

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 144 OF 2022

FARRUKH SHAHZAD.

Vs.

MEHREEN SAJJAD QAZI, ETC.

Petitioner by : Mr. Shakir Javed, Advocate

Respondents by : Mr. Junaid Jahangir, Advocate

Date of hearing : **01.04.2022.**

SAMAN RAFAT IMTIAZ, J.

Through the instant writ petition, the Petitioner (Farrukh Shahzad) assailed Judgment dated 13.11.2021 (**Impugned Judgment**) passed by the learned Additional District Judge (East), Islamabad, whereby his appeal against Order dated 28.10.2021 (**Impugned Order**) passed by learned Family Court, Islamabad has been dismissed and consequently the Impugned Order dismissing the Petitioner's application under Section 12(2), CPC was upheld.

2. Brief facts as per Memo of Petition are that Respondent No.1 [Mehreen Sajjad Qazi] filed Suit for Dissolution of Marriage through Khula, Recovery of Dowry Articles and Maintenance Allowance, which was decreed vide Judgment and Decree dated 06.09.2019, whereby, *inter alia*, Respondents No. 2 & 3 were held entitled to get Rs. 28,000/- each per month including their school fees from June 2018 till decision of the case. Said Respondents were further held entitled to get Rs. 33,000/- each per month including their school fees from the date of decision of the case till their legal entitlement with 10% annual increase. Whereas, Respondent/Plaintiff No.1 was held entitled to recover Rs. 25,000/- per month for her Iddat period. Thereafter, the Respondents No. 1 to 3/Decree Holders filed Execution Petition on 26.01.2021, during the pendency of the Petitioner filed application under Section 12(2) CPC on the ground that the learned Family Court lacked the territorial jurisdiction and was *coram non judice* and the Respondents obtained the decree through fraud, misrepresentation and concealment of fact by mentioning that Respondent No.1 is resident of Islamabad, whereas, she is

resident of House No.2, Street No.5 East, Sector-D, DHA-1 which is situated in District Rawalpindi.

3. The learned Family Court, after hearing the arguments, dismissed the Petitioner's application under Section 12(2) CPC vide the Impugned Order, the relevant portion of which is reproduced herein below:-

*"... on the other hand, learned counsel for decree holder has assisted the Court and also referred the DHA Act, 2013 by the parliament on 19.03.2013, as per the preamble of the said act it was enacted to establish the Defence Housing Authority Islamabad and it was termed as Defence Housing Authority Islamabad Act, 2013 and the area mentioned in the act is **Islamabad Capital Territory, according to the preamble DHA-I falls in Islamabad**, the area is also explained in the same act as "specified area" means all land owned, purchased or procured by or vested in or leased to the Army Welfare Housing Scheme or the Defence Housing Authority, Islamabad constituted under any law before the commencement of this Act in Islamabad Capital Territory and such other land as may, from time to time, be purchased or procured by or leased to the Authority in Islamabad Capital Territory and notified by the Government." The allotment letter in the name of the father of the decree holder is also submitted during the arguments by counsel for decree holder according to which this is clearly mentioned that Sector-D, DHA-I falls in Islamabad, moreover the CNIC of decree holder depicts her same address of Islamabad given in suit."*
[Emphasis added].

4. Being aggrieved, Petitioner filed appeal before Respondent No.4 [Additional District Judge (East), Islamabad], however, the appeal also met the same fate vide the Impugned Judgment the relevant portion of which is also reproduced herein below:

"7. During the course of arguments, respondent No.2 also produced her CNIC as well as allotment letter of her house on which it is mentioned that Phase-I DHA is situated in Islamabad. It clearly depicts from the record that during the execution petition at the time when the executing court was pressing the appellant for the payment of outstanding decretal amount instant application u/s 12(2) CPC was filed just to deprive the respondents from the fruits of judgment. From the

day first appellant participated in the court proceedings, therefore, it cannot be said that decree was passed on the basis of fraud and misrepresentation.”

5. The Petitioner has now filed and instituted the present petition to challenge the Impugned Order and Impugned Judgment.

6. The learned counsel for the Petitioner argued that the application u/s 12(2) as well as appeal were wrongly dismissed in view of the fact that both the Courts below failed to appreciate that according to Form-II A, Final List of Constituencies for Tehsil Taluka, Potohar Town, District Rawalpindi Ward 6, DHA Phase-1 falls within the jurisdiction of Rawalpindi and not Islamabad, whereas, Respondents No. 1 to 3 being residents of DHA Phase-1 wrongfully and fraudulently showed their addresses as Islamabad in the title of the plaint and filed the proceedings in Islamabad. In view of the aforesaid position, according to the Petitioner, the Courts in Islamabad lacked jurisdiction in view of Rule-6 of the West Pakistan Family Courts Rules, 1965.

7. On the other hand, the learned counsel for Respondents No. 1 to 3 drew my attention towards allotment letter in respect of Plot No. 2, Street 5, Sector D, Phase-I, Defence Housing Authority, Islamabad, where the said Respondents are residing which was filed along with a C.M. for additional documents in the instant Petition. According to such allotment letter the said property is located in DHA Phase-1, Islamabad. The learned counsel also stated that the Respondent No. 3's CNIC also reflects that DHA, Phase -1 is located in Islamabad.

8. I have heard the learned counsel for the parties and also perused the available record including the Impugned Order and Judgment.

9. It is noted first and foremost that the Petitioner did not raise any objection with regard to jurisdiction before the Family Court and in fact submitted himself to its jurisdiction. In the case of *Malik Khan Muhammad Tareen versus M/s Nasir and Brother Coal Company through Proprietor and others*, 2018 SCMR 2121, the Honorable Supreme Court held as follows:

“...Section 21, C.P.C. reads as follows:

"21. Objections to jurisdiction. No objection as to the place suing shall be allowed by any appellate or revisional Court unless such objection was taken

in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

*13. On the bare reading of section 21 ibid; **it is manifestly clear that the objections as to territorial jurisdiction unless raised before the Court of first instance "at the earliest possible opportunity" are not even considered by the appellate or Revisional Court.** The Appellate or Revisional Court would only consider such objections provided all three conditions as set down in section 21, C.P.C. are met viz firstly, objection as to territorial jurisdiction was raised in the Court of first instance, secondly such objection is raised at the earliest opportunity and in case the issues are settled, before settlement of issue and most importantly and thirdly, there has been consequent failure of justice." [Emphasis added].*

10. The learned counsel for the Petitioner claimed that they filed the application under Section 12(2), C.P.C., as soon as they became aware of the material facts. However, fact remains that the requirements under Section 21, C.P.C., have not been satisfied. Objection was not taken before the Court of first instance at all, therefore the question of earliest possible opportunity does not arise and Petitioner has utterly failed to show how it has resulted in failure of justice.

11. Even otherwise, the learned counsel for the Petitioner was unable to show as to how the Respondents committed fraud or misrepresentation while stating to be residents of Islamabad in the title of the Plaint filed by them for the Suit for Dissolution of Marriage through Khula and Recovery of Dowry and Maintenance when the Respondent No. 3's CNIC shows her as a resident of Islamabad and the allotment letter in respect of her residence shows the same. Furthermore as noted in the Impugned Order of the learned Family Court according to the Defence Housing Authority Islamabad Act, 2013, DHA Phase-1 falls within the territorial jurisdiction of Islamabad. In absence of fraud or misrepresentation an application under Section 12 (2) CPC does not lie.

12. Last but not least, whether the Respondents' residence falls within the jurisdiction of Rawalpindi or Islamabad is essentially a factual dispute. The learned counsel for the Appellant was specifically asked as to how a factual dispute of this nature can be adjudicated upon by this Court in exercise of its constitutional jurisdiction to which he had no answer.

13. For the foregoing, I am of the opinion that both the Courts below came to the correct conclusion and as such the titled petition is devoid of merit.

14. It is clear that the Petitioner has dragged the Respondents to this Court unnecessarily, which is an abuse of the process of this Court. It is all the more regrettable given that the Petitioner is the father of the Respondents No. 2 & 3 whose maintenance is not only the Petitioner's moral obligation but which has been decreed by the learned Family Court and upheld by the learned appellate court as well as this Court. Yet the Petitioner is raising frivolous objections and instituting baseless proceedings causing undue harassment to the Respondents. In such circumstances, while taking guidance from the cases of *S.M. Sohail versus Mst. Sitara Kabir ud Din*, PLD 2009 SC 397, *Muhammad Anwar versus Mst. Ilyas Begum*, PLD 2013 SC 255; and *Major (R) Ahmad Nadeem Sadal versus Federation of Pakistan through Secretary, Sports, Pakistan*, 2015 CLC 34, I impose a cost of Rs. 50,000/- upon the Petitioner. The Petitioner will deposit the same with the Deputy Registrar (Judicial) of this Court within 30 days from the date of announcement of this Judgment who shall pay the same forthwith to the Respondent No. 1.

15. For what has been discussed above, instant petition being devoid of any merit is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 07th April, 2022.

JUDGE