

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Shariat Appellate Jurisdiction]

**PRESENT:**

*Raja Saeed Akram Khan, J.*  
*Ghulam Mustafa Mughal, J.*

Civil Appeal No.287 of 2018  
(PLA filed on 24.11.2018)

Umar Farooq s/o Muhammad Bashir, caste  
Jatt, r/o Usmanabad Chokari, Manana, Tehsil  
Samahni, District Bhimber.

....APPELLANT

**VERSUS**

Noreen Akhtar d/o Muhammad Hameed, caste  
Jatt, r/o Gaie, Tehsil Samahni, District  
Bhimber.

.... RESPONDENT

(On appeal from the judgment of the  
Shariat Appellate Bench of the High Court  
dated 18.10.2018 in Family Appeal  
No.143 of 2017)

FOR THE APPELLANT: Ch. Muhammad  
Suleman, Advocate.

FOR THE RESPONDENT: Mr. Fazal-ur-Rehman,  
Advocate.

*Date of hearing:* 20.03.2019

**JUDGMENT:**

**Raja Saeed Akram Khan, J.—** This appeal by leave of the Court has been directed against the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 18.10.2018, whereby the appeal filed by the appellant, herein, has been dismissed.

2. The precise facts forming the background of the captioned appeal are that the respondent, herein, filed a suit for recovery of the maintenance allowance against the appellant, herein, in the Court of Judge Family Court, Samahni. It was averred in the plaint that marriage of the solemnized on 13.11.2014. Initially, the relationship of the spouses remained cordial but later on, the behaviour of the appellant, herein, turned hostile to the respondent and he started

abusing and beating to her. It was further stated that a number of times the appellant, herein, badly tortured her and finally ousted her from his house on 21.01.2016. It was claimed that since then she is living with her parents and the appellant, herein, is not providing her any maintenance allowance. The case was at the stage of framing the issues when on 20.04.2017, the trial Court consigned to record the file of the case on the ground that reconciliation has been made between the parties. The trial Court also ordered the appellant, herein, to pay maintenance allowance to the respondent, herein, at the rate of Rs.3000 per month from the date of desertion and expenses for the period of *iddat* at the rate of Rs.5000 per month, total amounting to Rs.57000/. The order passed by the trial Court was challenged by the appellant, herein, before the High Court by

way of appeal on 01.11.2017. The learned High Court through the impugned judgment dated 18.10.2018, dismissed the appeal, hence, this appeal by leave of the Court.

3. Ch. Muhammad Suleman, Advocate, the learned counsel for the appellant argued that the learned High Court dismissed the appeal on the sole ground that the same has incompetently been filed against an interlocutory order, whereas, the trial Court finally disposed of the case and no proceedings were pending adjudication before the Family Court; thus, in such situation, the order passed by the trial Court was appealable under the provisions of section 14 (5) of the Family Courts Act, 1993, and the learned High Court wrongly dismissed the appeal. He further added that no compromise was effected between the parties and the trial Court illegally disposed of the suit on the ground that the

matter has been compromised and this point was raised before the High Court but the learned High Court without attending the same dismissed the appeal in a hasty manner. The learned counsel referred to and relied upon the case law reported as *Firdos Bakhat v. Javed Khand through Attorney and another* [2012 SCR 205] and prayed for acceptance of appeal.

4. On the other hand, Mr. Fazal-ur-Rehman, Advocate, the learned counsel for the respondent strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is perfectly legal and interference by this Court is not warranted under law. He submitted that the order passed by the Family Court for fixation of the installments was interlocutory; therefore, appeal before the High Court was not

competent which has rightly been dismissed.  
He prayed for dismissal of appeal.

5. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned judgment. From the perusal of the record it appears that the trial Court vide order dated 20.04.2017, finally disposed of the suit filed by the respondent. For better appreciation the last lines of the order are reproduced here which read as under:-

"--- معاملہ مابین فریقین اسی طور یکسو کیا جاتا ہے۔ ادائیگی کے لئے علحیدہ سے انڈکس قائم ہو۔ جبکہ مسل ہذا بعد از ترتیب و تکمیل ضابطہ داخل دفتر ہو۔ حکم سنایا گیا۔"

After going through the reproduction (supra), it is clear that the order of the trial Court was final not interlocutory, thus, appeal before the High Court against the final order was competent and the learned High Court wrongly dismissed the appeal on the ground that the

same has been filed against an interlocutory order. The findings recorded by the High Court in paragraph 4 of the impugned judgment that the Executing Court has taken the lenient view while fixing the monthly installment of the decretal amount, are also based on non-appreciation of the record as in the matter in hand the trial Court has not passed the order in the execution proceedings rather the trial Court disposed of the suit even before recording the evidence. The main claim of the appellant before the High Court was that no reconciliation was effected between the parties and the trial Court wrongly disposed of the case on the ground that reconciliation has been made between the parties, however, the learned High Court has not considered this point. In such state of affairs, we deem it proper to remand the case to the High Court.

In view of the above, we accept this appeal and while setting aside the impugned judgment the case is remanded to the High Court with the direction to decide the same afresh on merits within a period of 2 months positively from the communication of the judgment of this Court after providing fair opportunity of hearing to the parties. No order as to costs.

Mirpur,  
.....03.2019

**JUDGE**

**JUDGE**



