

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

E.F.A.No.01 of 2021

Mst. Abida Zakir

**Versus**

Raja Aman Ullah and another

<b>Date of Hearing:</b>	20.10.2021
<b>Appellant by:</b>	Raja Muhammad Khan, Advocate
<b>Respondents by:</b>	Raja Abid Hussain Janjua and Rehmat Ali, Advocate for respondent No.1, Mr. Ali Waqas, Advocate for the C.D.A.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant appeal, the appellant, Mst. Abida Zakir, impugns the judgment dated 04.01.2021 passed by the Court of the learned Additional District Judge, Islamabad, whereby the appellant's application filed under Section 44-A of the Code of Civil Procedure, 1908 ("C.P.C.") for the enforcement of the order dated 06.07.2018 and decree dated 07.11.2019 passed by the Central Family Court, United Kingdom, was dismissed. Vide the said order dated 06.07.2018, the said foreign court held that Raja Aman Ullah Khan/respondent No.1 "*must pay*" to the appellant a sum of Pounds Sterling 577,665 along with costs amounting to Pounds Sterling 78,098 by 4 p.m. on 06.10.2018. Furthermore, the freezing order issued on 06.10.2015 was confirmed and ordered to remain in full force and effect until compliance by respondent No.1 with the order to pay the said amount to the appellant. Vide decree dated 07.11.2019, the marriage between the appellant and respondent No.1 was declared to have been void by law, and the appellant was freed from bond of marriage with respondent No.1.

2. The facts essential for the disposal of the instant appeal are that the appellant had instituted proceedings against respondent No.1 under the provisions of the Matrimonial Causes Act, 1973 before the Central Family Court sitting at the Royal Courts of Justice, London, United Kingdom. On 06.10.2015, the said Court issued an interim freezing order against respondent No.1 restraining him from disposing of or dealing with or otherwise diminishing his interest in

two properties in London, one property in Rawalpindi and two properties in Islamabad. The appellant brought this order to Pakistan, and on 27.10.2015 she filed an application under Section 44-A C.P.C. for its enforcement before the District Court, Rawalpindi.

3. Vide order dated 15.02.2017, the said application was dismissed. Perusal of the said order shows that during the course of the arguments, respondent No.1 undertook not to alienate, transfer or sell the two properties in Islamabad and one property in Rawalpindi till final adjudication of the cases pending before the Courts in Pakistan and the United Kingdom. In the said order, it was observed that after the said undertaking, the appellant's grievances had been "*almost redressed.*" Apparently, the appellant had also applied for the appointment of a receiver. The learned Court observed *inter alia* that the order dated 06.10.2015 passed by the foreign court was not conclusive in nature, and that orders passed by foreign courts have no binding force in Pakistan unless and until a specific treaty in this behalf had been executed between the two countries. For the present purposes, it is not necessary to comment on the legality of the said order. Be that as it may, the said order dated 15.02.2017 was not challenged any further.

4. The proceedings before the foreign court culminated in the final order dated 06.07.2018. Vide the said order, respondent No.1 was directed to pay the appellant Pounds Sterling 577,665 and costs in the sum of Pounds Sterling 78,098 by 4 p.m. on 06.10.2018. The freezing order dated 06.10.2015 had been confirmed by the foreign court on 04.12.2015. In the final order dated 06.07.2018, the foreign court had held that the said freezing order shall remain in force and effect until respondent No.1's compliance with the direction to pay the said amount to the appellant.

5. For the enforcement of the said final order dated 06.07.2018, the appellant filed an application under Section 44-A C.P.C. before the District Court, Islamabad. Respondent No.1 contested the said application and in his written reply he pleaded *inter alia* that the application was not maintainable since the appellant had earlier filed a similar application before the District Court at Rawalpindi. Vide

judgment dated 04.01.2021, the District Court at Islamabad dismissed the said execution application primarily on the ground that the appellant had earlier filed an execution application before the District Court at Rawalpindi for the execution of the interim order dated 06.10.2015 passed by the said foreign court, and that the District Court at Rawalpindi had recorded respondent No.1's statement to the effect that the properties with respect to which the said application was filed would not be disposed of. For the purposes of clarity, the operative part of the said judgment is reproduced herein below:-

*“The petitioner through the instant petition is trying to seek another execution of order dated 06.07.2018 and decree dated 07.11.2019 of Central Family Court United Kingdom, while she has already invoke the jurisdiction of District Court at Rawalpindi for execution of the above referred foreign order / decree. If the petitioner has any grievance with regard to the conduct of judgment debtor that he has resiled from his statement recorded during the execution proceedings of her earlier execution petition filed at Rawalpindi, then she has a remedy to approach the said forum instead to file the instant execution petition.”*

6. Against the said judgment dated 04.01.2021 the appellant has preferred the instant appeal.

7. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the learned Court below erred by not appreciating that the proceedings before the District Court at Rawalpindi were only for the enforcement of an interim freezing order passed by the foreign court on 06.10.2015; that the appellant had filed an application for the execution of the said order dated 06.10.2015 before the District Court at Rawalpindi since one of the properties with respect to which the freezing order had been issued was situated in Rawalpindi; that since respondent No.1 had undertaken before the said Court that he would not dispose of the properties with respect to which the freezing order has been issued, the appellant was satisfied with the said undertaking and had therefore not challenged the said order any further; that it is after the District Court at Rawalpindi dismissed the appellant's execution application on 15.02.2017 that the foreign court passed the final order on 06.07.2018; that the appellant filed the execution application before the District Court at Islamabad for the

enforcement of the said final order dated 06.07.2018; that the appellant had sought the enforcement of the freezing order only with respect to respondent No.1's two properties in Islamabad; that under Section 44-A C.P.C., the final order passed by the court in the United Kingdom is to be executed in Pakistan as if it had been passed by the District Court in Pakistan; and that such execution proceedings cannot be stalled or stopped due to the pendency of proceedings between the contesting parties before any other Court in Pakistan. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned judgment dated 04.01.2021 to be set-aside.

8. On the other hand, learned counsel for respondent No.1 submitted that the appellant was forum hunting; that after her earlier execution application was dismissed vide order dated 15.02.2017 passed by the District Court at Rawalpindi, she filed a second execution application before the District Court at Islamabad; that the final order dated 06.07.2018 passed by the foreign court was an *ex-parte* order and cannot be enforced against respondent No.1; that respondent No.1 is an unwell senior citizen and did not have "*proper knowledge*" of the proceedings before the foreign court; that while filing the earlier execution application before the District Court at Rawalpindi, the appellant had abandoned her claim over the two properties in Islamabad; that the appellant is estopped from seeking the execution of the final order dated 06.07.2018 with respect to the two properties in Islamabad; that the second execution application had been filed by the appellant only to cause embarrassment and mental stress to respondent No.1; and that since the family laws in Pakistan are different from those in the United Kingdom, the enforcement of the final order would amount to violation of the laws of Pakistan. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have

been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

10. Section 44-A C.P.C. reads thus:-

**"44-A. Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory. (1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in [Pakistan] as if it had been passed by the District Court.**

**(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.**

**(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13.**

**Explanation 1. "Superior Courts" with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.**

**Explanation 2. "Reciprocating territory" means [the United Kingdom and such other country or territory as] the Federal Government may, from time to time, by notification in the (official Gazette), declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.**

**Explanation 3. "Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and  
**a) With reference to superior Courts in the United Kingdom, includes judgments, given and decrees made in any Court in appeals against such decrees or judgments, but**  
**b) In no case includes an arbitration award, even if such award is enforceable as a decree or judgment."****

11. Section 44-A envisages presentation of an application seeking execution of a decree of a superior court in the United Kingdom or any reciprocating territory before a District Court in Pakistan. Section 44-A C.P.C. was enacted to make decrees of superior courts in the United Kingdom or any reciprocating territory executable in the same manner as decrees passed by Courts in Pakistan. For the avoidance of doubt Explanation 2 to Section 44-A C.P.C. clarifies that "reciprocating territory" includes the United Kingdom.

12. On 08.06.2020, the appellant filed an application under Section 44-A C.P.C. for the enforcement of the final order dated 06.07.2018 passed by the Central Family Court in the United Kingdom. The Court of the learned Additional District Judge, Islamabad dismissed the appellant's application for the execution of the final order dated 06.07.2018 passed by the foreign court on the sole ground that the District Court at Rawalpindi had dismissed her application for the execution of the interim freezing order dated 06.10.2015 passed by the said foreign court. The application before District Court at Rawalpindi was also filed under Section 44-A C.P.C.

13. Since the appellant was seeking to enforce the foreign court's interim freezing order dated 06.10.2015 with respect to properties including a property in Rawalpindi, she was well within her rights to have filed the execution application under Section 44-A C.P.C. before the Court of the learned Additional District Judge, Rawalpindi. With the dismissal of that application vide order dated 15.02.2017, the matter regarding the enforcement of the foreign court's said order dated 06.10.2015 came to an end. After the dismissal of the said execution application, the foreign court passed the final order dated 06.07.2018. As mentioned above, the foreign court has directed respondent No.1 to pay the appellant Pounds Sterling 577,665 along with costs amounting to Pounds Sterling 78,098 by 4 p.m. on 06.10.2018, and until the payment of the said amount the freezing order with respect to the five properties, including two properties situated in Islamabad shall remain in full force and effect.

14. It is an admitted position that till date the direction issued to respondent No.1 by the foreign court in the final order dated 06.07.2018 has not been complied with by respondent No.1. In other words, the said final order remains unsatisfied. Could in these circumstances the learned District Court at Islamabad have dismissed the appellant's application under Section 44-A C.P.C. on the sole ground that earlier she had filed an application for the enforcement of the interim freezing order dated 06.10.2015 before the District Court at Rawalpindi? I would say not. The freezing order was interim in nature and did not dispose of the entire case.

Furthermore, it was not an order “*under which a sum of money [was] payable*” and therefore was not a “decree” in terms of Explanation 3 to Section 44-A C.P.C. Undoubtedly, the final order dated 06.07.2018 that had been brought before the learned District Court at Islamabad for execution is indeed an order for the payment of money. Assuming that respondent No.1 was to discharge his obligation under the final order dated 06.07.2018 by paying Pounds Sterling 577,665 along with costs amounting to Pounds Sterling 78,098 to the appellant, the need for enforcing the freeze order on the two properties at Islamabad would not arise. The said interim freeze order was subsequently confirmed and made an integral part of the final order dated 06.07.2018. In paragraph 10 of the appellant’s application under Section 44-A C.P.C. filed before the District Court at Islamabad, it was clearly pleaded that the said application had been filed with respect to the two properties in Islamabad. In other words, the appellant was not seeking to enforce the final order dated 06.07.2018 with respect to any property beyond the territorial jurisdiction of the District Court at Islamabad. In this view of the matter, the appellant rightly filed the said application before the District Court at Islamabad.

15. A transferee Court under Section 39 C.P.C., which is called upon to execute a decree passed by a competent Court against the judgment debtor, cannot permit the judgment debtor to go behind the decree. Section 44-A C.P.C. expressly permits the foreign decree to be questioned before an executing Court in Pakistan on any of the grounds mentioned in Clauses (a) to (f) of Section 13 C.P.C., which read thus:-

*“13. When foreign judgment not conclusive. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties under whom they or any of them claim litigating under the same title except--*

*(a) where it has not been pronounced by a Court of competent Jurisdiction;*

*(b) where it has not been given on the merits of the case;*

*(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Pakistan in cases in which such law is applicable;*

*(d) where the proceedings in which the Judgment was obtained are opposed to natural justice;*

*(e) where it has been obtained by fraud ;*

*(f) where it sustains a claim founded on a breach of any law in force in Pakistan.”*

16. Now, Section 13 C.P.C. provides that except for six circumstances mentioned therein, a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating under the same title. The legislature in its wisdom has deemed it appropriate to carve out exceptions to the conclusiveness of a foreign judgment of a superior Court in the United Kingdom or any reciprocating territory. The binding character of the judgment may be displaced only by establishing that the case falls within one or more of the six clauses of Section 13 C.P.C. and not otherwise. In considering whether a judgment of a foreign court is conclusive, the Courts in Pakistan will not inquire whether conclusions recorded by a foreign court are supported by evidence or are otherwise correct. The Division Bench of the Hon'ble High Court of Sindh in the case of Syed Jaffer Abbas Vs. Habib Bank Limited (PLD 2014 Sindh 209) has held as follows:-

*“A foreign judgment, even in terms of section 44-A, CPC, (wherein direct execution can be filed on the basis of such foreign judgment), is not conclusive, and is subject to satisfaction of exceptions as contained in section 13, CPC by virtue of sub section (3) of section 44-A, CPC. This means that the provisions of section 44-A and section 13 are not independent of each other and are in fact interlinked and dependent in as much as even a final judgment of a foreign court, after its approval from the appellate Court (of a country with whom there is an international treaty) cannot be executed directly without recourse to the provisions of exception as contained in section 13, CPC and the Courts in Pakistan can even refuse the execution of such final judgments of the foreign Courts, if they fall under any of the exceptions as contained in section 13, CPC This understandably means that no foreign judgment or decree could be executed on the basis of the provisions of section 44-A, CPC independently, without recourse to and satisfaction of the provisions of section 13, CPC.”*

17. As for the contention of the learned counsel for respondent No.1 that respondent No.1 did not have “proper knowledge” of the proceedings before the foreign court or that the execution of the final order dated 06.07.2018 would violate the laws of Pakistan, Section 44-A(3) of C.P.C. provides that the District Court shall refuse execution of any such decree if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f)



of Section 13 C.P.C. Therefore, it will be open to respondent No.1 to contend in the proceedings before the Court in which the appellant's application under Section 44-A C.P.C. was filed that the final order passed by the foreign court is not a foreign judgment within the meaning of Section 13 of the Code or the same is not conclusive because the judgment falls within any of the exceptions specified in clauses (a) to (f) of Section 13 C.P.C.

18. Section 44-A C.P.C. does not require the District Court in which the decree of any superior Court of the United Kingdom or any reciprocating territory is submitted for execution by a decree holder must be a Court which could have been competent to pass such a decree if in the first instance a suit was filed by the decree holder against the judgment debtor in Pakistan. The scheme of Section 44-A C.P.C. is alien to the scheme of domestic execution as provided under Section 39(2) C.P.C. which requires the "transferee Court" must be otherwise competent to assume jurisdiction. In the case of Oakwell Engineering Ltd. Vs. Enernorth Industries Inc. (2006 VII AD (Delhi) 836)\*, an application under Section 44-A C.P.C. was filed before the Delhi High Court for the execution of a decree passed by the High Court of the Republic of Singapore. An objection was taken to the maintainability of the said application on the ground that the Delhi High Court did not have the territorial jurisdiction to adjudicate upon the matter since the registered office and business was at Ontario, Canada. The said objection was spurned by the Delhi High Court in the following terms:-

*"The scheme of Section 44A of the CPC is entirely different. It makes no mention of jurisdiction to try. Only thing necessary is that the decree has been obtained from any superior court of any reciprocating territory. The decree holder is required to file a certified copy of the decree along with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied. There is no requirement under Section 44A of the CPC that the District Court in which the foreign decree is presented for execution should be also a court which could have entertained the suit. The decree has to be executed in India as if it had been passed by the District Court in India. Since there is no requirement that the District Court to whom the decree is presented for execution should also have the jurisdiction to entertain the suit had it been presented before it, the point raised by the respondent particularly with reference to the judgment of World Tanker (supra) is entirely foreign to the context. It may be noted at this point that where a decree is*

*transferred from the court which has passed the decree to another court for execution under Section 39 of the CPC, the transferee court would be the court of competent jurisdiction if such court has the jurisdiction to try the suit in which such decree was passed. The present proceedings are, however, not governed by Section 39 of the CPC. Section 44A of the CPC, in distinction with Section 39 of the CPC, makes no such demand on the District Court to which the decree is presented for execution. Hence, the objection to the jurisdiction of this Court on this score has also to be rejected.”*

A similar view was taken by the Delhi High Court in a subsequent judgment in the case of Goyal Mg Gases Private Ltd. Vs. Messer Griesheim Gmbh (211 (2014) DLT 481), wherein it was held as follows:-

*“It is clear that the legislature has consciously in its wisdom chosen not to infuse the conception of 'competent jurisdiction' in Section 44A of the Code of Civil Procedure, 1908 in contradistinction to Section 39 which provides the mechanism for execution of 'domestic decrees'. The requirements saddled on the executing court under the scheme of Section 39 are alien to the 'District Court'; the jurisdiction of which may be invoked by the holder of a foreign decree in terms of Section 44A. Rather it may be pertinently observed that the legislature has vested such 'District Court' the power to execute the 'foreign decree' as if it had been passed by itself. The conception of 'competence of jurisdiction' of executing court contained in Section 39 being wholly absent in the language employed by the legislature in Section 44A of the Code, the same cannot be circuitously injected by this Court as the same would tantamount to legislative re-writing, which is impermissible.”*

19. In view of the above, I hold that it was wholly unlawful for the learned Court below to have dismissed the appellant's application under Section 44-A C.P.C. for the enforcement of the final order dated 06.07.2018 passed by the Central Family Court in the United Kingdom on the ground that earlier the appellant had filed an application for the execution of an interim freezing order passed by the said foreign court before the District Court at Rawalpindi. The learned Court below appears to have lost sight of the fact that the application under Section 44-A C.P.C. had been filed before it for the enforcement of the said final order which was, in essence, an order for the payment of money. The enforcement of the freezing order, which had been made an integral part of the said final order, was sought only to secure respondent No.1's assets in Islamabad against which the said final order could be enforced. Consequently, the instant appeal is allowed; the impugned judgment dated 04.01.2021 is set aside; and the matter is remanded to the Court of learned District Judge (West), Islamabad,

for further proceedings on the appellants application under Section 44-A C.P.C.

20. Any observations made in this order shall not come in the way of respondent No.1 to resist or object to legal proceedings instituted by the appellant for the enforcement of the final order dated 06.07.2018 passed by the Central Family Court in the United Kingdom on any of the grounds mentioned in clauses (a) to (f) of Section 13 C.P.C. Furthermore, a court hearing the matter in post-remand proceedings shall also not be influenced by any observations made herein.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 07/12/2021**

**(JUDGE)**

*Qamar Khan*

**APPROVED FOR REPORTING**