

**HIGH COURT OF AZAD JAMMU & KASHMIR
[SHARIAT APPELLATE BENCH]**

Family Appeal No. 205/2022
Date of Institution 18.08.2022
Date of Decision 23.01.2024

1. Shahzad Ahmed Abbasi son of Muhammad Nazir Abbasi,
2. Muhammad Nazir Abbasi son of Sardar Safdar Khan Abbasi residents of Garhi Dupatta Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Appellants

VERSUS

Mst. Asima Bashir Abbasi daughter of Muhammad Bashir Abbasi wife of Shahzad Ahmed Abbasi resident of Chela Bandi Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Respondent

**APPEAL AGAINST THE JUDGMENT OF JUDGE FAMILY
COURT MUZAFFARABAD DATED 04.08.2022.**

Before: Justice Mian Arif Hussain, J.

PRESENT:

1. Mr. Akhlaq Hussain Mughal, Advocate for the appellants.
2. Syed Atif Mushtaq Gillani, Advocate for respondent.

JUDGMENT:

Through the captioned appeal, propriety of judgment of Additional District Judge/Judge Family Court, Muzaffarabad dated 04.08.2022 has been called in question, whereby, the learned Judge Family Court has dismissed the application for adjustment of the gold ornaments, filed on behalf of judgment-debtor/appellant, herein.

2. Succinctly, the facts giving rise to appeal in hand are that, initially, plaintiff-respondent, herein, filed two separate suit; one for monthly maintenance allowance and the other for recovery of dower, against defendant-appellant No.1, herein, before the Court of Additional District Judge, empowered as Judge, Family Court Muzaffarabad on 07.02.2017 and the learned trial Court, on conclusion of the proceedings, decreed the suit for recovery of dower, to the tune of Rs.5,00,000/- (five lac rupees) whereas, suit of maintenance allowance was partly decreed to the extent of monthly maintenance allowance at the rate of Rs.5000/- per month subject to maintaining the nuptial

relationship in future, whereas, claim regarding past maintenance was declined vide consolidated judgment & decree dated 17.12.2018.

3. Feeling aggrieved and dissatisfied from the aforesaid judgment & decrees, both the parties preferred appeals before this Court, which were got dismissed and similarly, appeals before the Hon'ble apex Court also met the same fate of dismissal vide judgment dated 10.09.2021.

4. The decree holder-respondent, herein, after finalization of the decree dated 17.12.2018, filed an application for execution of the same before the learned Judge, Family Court, Muzaffarabad on 21.10.2021, whereupon, the judgment-debtor-appellant, herein, filed objections and also filed an application for execution of the decree to the extent of issue No.3.

5. The learned Executing Court, after hearing the arguments of the learned counsel for the parties,

vide order dated 04.08.2022, has dismissed the application, hence the captioned appeal.

6. Arguments heard.

7. The learned counsel representing the appellant, herein, while reiterating the stance raised in the application and the appeal, as well, laid stress on the point that the learned trial Court, while recording issue-wise judgment, has decided issue No.3, in favor of defendant-appellant, herein, therefore, it was enjoined upon the executing Court to execute the decree in the light of the observations recorded regarding issue No.3. The learned counsel maintained that the learned Executing Court illegally and contrary to the judgment, has passed the impugned order, therefore, by accepting the appeal in hand, the same be set at naught.

8. Conversely, the learned counsel appearing for respondent, while defending the judgment, impugned herein, submitted that the executing

Court cannot pass any order contrary to the contents of the decree and it is very much clear from the contents of the decree that the decree holder has been declared entitled to receive Rs.5,00,000/- in shape of 2 rooms, along-with bathroom and kitchen, situated in village Garhi Dupatta and no any other observation regarding issue No.3 is part of the decree. The learned counsel submitted that the executing Court is bound to execute the decree in its letter and spirit, therefore, the judgment, impugned herein, does not suffer from any illegality or irregularity, whereas, the appeal in hand has been filed just in order to prolong and procrastinate the execution proceedings, hence, the appeal be dismissed with costs.

9. Having heard the arguments of both sides, I have also gone through the record, made available on the file.

10. The moot point in the present lis, is the execution of decree and it is settled law that an

executing Court is duty bound to execute a final decree, in letter and spirit and the said Court has no powers to deviate from the contents of decree.

11. For proper appreciation of the controversy, the contents of the decree are reproduced, hereunder:-

"لہذا حکم ہوا کہ ڈگری دلا پانے حق مہر مبلغ 5 لاکھ روپے بشکل دو کمرے مکان کچن
باتھ موضع وارڈ نمبر 2 گزہی دوپٹہ بحق مدعیہ بخلاف مدعا علیہ صادر کی جاتی ہے کہ
مدعا علیہ مدعیہ کو مہر میں دیا گیا مکان دو کمرے کچن باتھ بحق مدعیہ منتقل کرے بصورت
عدم ادائیگی مہر مدعا علیہ نمبر 2 بطور ضامن حق مہر کی ادائیگی کروائے۔ حکم سنایا گیا۔"

12. The stance of the judgment-debtor/appellant, herein is that **"while handing down the judgment & decree, the learned trial Court regarding issue No.3, has categorically accepted the claim of the appellant, herein, regarding gold weighing 8½ tolas, within possession of decree holder, which fact clearly signifies that the decree holder is duty bound to hand over the aforesaid gold to the judgment-debtor but the learned executing Court has declined to adjust or deduct the said gold or amount equivalent to the said gold, so, by allowing the appeal in hand,**

the decree in question needs to be executed in view of the aforesaid claim of the appellant.”

13. A perusal of the judgment and decree recorded by learned Judge, Family Court reveals that judgment-debtor, appellant, herein, defendant, while submitting written statement, took a version that the gold weighing 8½ tolas, falling within the ownership of judgment-debtor, has been taken by the plaintiff/ respondent, herein, without permission of defendant. The trial Court, while handing down, its findings regarding issue No.3, observed that conduct of plaintiff/decree holder signifies that **“she, while taking a gold of the defendant, deposited the same in the Bank as a “surety’ against a loan, hence, issue is decided accordingly.”**

14. From the said observation of the learned Judge, Family Court, it does not reflect that “Court has recorded a verdict that said gold is in the possession of plaintiff-decree holder and the same may be treated as a dower. Furthermore, neither

the defendant was exonerated from the liability of payment of dower. No such findings are available on the record, from the perusal of which, it could be inferred that said verdict of trial Court amounts to admission of the claim of defendant in terms of considering the said gold in possession of the decree holder and treating the same as dower.

15. Moreover, the appellant, herein, while filing appeals before this Court and Hon'ble Supreme Court took such version but he has not been granted the relief claimed for and admittedly, the judgment & decree of the learned Judge, Family Court has attained finality, therefore, the learned executing Court, while dealing with the stance of the judgment-debtor/appellant, herein, has rightly observed that **“the defendant-judgment debtor has ample opportunity to approach the proper fora for redressal of his grievance regarding the said amount of gold ornaments, in view of his claim taken in the written statement.”**

16. It is universally celebrated principle of law that an executing Court is bound to execute a final decree in its letter and spirit. My this view finds support from a case law reported as PLD 2003 Supreme Court (AJ&K) 14, wherein, the Hon'ble apex Court, at page 18 of the report has observed as under:-

“A decree passed by the civil Court is either to be challenged by the opposite party or in case of its finality, is to be acted upon according to the terms and conditions laid down in it.”

Similarly, the Lahore High Court, in a case reported as PLD 2011 Lahore 450, has opined as under:-

“..... It is also a settled principle of law that executing Court has to confine it within the four corners of decree and not beyond that.”

17. Having considered the lis in hand, in light of the supra reproduced case law, this Court is left with no option, except to concur with the findings of the learned Court below, hence, the appeal in

hand fails to make out any case of interference in the judgment, impugned herein.

18. As a net consequence of the above detailed discussion is, the appeal in hand being devoid of substance stands dismissed with no order as to costs.

Muzaffarabad;
23.01.2024

JUDGE

Approved for reporting.

JUDGE