmed Khan.**

**Vs.**

**The Learned Additional District Judge and others.**

**Petitioner by : Mr. Khaliq Ur Rehman Saifi, Advocate.**

**Respondents by : Mr. Hamad Arif Khan, Advocate.**

**Date of hearing : 16.02.2022.**

**SAMAN RAFAT IMTIAZ, J.** Through the instant petition, the Petitioner has assailed the Judgment dated 15.12.2021 passed by the learned Additional District Judge-I, Islamabad (East) as well as ex-parte Judgment and Decree dated 24.02.2021 and Order dated 23.10.2021 passed by the learned Judge, Family Court, Islamabad (East).

2. Facts, in brief, are that the Petitioner and the Respondent No.1 were married on 14.05.2000. The parties were blessed with four children (Respondents Nos. 4 to 7). The relations between the husband and wife deteriorated and Respondents No.3 to 7/Plaintiffs instituted a suit for recovery of maintenance allowance and monthly rent of House at the rate of 8,000/- against the Petitioner/Defendant. The Petitioner/Defendant was summoned by the learned Trial Court through ordinary as well as substitute mode i.e. publication in newspaper, but no one entered appearance on his behalf, hence, an ex-parte judgment and decree was passed in favor of Respondents No. 3 to 7/Plaintiffs on 24.02.2021. Respondents No.3 to 7/Plaintiffs then filed execution petition before the learned Trial Court on 17.06.2021 and the learned Trial Court after issuance of notice proceeded to issue

warrant of arrest of present Petitioner/Defendant who was arrested and produced before the Court.

3. On 28.09.2021 Petitioner/Defendant filed application for setting aside ex-parte judgment/decree before the learned Trial Court mainly on the ground that both the parties are permanent residents of Azad Jammu & Kashmir; that their marriage was solemnized and registered in District Plandri, AJ & K; and that no cause of action has accrued in Pakistan, therefore, the learned Family Court lacked jurisdiction to entertain the Respondents No.3 to 7/Plaintiffs' suit. Further, that no summons or notices were issued upon the Petitioner/Defendant as the Respondent/Plaintiff mentioned wrong address of the Petitioner/Defendant in order to obtain ex-parte decree. The Petitioner/Defendant submitted that he is a conductor by profession and as such comes to Rawalpindi/Islamabad with the vehicle. He claimed that on 25-09-2021, the Respondent/Plaintiff called him to come to Ali Pur, Islamabad to meet the children and that he was arrested when he reached. The Petitioner/Defendant's application was allowed vide Impugned Order dated 23.10.2021 subject to deposit of 50% of the decretal amount within 30 days.

4. However, the Petitioner/Defendant filed appeal before the learned Appellate Court on 22.11.2021. The appeal was dismissed vide Impugned Judgment dated 15.12.2021 *inter alia*, due to the fact that the order dated 26-02-2020 records that as per report of process server, the Defendant refused to receive notice, hence the instant Petition. The proceedings in the execution petition were still pending till filing of instant writ petition on 13.01.2022.

5. Learned counsel for the Petitioner contended that the Impugned Judgments/Order passed by the learned Courts below are not tenable as no cause of action has accrued in Pakistan; that Respondent No.3/Plaintiff misled the Court and did not produce Nikahnama and willfully mentioned wrong address of the

Petitioner so as to obtain an ex-parte decree. The learned counsel for the Petitioner contended that the Impugned Order dated 23.10.2021 has incorrectly recorded that he explained with regard to process server reports dated 20-02-2021 that Petitioner/Defendant's father is an old man of about 70 years therefore forgot to inform the Petitioner regarding service and that he did not give any such explanation. His stance was that the learned courts below failed to apply their judicial mind and passed the Impugned Judgments/Orders without adhering to the relevant law and knocked out the Petitioner/Defendant on the basis of technicalities; and that the maintenance allowance fixed by the learned Trial Court is exorbitant as Petitioner's income has not been considered at the time of passing the ex-parte judgment and decree. Learned counsel has relied on the judgment titled *Majid Hussain versus Farrah Naz and others*, 2017 YLR 84 in support of his contentions.

6. On the other hand, the learned counsel for the Respondents No.3 to 7 argued that parties are residing in Islamabad and it is crystal clear from the order dated 26.02.2020 that the Petitioner refused to receive the notice, therefore, proclamation was issued in "Daily Ausaaf"; that Petitioner was arrested from Islamabad and he has also submitted surety bonds of Islamabad. Learned counsel for Respondent No. 3 to 7 relied upon the cases of *Dilshad Bibi Vs. The State and others*, PLD 2019 Islamabad 476 and *Muhammad Zaman Vs. Uzma Bibi*, 2012 CLC 24.

7. In rebuttal, the learned counsel for the Petitioner submitted that his father is his surety who is admittedly a resident of Islamabad however, the same does not have any bearing on the status of the Petitioner himself.

8. Arguments heard, record perused.

9. In short, the Petitioner has challenged the jurisdiction of the learned Family Court on the basis of his allegation that all parties are permanent residents of Azad

Jammu & Kashmir. Whereas, perusal of the plaint filed by the Respondents No.3 to 7 before the learned Family Court shows that it does not disclose whether or not Respondents No. 3 to 7 are citizens of Pakistan. What has been mentioned in the plaint to claim jurisdiction of the Family Court is that the Plaintiffs [i.e. Respondents No. 3 to 7] are residing at Islamabad and that cause of action also accrued in Islamabad. In such circumstances, it is important to consider Rule 6 of the West Pakistan Family Courts Rules, 1965, which provides as follows:

*“6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which-*

*(a) the cause of action wholly or in part has arisen, or*

*(b) where the parties reside or last resided together:*

*Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.”*

10. The Court in the case of *Majid Hussain versus Farrah Naz and others*, 2017 YLR 84 observed that it may not be sufficient reason to return a plaint or to dismiss a suit simply because one or both the parties to a suit under the West Pakistan Family Courts Act, 1964 are not citizens of Pakistan provided that the cause of action accrued to the plaintiff within the jurisdiction of the Family Court where the suit has been instituted. Whether or not the Respondent is a Pakistani citizen and/or whether the cause of action accrued in Islamabad can only be resolved by recording evidence.

11. However, the learned Family Court has passed an ex-parte decree against the Petitioner after affecting notice on an address located in Islamabad as provided by the Respondents No.3 to 7 in the title of the suit and upon failure of service on such address by affecting service by publication. On the other hand, the Petitioner maintains that such address is not his and that he is a permanent resident of Azad

Jammu & Kashmir and that the Respondents provided wrong address purposely so service could not be made upon him.

12. It is noted that as per Impugned Order dated 23.10.2021 learned counsel for the Petitioner/Defendant was confronted with the report dated 20.02.2020 filed by the Process Server according to which service was properly affected. The said Impugned Order records that the learned counsel for the Defendant explained that the father of the Petitioner is an old man of more than 70 years who forgot to inform the Petitioner/Defendant. As noted above the learned counsel for the Petitioner has denied making such statement.

13. Be that as it may, service on the Petitioner's father cannot be termed personal service in any event unless it is proved that the Petitioner lives in the same house as the father. According to Rule 12 of Order V, C.P.C., wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient. Rule 15 of Order V, C.P.C., provides that where defendant cannot be found and has no agent, service may be made on any adult male member of the family of the defendant who is residing with him. However, in the present case the Petitioner denies that he resides with his father in Islamabad.

14. It is further noted that the order dated 26.02.2020 records that receipt of registered post and report of process server submitted. It further records that as per the report Defendant refused to receive notice. Strangely enough, the Petitioner was not confronted with this report of the process server and receipt of registered post on 23.10.2021 when the Impugned Order was passed and when he was confronted with the report dated 20.02.2020.

15. Moreover, Rule 17 of Order V CPC provides the procedure where the defendant refuses to accept service or cannot be found, in such circumstances, the

serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house. In the instant case, however, service by pasting was not carried out.

16. In view of the foregoing, and considering the Petitioner's denial that he is a resident of Islamabad at the address provided by Respondents No.3 to 7/Plaintiffs, publication in Islamabad cannot be termed proper service. Even otherwise, it is settled law that matters should be decided on merits and not technicalities.

17. Therefore, in view of the above discussion, I am inclined to set aside the Impugned Judgments/Orders dated 15.12.2021, 24.02.2021 & 23.10.2021 passed by the learned Courts below. The matter is remanded to the learned Family Court with direction to proceed with the case in accordance with law and to decide the same after framing of issues including a specific issue regarding jurisdiction of the Family Court in Islamabad.

**(SAMAN RAFAT IMTIAZ)**  
**JUDGE**

Announced in the open Court on \_\_\_\_\_.

**JUDGE**