SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT
Ch. Muhammad Ibrahim Zia, C. J.
Raja Saeed Akram Khan, J.

1. Civil Appeal No. 154 of 2016
(PLA filed on 15.06.2016)

Iffat Shaheen Mirza w/o Ateeque Ur Rehman r/o House No.47, Sector F, Part II, Mirpur.

….. APPELLANT

VERSUS

Ateeque Ur Rehman s/o Mirza Nazirullah r/o House No.56-A, Sector C/3, Tehsil and District Mirpur.

….. RESPONDENT

(On appeal from the judgment of the Shariat Court dated 14.04.2016 in Civil Appeals No. 56 and 61-A of 2015)

FOR THE APPELLANT: Raja Khalid Mehmood Khan, Advocate.

FOR THE RESPONDENT: Mr. Zaffar Iqbal Chaudhary, Advocate.

2. Civil Appeal No. 155 of 2016
(PLA filed on 15.06.2016)

Iffat Shaheen Mirza w/o Ateeque Ur Rehman r/o House No.47, Sector F, Part II, Mirpur.

….. APPELLANT

VERSUS

Ateeque Ur Rehman s/o Mirza Nazirullah r/o House No.56-A, Sector C/3, Tehsil and District Mirpur.

….. RESPONDENT

(On appeal from the judgment of the Shariat Court dated 14.04.2016 in Civil Appeals No. 56 and 61-A of 2015)

FOR THE APPELLANT: Raja Khalid Mehmood Khan, Advocate.

FOR THE RESPONDENT: Mr. Zaffar Iqbal Chaudhary, Advocate.

Date of hearing: 02.03.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C. J.— Vide judgment dated 30.03.2015 passed by Judge Family Court, Mirpur the suit filed by the appellant, Iffat Shaheen, for grant of maintenance allowance was decreed in her favour, whereas, the other suit for

recovery of dower filed by her was dismissed for want of proof. She preferred two appeals before the Shariat Court, one for enhancement of maintenance allowance and the other in respect of recovery of dower, which have been dismissed on the sole ground of limitation vide judgment dated 14.04.2016, hence, these appeals by leave of the Court.

2. Raja Khalid Mehmood Khan, Advocate, the learned counsel for the appellant submitted that the judgment of the learned Shariat Court is based upon misconception of facts and failure to properly appreciate the legal and factual propositions. After deduction of the time spent in obtaining the requisite certified copies, the appeals were filed well within time. She applied for certified copies on 08.04.2015 which were issued on 08.05.2015. This aspect has not been considered and the learned Shariat Court merely on technical ground of limitation dismissed the appeals filed by the appellant. Therefore, while setting-aside the impugned judgment the appeals be remanded back to the Shariat Court for decision on merit.

3. Conversely, Mr. Zaffar Iqbal Chaudhary, Advocate, the learned counsel for the respondent strongly opposed the appeals on the ground that the arguments advanced on behalf of the appellant are based upon an afterthought story. In the Shariat Court, the reason stated for condonation of delay was that the judgment was announced after one month's time, whereas, the appellant herself furnished the certified copies with the appeals which clearly speak that she applied for certified copies after expiry of the prescribed limitation i.e., on 06.05.2015 which were issued on 08.05.2015. Only three days were spent in obtaining the certified copies. The concocted story of applying for certified copies on 08.04.2015 was neither raised before the Shariat Court nor argued, therefore, a new case cannot be built up before this Court. Moreover, in this context the referred document i.e., copy of application, itself speaks that the application was received on 06.05.2015, thus, even from her own produced record the contention stands falsified.

4. We have considered the arguments of the learned counsel for the parties and gone through the record made available. The appellant herself annexed the certified copies of the judgment and decree of the Family Court which clearly contain the date of applying for certified copies as 06.05.2015 and the date of issuance as 08.05.2015, thus, only three days have been consumed in obtaining the certified copies. The Shariat Court has rightly observed that the appellant is not entitled for exclusion of the time spent in obtaining the certified copies because she has applied for the same after expiry of the limitation prescribed for filing appeal.

5. The argument of the learned counsel for the respondent that before the Shariat Court the stand of the appellant was quite different, finds support from the record. In her application for condonation of delay it is mentioned that the trial Court verbally announced the judgment which was delivered after one month’s time, whereas, in this Court her stance has been changed. The copy of the application furnished in support of her version is not helpful

because it clearly contains the note that the application was received on 06.05.2015. In view of this admitted position, the impugned judgment of the Shariat Court is quite in accordance with law suffering from no illegality or infirmity.

Therefore, finding no force both these appeals stand dismissed. No order as to costs.

Mirpur, CHIEF JUSTICE JUDGE
__.03.2017

Date of announcement: 07.03.2017