**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(Shariat Appellate Jurisdiction)

**PRESENT:**

*MR. JUSTICE RAJA SAEED AKRAM KHAN, C.J.*
*MR. JUSTICE RAZA ALI KHAN*

**CIVIL APPEAL No. 56 of 2024**

(Against the judgment, dated 14.09.2023, passed by the Shariat Appellate Bench of the High Court in Family Appeals No. 07 &14 of 2021).

Tayyaba Akbar d/o Muhammad Akbar Mughal wife of Rais Asif caste Mughal r/o Doba Behri, presently resides at Upper Chatter House No. D-71 Tehsil & District Muzaffarabad Azad Jammu and Kashmir.

… Appellant

***VERSUS***

Rais Asif s/o Abdul Asif Baig & another.

…Respondents

**Appearances:**

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|---|---|
| For the Appellant: | Mr. Muhammad Hanif Khan Minhas, Advocate. |
| For the respondents: | Raja Tariq Bashir, Advocate. |
| Date of hearing: | 07.11.2024. |

**JUDGMENT:**

***Raza Ali Khan, J*:-** The captioned appeal by leave of the Court has been filed against the consolidated judgment, dated 14.09.2023, passed by the Shariat Appellate Bench of the High Court (*hereinafter to be referred as the High Court*) in Family Appeals No. 07 & 14/ 2021.

2. The relevant facts leading to this appeal are that the plaintiff, Tayyaba Akbar (appellant), filed multiple suits before the Additional District Judge/Family Court, Muzaffarabad. These included separate suits for (i) dissolution of marriage, (ii) recovery of dower, (iii) recovery of maintenance allowance, and (iv) recovery of dowry articles, against the defendants, including Rais Asif (respondent). In response, the defendant, Rais Asif, filed a cross-suit for restitution of conjugal rights against Tayyaba Akbar and others. Upon the filing of these suits, the trial Court issued summons, after which the parties appeared and submitted their written statements. The Family Court subsequently consolidated all suits and framed the issues based on the parties' pleadings. After examining the evidence and hearing the arguments, the trial Court passed a judgment and decree dated 30.01.2021, partially decreeing the suits for recovery of dower, dowry articles, and restitution of conjugal rights, while dismissing the suits for dissolution of marriage and maintenance allowance due to insufficient evidence. Dissatisfied with this decision, both parties filed separate appeals before the High Court seeking redress. Following

the necessary proceedings, the High Court disposed of the appeals in the following terms:

> *"13. The nutshell of the foregoing reasons is that appeal No.14 of 2021 filed on behalf of respondent-Rais Asif & another, being barred by limitation, is hereby dismissed and consigned to record whereas the appeal filed by appellant-Tayyaba Akbar, is partly accepted in terms that judgment & decree dated 30.01.2021 passed in suit No.311 of 2018 is hereby set-aside and the appellant-Tayyaba Akbar is entitled to receive the maintenance allowance of Rs.5000/- per month from the date of filing suit i.e. 05.12.2018 till the decision of this appeal from the respondent- Rais Asif and a future maintenance allowance at that ratio with 10% annual increment shall also be paid by him. Judgment & decree passed in suit No.312 of 2018 is hereby modified in terms that appellant-Tayyaba Akbar is entitled to recover the dowry articles lying in the house of her husband at Lahore or in alternative, she is entitled to receive the amount of Rs.4,00,000/- from the respondent- Rais Asif. Judgment & decree passed in suit No.313 of 2018 is modified in terms that the appellant-Rais Asif is legally bound to transfer the deferred dower in shape of two rooms of ground floor along-with kitchen & washroom in favour of appellant-Tayyaba Akbar under the relevant provisions of law or in alternative, she is entitled to receive the amount of Rs.5,94,400/- as deferred dower from the respondent-Rais Asif and rest of the judgment & decrees are upheld."*

3. Mr. Muhammad Hanif Khan Minhas, Advocate, representing the appellant, argued that the impugned judgment issued by the High Court is both legally flawed and factually inconsistent. He submitted that the judgment contains self-contradictions, pointing out that

while the High Court dismissed the respondents' appeal on the basis of limitation as discussed in Para 13, it nevertheless went on to modify the trial court's decision in Suit No. 313. He contended that this modification reflects a misreading and non-reading of the case record, rendering the judgment unsustainable under the law. Additionally, he argued that procedural requirements were not adhered to in issuing the judgment, further undermining its validity. On these grounds, he respectfully urged the Court to allow the appeal.

4. Conversely, Raja Tariq Bashir, learned Advocate for the respondents, vigorously defended the High Court's judgment, asserting that it aligns well with legal principles and merits no interference from this Court. He argued that the appellant failed to substantiate her claims regarding the grounds for divorce, maintenance, dowry recovery, non-population, and dower. As such, he submitted, the appeal should be dismissed. He emphasized that respondent No.1 had also filed a suit for restitution of conjugal rights, which the Family Court decreed in his favor after hearing both sides, while dismissing the appellant’s suit for dissolution of marriage. In the suit for dowry articles, the court awarded only Rs. 280,000/-, and the maintenance claim was rejected based on the appellant’s refusal to reside with the respondent. Regarding the dower, it was proven that the appellant received 8 tolas of gold as partial payment, with an outstanding balance of Rs. 5,94,400 decreed in her favor for constructing two rooms, a kitchen, and a washroom. He further contended that the appellant’s primary intent in filing the suit was to secure the house and that she demonstrated no intention to fulfill conjugal

obligations, as evidenced by her own and her witnesses' statements. Under these circumstances, he argued, the High Court's judgment is sound and requires no further scrutiny by this Court, concluding with a request for the appeal's dismissal.

5. After thoroughly reviewing the arguments presented by the learned counsel for both parties and examining the record and impugned judgment, it appears that the appellant's counsel emphasized a significant procedural error, specifically, before the High Court, in paragraph 13 of its judgment, dismissed the respondents' appeal based on limitation but later modified the Family Court's judgment and decree in suit No. 313 without the appellant challenging this decree. This action by the High Court, by modifying the Family Court's decree concerning the recovery of dower, lacks legal justification and contravenes procedural norms. The Family Court's decree granted the appellant dower in the form of a ground-floor room, kitchen, and washroom, as requested. While this decree was appealed by the respondent on limitation grounds, the High Court dismissed the appeal for being time-barred. Nonetheless, the High Court proceeded to modify the decree, ordering that Rais Asif either transfer two ground-floor rooms along with the kitchen and washroom to Tayyaba Akbar as deferred dower or pay her Rs. 594,400 in lieu. This adjustment was unwarranted, especially given the initial limitation ruling. Accordingly, we find that the High Court's judgment and decree to this extent is not maintainable. Thus, we restore the Family Court's original decree of dower as issued by the learned Family Court, Muzaffarabad.

6. As for the other contentions advanced by the learned counsel for the appellant, it is observed that, despite his lengthy and detailed arguments, he was unable to substantiate any further flaws or identify any significant legal defect in the impugned judgment other than the one already discussed. His arguments did not reveal any persuasive grounds that could establish any further inconsistencies or weaknesses in the High Court's findings. Upon an independent examination of the record, we, too, have carefully scrutinized the evidence and the conclusions reached by the High Court. Our assessment confirms that the judgment reflects a sound evaluation of the material evidence on record and the application of relevant legal principles. We are unable to identify any instance of misreading or non-reading of evidence that would justify interference with the findings of the High Court on the remaining issues. Therefore, apart from the modification already discussed regarding the decree for dower, the rest of the judgment and decrees issued by the High Court appear well-founded and legally sound. Consequently, we see no merit in disturbing these findings or altering the determinations made by the learned High Court. Except for the modification on the decree related to dower as already addressed, the remaining aspects of the High Court’s judgment and decree stand upheld.

In view of the above, this appeal is partly accepted in the manner indicated above.

**JUDGE** **CHIEF JUSTICE**

Muzaffarabad,
11.11.2024.