

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

1.Civil Appeal No.299 of 2018

(PLA filed on 04.09.2018)

Yasir Bashir s/o Bashir Ahmed r/o Madina Market
Near HBL Geo Mobile, Muzaffarabad.

.....APPELLANT

VERSUS

1. Saba Yasir d/o Lal Muhammad r/o Charkhana
Road Notia Jadeed, Tehsil and District
Peshawar presently residing at central Plate,
Muzaffarabad.

.....RESPONDENT

2. Senior Civil Judge, Muzaffarabad.
3. District and Sessions Judge, Muzaffarabad.
4. District and Sessions Judge, Peshawar, Khyber
Pakhtun Khawa (KPK).

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court
dated 05.07.2018 in writ petitions No. 161 of 2013
& 3114 of 2016]

FOR THE APPELLANT: Raja Gul Majeed Khan,
Advocate.

FOR RESPONDENT No.1: Mr. Fayyaz Ahmed
Janjua, Advocate.

AMICUS CURIAE: Sardar Karam Dad Khan, Advocate-General, Raja M. Hanif Khan and Abdul Rashid Abbasi, Advocates.

2.Civil Appeal No.330 of 2018
(PLA filed on 15.08.2018)

1. Mst. Manaza Waris d/o Muhammad Waris Khan,
2. Muhammad Waris Khan s/o Feroz Din,
3. Waqas Ahmed s/o Muhammad Waris,
4. Gulzar Ahmed s/o Feroz Din, permanent residents of Village Chandaira, Tehsil and District Muzaffarabad presently residing at E-31/10, house No.5-A3 Street No.5 Alnoor Town Walten Road, Lahore, Pakistan.

.....APPELLANTS

VERSUS

1. Mushtaq Hussain s/o Muhammad Hussain r/o Village Chandaira Tehsil and District Muzaffarabad employee of P&D Department Chatter, Muzaffarabad.

.....RESPONDENT

2. Judge Family Court/Additional District & Session Court Muzaffarabad having his office at District Headquarter Complex, Muzaffarabad.
3. Shahwaiz Khan (Minor) s/o Mushtaq Hussain,
4. Anoosha Mushtaq d/o Mushtaq Hussain r/o E-31/10 House No.5-A3 Street No.5, Alnoor Town Walton Road, Lahore, Pakistan.

..... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court dated 05.07.2018 in writ petitions No. 161 of 2013 & 3114 of 2016]

FOR THE APPELLANTS: Mr. Shahd Ali Awan,
Advocate.

FOR RESPONDENT NO.1: Ch. Shoukat Aziz,
Advocate.

AMICUS CURIAE: Sardar Karam Dad
Khan, Advocate-General,
Raja M. Hanif Khan and
Abdul Rashid Abbasi,
Advocates.

Date of hearing: 04.12.2018.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– Both the captioned appeals by leave of the Court have arisen out of the common judgment of the High Court and identical propositions are involved, hence, disposal of the same through this consolidated judgment is felt advised.

2. The brief facts involved in appeal No.299/2018 are that the appellant, herein, (resident of Muzaffarabad) and the contesting respondent No.1 (resident of Peshawar) entered into marriage contract on 06.04.2006. Thereafter, their relations became strained whereupon the respondent instituted a suit against the appellant

before Judge Family Court, Peshawar on 05.01.2010 while claiming several reliefs. The suit was decreed on 28.02.2012. The appeal of the appellant, herein, before the Additional District Judge-XIII, Peshawar was dismissed on merits vide judgment dated 22.10.2012. During the aforesaid proceedings, Mst. Saba Yasir, respondent No.1, moved an application before Judge Family Court, Peshawar for sending a precept to Judge Family Court, Muzaffarabad under section 46, C.P.C. for execution of the decree. The application was allowed and vide letter dated 29.06.2012, the precept was sent to the District and Sessions Judge, Muzaffarabad for further action. The learned District and Sessions Judge, Muzaffarabad after receiving the precept, sent the decree to Senior Civil Judge, Muzaffarabad who returned the execution petition to the District Judge, Muzaffarabad for further orders while addressing a letter on 14.07.2012 stating therein that High Court of Azad Jammu and Kashmir in its judgment reported as *Muhammad Siddique Rathore vs. Muhammad Muzaffar Khan*

[PLJ 2006 AJ&K 1], has held that the decrees passed by the foreign Courts are not executable in Azad Kashmir. The contesting respondent, Saba Yasir, challenged this order before the High Court of Azad Jammu and Kashmir by filing writ petition No.161/2013.

3. The facts of appeal No.330/2018 are that appellant No.1 (resident of Lahore) married the respondent No.1 (resident of Muzaffarabad), whereas, proforma-respondents No.3 and 4 are their children. It is claimed that appellant No.1 and the minor children went to Lahore in summer vacations but on account of strained relations did not come back. Respondent No.1, herein, filed a suit for restitution conjugal rights and also an application for issuance of guardian certificate before the Judge Family Court, Muzaffarabad. The suit was decreed on 17.12.2013 and the guardian certificate was also issued on the same date in favour of respondent. Thereafter, appellant No.1 and the minors filed a suit before the Judge Family Court, Lahore for recovery of maintenance

allowance and the delivery expenditures. The suit was decreed vide judgment and decree dated 22.01.2014. The learned Family Court, Lahore sent the decree for execution to the District Judge, Muzaffarabad which was returned to the Family Court, Lahore, however, in reference filed by respondent No.1, herein, the learned Shariat Court of Azad Jammu and Kashmir vide order dated 12.09.2014 sent the case to the Family Court, Muzaffarabad for hearing and disposal of the execution application in accordance with law. The learned Judge Family Court, Muzaffarabad heard arguments on maintainability of the aforesaid execution petition and directed respondent No.1, herein, to deposit surety bond of Rs.14,00,000/- till next date of hearing vide order dated 29.10.2016. This order was called in question by respondent No.1 before the High Court by way of writ petition No.3114/2016.

4. The learned High Court, after necessary proceedings, clubbed both writ petitions and disposed of the same through impugned

consolidated judgment dated 05.07.2018 in the following manner:-

“The nutshell of the above detailed discussion is that, both the writ petitions are accepted and the impugned orders dated 14th July, 2012 and 29th October, 2016, passed by Family Courts, Muzaffarabad, respectively, are hereby set-aside. The learned Judge Family Court, Muzaffarabad, is directed to continue proceedings for execution of decree passed by the learned Judge Family Court, Peshawar, in favour of Mst. Saba Yasir, petitioner/decreed-holder. The learned Judge Family Court No.IV, Muzaffarabad, is restrained to execute an ex-parte decree of maintenance allowance, dated 22nd January, 2014, passed by the learned Judge Family Court, Lahore, against Mushtaq Hussain, petitioner-defendant. However, Mst. Munazza Waris and others, respondents-plaintiffs, may file suit on the basis of aforesaid decree, dated 22nd January, 2014, before Judge Family Court, Muzaffarabad. The writ petitions are accepted in the manner as indicated hereinabove with no order as to the costs. A copy of the instant judgment shall be annexed with the other relevant file.”

Hence, these appeals by leave of the Court.

5. Raja Gul Majeed Khan, Advocate, the learned counsel for the appellant (Yasir Bashir) in appeal No.299/2018 and Ch. Shoukat Aziz, Advocate, the learned counsel for respondent

(Mushtaq Hussain) in appeal No.330/2018 argued that the learned High Court has fell in error of law while deciding the legal propositions involved in both the appeals. The moot point is the execution of decrees passed by the foreign Courts. In both the cases, the decrees have been passed by the family Courts of Pakistan. According to enforced family laws in Azad Jammu and Kashmir no specific provision exists on the statute book for execution of the foreign decrees. Although, the application of Code of Civil Procedure, 1908 (CPC) to the proceedings before the Family Courts is excluded, however, for execution of decrees, the guidelines can be had from the relevant provisions of CPC. The learned High Court mainly decided both the writ petitions while interpreting the provisions of section 13 of CPC which has no nexus with the execution of decree rather it only determines the status of foreign judgment and differentiate the judgments given on merits and the decrees founded on incorrect view of international law or against law of Pakistan or obtained against natural justice, fraud

etc., whereas specific provision for execution of foreign decree is section 44-A of CPC which is applicable to the cases in hand. The learned High Court in both the cases has not appreciated the relevant provisions which resulted into drawing the incorrect conclusion. According to section 44-A, CPC the decree passed by the foreign Court can only be executed if so notified in the official gazette by the Government of reciprocating territory or country and without such reciprocation or notification the decree, whether contested or ex-parte, cannot be executed directly in Azad Jammu and Kashmir. They referred to the cases reported as *Robeena Fazil vs. Yasin Khan* [2005 SCR 37], *Abdul Khaliq vs. Sidra Khaliq & others* [2014 SCR 280], *Mst. Maryam Bibi & others vs. Muhamma Iqbal & others* [PLD 1976 AJK 9], *Mian Nazir Ahmad vs. Abdur Rashid Qureshi* [1986 CLC 1309], *Muhammad Siddique Rathore vs. Muhammad Muzaffar Khan* [PLJ 2006 AJ&K 1] and *Commissioner Income Tax vs. Messrs. Haji Ali Khan & others* [PLD 1985 SC(AJ&K) 6] and submitted that the impugned

judgment is quite inconsistent with the principle of law and administration of justice.

In rebuttal, Mr. Fayyaz Ahmed Janjua, Advocate, submitted that after introduction of 13th amendment in the Constitution, under Article 19 the Azad Jammu and Kashmir has to be treated like a Province, thus, the decrees passed by the Pakistani Courts are not foreign decrees for the purpose of execution and the same can be executed in the Azad Jammu and Kashmir. He submitted that according to the provisions of section 13 of CPC once foreign decree is deemed conclusive it is executable and no further notification or reciprocation is required. He referred to the cases reported as *Shalig Ram vs. Firm Daulat Ram Kundanmal* [AIR 1967 SC 739], *Nazakat Parveen vs. Ikhtlaq Ahmed* [2001 MLD 1169] and *Ghulam Nabi vs. Banking Court & others* [2001 YLR 625].

6. Mr. Shahid Ali Awan, Advocate, the learned counsel for the appellants (Munaza & others) submitted that the High Court has fell in error of law while allowing the writ petition. Once it is held that a foreign decree is executable in Azad

Jammu and Kashmir it makes no difference whether it is contested or ex-parte. The learned High Court has wrongly issued the writ and stopped the execution proceedings.

7. Keeping in view the public importance of the proposition involved the eminent Bar members were also invited to assist the Court.

8. Sardar Karam Dad Khan, the learned Advocate-General while assisting the Court argued that in this context the judgments reported as *Grosvenor Casino Limited vs. Abdul Malik Badruddin* [1997 SCMR 323] and *The Attock Oil Co. Ltd and others vs. Dr. Ghaith R. Pharaon and others* [1994 SCMR 811] are helpful in which some related principles of law have been enunciated.

9. Raja Muhammad Hanif Khan, Advocate, argued that the impugned judgment is based upon misconception of law. Section 13, CPC does not relate to the execution of foreign decree rather it simply determines the status of decree, whereas, for execution, the relevant provisions are sections 40 and 44-A, CPC. He submitted that after

introduction of 13th amendment, according to provisions of Article 19 of the AJ&K Interim Constitution, the Azad Jammu and Kashmir has been given the status of a Province, thus, for the purpose of execution the decree passed by the Pakistani Courts shall not be treated as foreign. He referred to the case reported as *Karim Haider Shah & another vs. Raja Khani Zaman & others* [PLD 1954 AJK 1].

10. Mr. Abdul Rashid Abbasi, Advocate, while assisting the Court submitted that the decree passed by the Pakistani Court cannot be directly executed in Azad Jammu and Kashmir being foreign decree unless the procedure laid down in section 44-A of CPC is adopted. The argument that the status of Azad Jammu and Kashmir is like a Province, is against the spirit of the Constitution and the historical background of Azad Jammu and Kashmir. Even this argument is fallacious as for the purpose of criminal cases the AJ&K Council Transfer of Fugitive Offenders Act, 1984 is holding the field which clearly determines the status of Azad Jammu

and Kashmir. He submitted that the status of Azad Jammu and Kashmir has to be determined according to the spirit of Article 257 of the Constitution of Islamic Republic of Pakistan. Mere on the basis of some notification issued in the year 1971, the status of Azad Jammu and Kashmir cannot be treated to be as of a Province, therefore, the provisions of section 44-A, CPC are fully applicable and without following the statutory provisions the decree cannot be executed.

11. We have paid our utmost attention to the arguments of learned counsel for the parties and gone through the record made available. We also highly appreciate the assistance provided by the eminent lawyers of the Bar on Court request. The sole vital proposition emerged in these appeals is the execution of decrees in Azad Jammu and Kashmir passed by the Courts of Islamic Republic of Pakistan. Relating to the territorial limits of Islamic Republic of Pakistan and the State of Azad Jammu and Kashmir, it hardly requires any detailed thesis to be brought on record. The territory of the Islamic

Republic of Pakistan has been defined under Article 1 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter to be referred as Constitution of Pakistan). Article 1 of Constitution of Pakistan as amended up to date, reads as follows:-

- “1. The Republic and its territories:-- (1) Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter to be referred as Pakistan.
- (2) The territories of Pakistan shall comprise—
- (a) the Provinces of Balochistan, the Khyber Pakhtunkhwa, the Punjab and Sindh;
- (b) the Islamabad Capital Territory, hereinafter referred to as the Federal Capital;
- (c) the Federally Administered Tribal Areas; and
- (d) such States and territories as are or may be included in Pakistan, whether by accession or otherwise.
- (3)

In this context, we would also like to refer here the special provisions of Article 257 of Constitution of Pakistan relating to the state of Jammu and Kashmir, which read as follows:-

- “257. Provision relating to the State of Jammu and Kashmir:- When the people of the State of Jammu and Kashmir decide to

accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.”

The juxtapose appreciation of the aforesaid Articles of the Constitution of Pakistan clearly reveals that at present the Azad Jammu and Kashmir is not constitutionally included in the territories of Pakistan. In this context, we also deem it appropriate to refer here the relevant part of the preamble of the Azad Jammu and Kashmir Interim Constitution, which reads as follows:-

“An Act to repeal and, with certain modifications, re-enact the Azad Jammu and Kashmir Government Act, 1970

WHEREAS the future status of the State of Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time;

AND WHEREAS a part of the territories of the State of Jammu and Kashmir already liberated by the people are known for the time being as Azad Jammu and Kashmir”

The territory of Azad Jammu and Kashmir has been defined under Article 2 of the Azad

Jammu and Kashmir Interim Constitution, 1974 as follows:-

“Azad Jammu and Kashmir’ means the territories of the State of Jammu and Kashmir which have been liberated by the people of that State and are for the time being under the administration of Government and such other territories as may hereafter come under its administration”

The deep appreciation of the above referred Articles of the Azad Jammu and Kashmir Interim Constitution clearly speaks that the Azad Jammu and Kashmir means the territories liberated by the people and which are for the time being under the administration of Government of Azad Jammu and Kashmir. No doubt, under the constitutional provisions the territories of the Azad Jammu and Kashmir can be extended on coming into its administration some other territories. Same like, in future if the people of State of Jammu and Kashmir decide to accede to Pakistan under Article 1 of the Constitution of Pakistan the territory of Pakistan can be extended but at present in view of the constitutional provisions it is clear that the Azad

Jammu and Kashmir is a separate territory and not included in the territory of Pakistan. Our this view also finds support from some other legislations of Azad Jammu and Kashmir. In this context the Azad Jammu and Kashmir Council Transfer of Fugitive Offenders Act, 1984 can be referred. This Act has been enforced in the Azad Jammu and Kashmir by the AJ&K Council having Chief Executive of Pakistan as its Chairman. The preamble to this Act is of vital importance, which is reproduced as under:-

“WHEREAS it is expedient to consolidate the law relating to the transfer of fugitive offenders from the territories of Azad Jammu and Kashmir to Pakistan.”

12. Besides the above stated legislative background there are also some legal precedents of the constitutional Courts of Pakistan and Azad Jammu and Kashmir dealing with this specific proposition. This Court in the case reported as *Commissioner Income Tax vs. Messrs. Haji Ali Khan & Co. and others* [PLD 1985 SC(AJ&K) 62] has held that:-

“.... It is correct as held by Justice Hamoodur Rehman, J. (as he then was) in

Noor Hussain v. The State [PLD 1966 SC 88], that the Azad Jammu and Kashmir territory which does not constitute a part of the Republic of Pakistan as defined in the Constitution of Pakistan is a foreign territory...”

It is clear that the above enunciated principle is based upon the ruling in the case reported as *Noor Hussain v. The State* [PLD 1966 SC 88]. Previously in Azad Jammu and Kashmir at the level of High Court there was divergence of opinion. In the case reported as *Karim Haider Shah & another vs. Raja Khani Zaman Khan & another* [PLD 1954 AJ&K 1] the decrees passed by the Rawalpindi (British India) Court before emergence of Islamic Republic of Pakistan, according to law enforced at that time, had been declared executable in Azad Jammu and Kashmir, whereas, in the cases reported as *Muhammad Rafique Dar vs. Sarkar* [PLD 1973 AJ&K 1] and *Mst. Maryam Bibi & others vs. Muhammad Iqbal & others* [PLD 1976 AJ&K 9], the single bench consisting of Late Khawaja Muhammad Yusuf Saraf, C.J (as he then was) formed the opinion that on the basis of Stand-

still Agreement of Maharaja, the Ruler of the State of Jammu and Kashmir, with the Government of Pakistan the decrees are executable. However, division bench of the High Court in the case reported as *Mian Nazir Ahmad vs. Abdul Rashid Qureshi* [1986 CLC 1309] formed a different opinion that on adaptation of CPC in Azad Kashmir, the previous notification made by Maharaja would come to an end and could not remain in force in Azad Kashmir. Moreover, due to enactments i.e. firstly the Azad Jammu and Kashmir Government Act, 1970 and thereafter the Azad Jammu and Kashmir Interim Constitution Act, 1974 the Stand-still Agreement for the purpose of execution of decrees becomes irrelevant. Thus, according to the enforced law the reciprocal arrangements are necessary. Moreover, with the passage of time another legislative development has also taken place. Previously, CPC contained the provisions of section 44. Through the Code of Civil Procedure (Adaptation of Amendments) Act, 2003 the CPC as amended up to date has been adapted in

Azad Jammu and Kashmir. In the up to date amended CPC, section 44 has been deleted and is no more in operation, thus, even due to this legislative development the opinion formed by the High Court in the cases reported as *Muhammad Rafique Dar vs. Sarkar* [PLD 1973 AJ&K 1] and *Mst. Maryam Bibi & others vs. Muhammad Iqbal & others* [PLD 1976 AJ&K 9] is no more consistent with the presently enforced statutory provisions and the opinion expressed in the case reported as *Mian Nazir Ahmad vs. Abdul Rashid Qureshi* [1986 CLC 1309] appears to be more consistent with the spirit of the Constitution and the enforced law. Therefore, it can be safely concluded that the decrees passed by the Courts of Islamic Republic of Pakistan can only be executed in the territory of Azad Jammu and Kashmir while complying with the statutory provisions of section 44-A of CPC. The basic requirement of this statutory provision is that the Governments of Pakistan and Azad Jammu and Kashmir have to make reciprocal arrangements for

execution of decrees by notification to be published in the official gazette.

13. We deem it necessary to clarify here relating to the opinion of the High Court expressed in the case reported as *Genuine Rights Commission vs. Federal Government and others* [PLD 2006 High Court (AJ&K) 1] wherein it has been held that the Azad Jammu and Kashmir territory is included in Pakistan. In view of hereinabove stated constitutional and other statutory provisions as well as the principle of law enunciated by the superior Courts of Pakistan and Azad Jammu and Kashmir, it is held without any hesitation that the opinion expressed by the High Court in the case (supra) is not correct, therefore, the same is overruled and cannot be accepted as precedent.

14. We also deem it proper to further clarify that the "territory of Azad Jammu and Kashmir" and "State of Jammu and Kashmir" are distinguishable. The "State of Jammu and Kashmir" legally, historically, geographically and constitutionally comprise of the territory of Azad Jammu and

Kashmir, liberated area of Gilgit Baltistan and the other territories i.e. valley of Kashmir and Jammu, Ladakh etc. now under the illegal occupation of India. Therefore, the legal distinction between the "territory of Azad Jammu and Kashmir" and the "State of Jammu and Kashmir" is of vital importance which is to be kept in mind while dealing with such eventualities.

15. Now, we would like to deal with the proposition directly involved in the instant case. It appears that while deciding the writ petitions the learned High Court without taking into consideration all the relevant provisions of CPC only focused on the provisions of section 13 of CPC. The scheme of law clearly speaks that section 13, CPC is included in Part-I which does not deal with the matter of execution of decrees rather it only deals with the status and conclusiveness of foreign judgment. Moreover, the examination of this statutory provision reveals that it deals with the status of foreign judgment; when it shall be deemed conclusive as to any matter thereby directly

adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating under the same title and what are the exceptions which deprives such judgment of its status of conclusiveness. According to the provisions of section 13, CPC mere conclusive status of foreign judgment itself is no ground that the same is executable in foreign territory without complying with the requirement of other relevant statutory provisions. As has already been mentioned that due to legislative developments section 44, CPC is no more on the statute book, whereas, Part-II of CPC deals with the execution of decrees and the relevant provisions in this context are section 43 and 44-A. Section 43 deals with the decrees passed by Civil Court established in the area of Pakistan to which the provisions relating to execution do not extend, thus, this provision has no nexus with the case in hand. The most relevant provision is section 44A, CPC which is reproduced as below:-

"44A. Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory— (1) Where a certified copy of decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in Pakistan as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purpose of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1: "Superior Courts" with reference to the united Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the Country Palantine of Lancaster and the Court of Chancery of the Country Palantine of Durham.

Explanation 2: "Reciprocating territory" means the united Kingdom and such other country or territory as the Federal Government may, from time to time, by notification in the official Gazette declare to be reciprocating territory for the purpose of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 3: "Decree" with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

- (a)** With reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against such decrees or judgments; but
- (b)** In no case includes an arbitration award, even if such award is enforceable as a decree or judgment."

The appreciation of this statutory provision clearly speaks that for execution of such decree reciprocal arrangements between the Governments of Pakistan and Azad Jammu and Kashmir are required and in this context the basic requirement is the declaration through a notification to be published in the official gazette by both the Governments according to the spirit of Explanation 2 of section 44A, CPC.

15. So far as the argument that the contested decree is conclusive, hence, executable, is concerned, we have no cavil with this but it deals with the execution process for the purpose that such decree is conclusive and relating to such

conclusive decree no objection can be raised before the executing Court according to the provisions of section 47, CPC, if it is shown to the satisfaction of the Court that such decree does not fall within any exception specified in clauses (a) to (f) of section 13, CPC. Sub section (3) of section 44A, CPC clarifies the legal position that the decree which is contested and does not fall within any exception specified in clauses (a) to (f) of section 13, CPC is deemed conclusive, whereas, in the case otherwise the executing Court has power to attend the objection raised by the judgment-debtor and determine the same according to section 44-A of CPC.

16. In view of the above stated clear legal position it appears that the learned High Court has misconceived the statutory provisions, therefore, the opinion expressed in the impugned judgment is not consistent with the Constitution as well as the statutory provisions of CPC, hence, not sustainable. Consequently, while accepting these appeals the impugned judgment stands recalled. Resultantly,

writ petition No.161/2013 titled *Saba Yasir vs. Senior Civil Judge & others* stands dismissed, whereas, writ petition No.3114/2016 titled *Mushtaq Hussain vs. Judge Family Court & others* stands accepted while declaring the execution proceedings initiated by the Family Court as without lawful jurisdiction, hence, stands quashed.

These appeals stand accepted with no order as to costs.

CHIEF JUSTICE
Muzaffarabad,

JUDGE

JUDGE