IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT
Justice Amin-ud-Din Khan
Justice Syed Hasan Azhar Rizvi

Civil Petition No. 74 of 2025
(Against the Order dated 20.11.2024 passed by the Lahore High Court, Rawalpindi in Writ Petition No. 3346/2018)

Shafqat Ali .... Petitioner(s)

Versus

Mst. Zaib un Nisa and others .... Respondent(s)

For the Petitioner(s) : Ms. Farhana Qamar, ASC
Mr. Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : Mr. M. Asif Mukhtar Butt, ASC

Date of Hearing : 20.08.2025

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this Civil Petition for Leave to Appeal, the Petitioner has called in question the Judgment dated 20.11.2024 ['**Impugned Judgment**'] passed by the Lahore High Court at Rawalpindi ['**High Court**'] in Writ Petition No. 3346 of 2018 whereby, the High Court reversed the Judgment dated 05.11.2018 of the Additional District Judge, Taxila ['**Revisional Court**'], thereby restoring the Order dated 10.07.2018 passed in the execution proceedings by the learned Family Judge, Taxila.

2. The background of the matter, in brief, is that respondent No.1 instituted a Family Suit for recovery of dower, dowry articles and maintenance of minor, which was adjudicated by the learned Family Judge, Taxila *vide* Judgment and Decree dated 17.12.2016 ['**Judgment and Decree**]. In clear terms, the relevant part of Decree provided as follows:

> "*....1. Suit of the Plaintiff for recovery of dower is decreed in her favour and she is entitled to recover of gold ornaments weighing seven tolas or in alternative amount of Rs. 100,000/–....*" (Emphasis added)

The Judgment and Decree, inter alia, recorded the prompt dower amount of Rs. 100,000/– and also took note of Column No. 15 of the

Nikahnama mentioning seven (07) tolas of gold, which had initially been given to Respondent No.1 but was later taken back by the petitioner. This formulation, however, gave rise to the later controversy whether the entitlement was limited to Rs. 100,000/– or extended to the prevailing market value of seven (07) *tolas* of gold.

3. Separate appeals filed by both parties were dismissed *vide* Order dated 28.03.2017 where the District Court held that no appeal lies against the Decree of dower up to Rs. 100,000/– and maintenance of Rs. 5,000/–.

4. In execution proceedings, upon an application of Respondent No. 1, the learned Executing Court, *vide* Order dated 10.07.2018 directed for the recovery of seven (07) *tolas* of gold or its current market value.

5. The said Order was assailed by the petitioner in a Revision Petition, which was accepted by the Revisional Court vide Judgment dated 05.11.2018. It was held therein that the seven (07) *tolas* of gold mentioned in Column No. 15 of the *Nikahnama* was in fact given in lieu of Rs. 100,000/–, and that the respondent no. 1 was not entitled to the prevailing market value but only to the fixed sum of Rs. 100,000/-.

6. Being aggrieved by the order of the Revisional Court, respondent No. 1 invoked the constitutional jurisdiction of the High Court. The High Court *vide* the Impugned Judgment, set aside the judgment of the Revisional Court, thereby upholding the entitlement of Respondent No.1 to either the recovery of seven (07) *tolas* of gold or its current market value. It is in the above backdrop that the present Civil Petition for Leave to Appeal has been filed by the Petitioner before this Court.

7. Learned counsel for the petitioner, while tracing the course of litigation between the parties, submitted that Respondent No.1 herself amended her Execution Petition by adding Rs. 100,000/-. This, according to learned counsel, amounted to an admission that the alternate value of the dower was Rs. 100,000/–. She further argued

that appeals of both the parties against the Judgment and Decree of the trial court were dismissed as not maintainable on the ground that the quantum of dower was Rs. 100,000/–, which also shows that the Judgment and Decree did not envisage seven (07) *tolas* of gold at its prevailing market value. It was, therefore, urged that the respondent no.1's plea of entitlement to seven (07) *tolas* of gold or its current price travels beyond the Judgment and Decree, and that the Revisional Court rightly corrected the Executing Court by restricting the entitlement to PKR 100,000/–.

8. Conversely, learned counsel for respondent no.1 contended that the Revisional Court, by its Order dated 05.11.2018, committed an error of law by travelling beyond the scope of the Judgment and Decree. He argued that the Judgment and Decree of the trial court itself unambiguously entitle Respondent No.1 to recover seven (07) *tolas* of gold or, in the alternative, PKR 100,000/–. Hence, the Executing Court was right in directing for the recovery of either the ornaments or its prevailing market value thereof. It was further submitted that where a Judgment and Decree provide alternate modes of satisfaction, the Decree-holder retains the liberty to elect the more beneficial option, and this principle has been recognised by this Court in the cases titled as *Haji Muhammad Nawaz v. Samina Kanwal & others*[1] and *Mst. Ayesha Shaheen v. Khalid Mehmood & others*[2]. Learned counsel also relied on the case titled as *Haseen Ullah v. Mst. Naheed Begum and others*[3] to urge that the Court is to discern the intention of the parties rather than the mere form of the instrument, and that entries made in Columns 15 or 16 of the *Nikahnama* are to be treated as independent obligations, and not merely alternatives to the prompt dower mentioned in Column 13 of the *Nikahnama*.

9. The learned counsel for the respondent no. 1 further argued that the amendment in the Execution Petition, by insertion of Rs. 100,000/–, was not a voluntary admission but was made upon the objection of the petitioner and, importantly, respondent no.1 contended that it did not relinquish or forgo her claim for seven (07)

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[1] 2017 SCMR 321
[2] 2013 SCMR 1049
[3] PLD 2022 SC 686

tolas gold. He submitted that the petitioner has attempted to mislead the Court by portraying the amendment as a waiver by the respondent no.1, whereas in fact the High Court correctly appreciated the record and restored the Executing Court's order.

10. Heard the arguments of the learned counsel for the parties and perused the record. Having considered the submissions advanced, we find no infirmity in the reasoning adopted by the High Court in the Impugned Judgment. The High Court correctly appreciated the scope of the Judgment and Decree, the conduct of the parties, and the settled principle that, where a Decree expressly affords alternate modes of satisfaction, the decree-holder retains the liberty to exercise her choice. The contention that the respondent no.1 voluntarily sought amendment during execution proceeding is misconceived. The Executing Court's Order dated 18.12.2017 makes it evident that the amendment was merely an addition of Rs. 100,000/- in consequence of the Petitioner's objection, without in any way deleting, relinquishing or substituting the original stipulation of seven (07) *tolas* of gold.

11. Most importantly, the legal principle relied upon by the learned counsel for respondent no. 1 is directly applicable. A three-member bench of this Court in *Haji Muhammad Nawaz (supra)* has settled that an executing court can direct payment of the current market value of gold ornaments if their return is not possible. For clarity, the relevant part of *Haji Muhammad Nawaz (supra)* is reproduced below:

> "*3. .... We are not convinced with such submission, as grant of requisite relief regarding payment of price of gold ornaments at the prevalent market rate, in case the golden ornaments are not returned, is fully justified and it cannot be said that it amounts to going beyond the terms of decree by the executing Court. ....*"

12. It is also a settled principle, as reaffirmed by this Court in the case titled as *M. Hamad Hassan v. Mst. Isma Bukhari and others*[4], that once the trial and appellate forums have adjudicated upon a matter, the constitutional courts exercise only limited supervisory jurisdiction and cannot re-appraise evidence or substitute their own opinion for

[4] 2023 SCMR 1434

that of the appellate court. The relevant portion of the said judgment is reproduced below:

> "*7. .... Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate's court opinion with their own – the acceptance of finality of the appellate's court finding is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanism ....*"

In our view, this authoritative pronouncement fortifies the High Court's conclusion. The Impugned Judgment neither suffers from legal error nor reflects any perversity or misapplication of settled law. On the contrary, it reinforces the principle that the Court must give effect to the true intent underlying the decree and the contract from which it flows.

13. In view of the above, the High Court rightly set aside the Order dated 05.11.2018. The Impugned Judgment is well-reasoned, based on proper appreciation of facts and law. No illegality, perversity, or misreading and non-reading of evidence has been found in the Impugned Judgment. Accordingly, the instant Petition is dismissed and Leave to Appeal is refused.

Judge

Judge

Islamabad
20.08.2025
APPROVED FOR REPORTING
Younus Shaikh, LC