

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

**WRIT PETITION NO. 275 OF 2022**

**KHAWAR SHAHZAD**

**VS.**

**CIVIL JUDGE, EAST, ISLAMABAD and others**

**Petitioner by : Mr. Imran Feroze Malik, Advocate.**

**Respondent by : Mr. Shafqat Ghafar Khan Joyia, Advocate.**  
(for Respondent No.2)

**Date of hearing : 13.05.2022.**

**SAMAN RAFAT IMTIAZ, J.:-** Through the instant writ petition, the Petitioner/Judgment Debtor [Khawar Shahzad] has assailed Orders dated 11.01.2022 & 20.01.2022 (“**Impugned Orders**”) passed by learned Judge Family Court-East, Islamabad (“**Executing Court**”) whereby application filed by the Petitioner seeking permission for payment of decretal amount in installments has been dismissed while local commission has been ordered to ascertain current market value of the gold ornaments and letter for blockage of CNIC of the Petitioner/Judgment Debtor has been ordered to be sent to D.G. NADRA.

2. Facts, in brief as per the Memo of Petition, are that an execution petition was filed by the Respondent No.2/Decree Holder [Humaira Bashir] to execute the Judgment and Decree dated 23.05.2017, whereby the learned Family Court had determined the value of gold ornaments and dowry articles to be Rs.1,083,125/-.

3. The Petitioner/Judgment Debtor filed an application seeking permission to submit the decretal amount in installments in respect of which the following Impugned Order dated 11.01.2022 was passed:

*The judgment debtor has filed an application for payment of decretal amount through installments. It appears that he wants to pay alternative amount of gold ornaments rather than 7.5 tolas gold ornaments. In present circumstances, **stenographer of this Court is appointed as local commission to ascertain the market value of 7.5 tolas gold ornaments and he is directed to submit his report on next date of hearing.** Record transpires that judgment debtor has already paid about Rs.580,000/- in lieu of decretal amount. Considering the application of judgment debtor, he is directed to pay Rs.250,000/- on next date of hearing. In case of non-compliance of payment he shall be proceeded as per law. [Emphasis added].*

4. The learned Executing Court vide Impugned Order dated 20.01.2022 issued non-bailable warrants of arrest in the name of Petitioner/Judgment Debtor as he

was not present and also letter for blockage of CNIC of the Petitioner/Judgment Debtor was sent to the D.G. NADRA.

5. Learned counsel for the Petitioner/Judgment Debtor, *inter alia*, contended that the Impugned Orders are bad in law, untenable, ex-facie based upon whims and caprice; that learned Executing Court erroneously assumed that the alternate value of gold is outstanding; that the learned Executing Court failed to take into consideration that the Petitioner has been paying the amount in view of which Impugned Orders dated 11.01.2022 & 20.01.2022 are harsh and oppressive; that the Petitioner only earns Rs. 50,000/- per month and as such cannot afford to pay the outstanding amount lump sum; that the learned Executing Court cannot go beyond the decree and change the decretal amount; that the Impugned Orders is against the facts and circumstances of the case hence same are liable to be set-aside; and that valuable rights are involved in the instant matter as huge amount has already been paid to the Respondent No.2. The Petitioner/Judgment Debtor through instant petition seeks setting aside of Impugned Orders dated 11.01.2022 & 20.01.2022 and to allow the Petitioner/Judgment Debtor to pay the amount outstanding out of the earlier fixed decretal amount i.e. Rs. 1,083,125/- in installments as per financial capacity of the Petitioner.

6. Conversely, learned counsel for the Respondent No.2/Decree Holder vehemently opposed the arguments advanced by the learned counsel for the Petitioner and submitted that the Impugned Orders are tenable. He submitted that the instant petition is without any merit as there is no illegality and infirmity in the Impugned Orders. The learned counsel for the Respondent No.2/Decree Holder relied upon the case of *Haji Muhammad Nawaz Vs. Samina Kanwal*, 2017 SCMR 321.

7. Arguments advanced by the learned counsels for the parties have been heard and record examined with their able assistance.

8. There is no cavil to the proposition that where decree of delivery of gold or its market value is granted the market value should be determined with reference to the date of payment as held by the Honouarble Supreme Court in case *Mst. Ayesha Shaheen Vs. Khalid Mehmood*, 2013 SCMR 1049.

9. Be that as it may, the alternate value of gold was admittedly fixed at Rs.335,600/- while value of the dowry articles was fixed at Rs. 747,525/- aggregating to Rs. 1,083,125/-. Whereas, on the date of the Impugned Order dated

11.01.2022 the Petitioner had admittedly paid about Rs.580,000/- towards the decretal amount which is more than the alternate value of the gold ornaments. The learned counsel for the Petitioner correctly pointed out that there is no way to ascertain whether the payment made was towards payment of alternate value of gold ornaments or the value of dowry articles. Therefore, on the date of the aforementioned Impugned Order, it could not be concluded that the value of gold ornaments was outstanding and the learned Executing Court erred in holding that market value of 7.5 tola gold ornaments would be ascertained as per date of payment.

10. The case of Mst. Ayesha Shaheen (*Supra*) relied upon by the learned counsel for the Respondent No.2/Decree Holder is distinguishable as despite lapse of 12 years not a single amount had been paid toward the adjustment of the decree in such case. Whereas in the instant case, as noted herein above, the Petitioner has already paid more than the value of the gold ornaments.

11. In view of the above, the instant petition is **partly allowed** and the Impugned Order dated 11.01.2022 is hereby modified only to the extent that the amount admittedly paid by the Petitioner shall be treated as including payment toward the alternate value of gold and such value shall not be revised. The outstanding amount for the value of dowry articles shall be paid as per direction of the learned Executing Court.

12. With regard to the Impugned Order dated 20.01.2022 no illegality or infirmity of law has been pointed out by the learned counsel for the Petitioner so as to call for interference by this Court, hence to the extent of Impugned Order dated 20.01.2022, instant petition being devoid of any merits is hereby dismissed.

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

**Announced in the open Court on 16<sup>th</sup> of May, 2022.**

**JUDGE**