IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 98 OF 2024
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 26.02.2024, passed in family appeal No. 06 of 2023).

Sughran Bibi d/o Ghulam Hussain caste Mughal r/o Sarsala Tehsil Samahni District Bhimber.

… Appellant(s)

VERSUS

Sultan Mehmood s/o Faiz Alam caste Mughal r/o Sarsala Tehsil Samahni District Bhimber.

…Respondent(s)

Appearances:

For the Appellant:	Raja Khalid Mehmood Khan, Advocate.
For the respondents:	Mr. Abdul Razzaq Chaudhary, Advocate.
Date of hearing:	28.01.2025

JUDGMENT:

Raza Ali Khan, J:- This appeal, preferred with leave of the Court, arises from the judgment rendered by the Shariat Appellate Bench of the High Court (hereinafter referred to as the "High Court") dated 26.02.2024, whereby the family appeal instituted by the appellant herein was dismissed.

2. The appellant contracted marriage with the respondent on May 17, 1995, with a stipulated dower comprising 3½ tolas of gold ornaments. The matrimonial bond was subsequently dissolved through divorce on August 29, 2015. On September 09, 2021, the appellant instituted a suit for the recovery of the dower before the Family Court. The learned trial Court, vide its judgment and decree dated December 30, 2022, dismissed the suit on the dual grounds of limitation and lack of evidence. Aggrieved by the said judgment, the appellant preferred an appeal before the High Court. However, the learned High Court, through the impugned judgment dated December 26, 2024, affirmed the findings of the trial Court and dismissed the appeal.

3. Mr. Abdul Razzaq Chaudhary, the learned counsel for the respondents, raised a preliminary objection asserting that the appellant failed to append a certified of the decree issued by the High Court with the instant appeal. He emphasized that this omission constituted a violation of the mandatory requirement stipulated under Section 14(5) of the Family Courts Act, 1993. He further argued that this procedural defect rendered the appeal liable outright dismissal, obviating the need for examination on merits.

4. Conversely, the learned counsel for the appellant refuted this contention, arguing that the omission of the certified copy of the decree does not vitiate the maintainability of the appeal. He submitted that the judgment of the High Court, which had been duly annexed, sufficiently elucidate the reasoning and decision of the lower court, and should therefore, suffice for adjudication. He further argued that the failure to annex the decree was merely a procedural lapse, which neither prejudice the substantive rights of the respondent nor obstructed the adjudication of the appeal. Additionally, he apprised the Court that certified copy has now been attached by filing an application, thereby, curing any procedural defect, if at all.

5. The issue before this Court pertain the maintainability of the present appeal filed under section 14(5) of the Family Courts Act, 1993, read with section 22(3) of the Family Courts Procedure Rules, 1998. The primary ground for seeking of dismissal of appeal is the failure to annex a certified copy of the decree passed by the High Court, which is argued to be a mandatory prerequisite under the governing provisions. The determination of this issue necessitates meticulous examination of statutory framework as well as the interplay between the relevant provisions to ascertain whether the omission of the certified decree renders the appeal incompetent.

6. Section 14 of the Family Courts Act, 1993, delineates the appellate mechanism within the statutory scheme. Subsection (5) which assume pivotal significance in the present case , read as follows:

"An appeal to the Supreme Court from a judgment, decree, or order of the Shariat Court shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal."

7. A plain reading of this provision underscores two essential conditions for the maintainability of an appeal to the Supreme Court: first, the appeal must arise from a judgment, decree, or order of the Shariat Court; and second, the Supreme Court must be satisfied that the case raises a substantial question of law of public importance. This provision reinforce the exceptional nature of the Supreme Court's appellate jurisdiction in family cases, restricting it to cases that involve significant legal or public interest issues.

8. Furthermore, the explicit reference to "judgment, decree, or order" underscores the necessity of these documents in determining whether the appeal meets the statutory threshold of a question of law. Among these, the decree constitutes the formal expression of the adjudication, crystalizing the rights and obligations determined by the lower court. Accordingly, its inclusion in the appeal is indispensable for the Supreme Court to exercise its jurisdiction under section 14(5).

9. Rule 22(3) of the Family Courts Procedure Rules, 1998, provides procedural clarity by stipulating:

"A certified copy of the decree and decision of the Court where a decree is passed, and a copy of the decision where only an order is passed, shall be attached with the appeal."

This provision explicitly mandates the attachment of a certified copy of the decree and judgment in cases where a decree has been issued. The decree, being the operative part of the judgment, formalizes the decision and defines the precise terms of the relief granted or denied. In its absence, the appellate forum is deprived of a vital document, necessary for a comprehensive understanding of the lower court's decision. The mandatory nature of this provision is underscored by the use of the term "shall," indicating that compliance is not discretionary. The rationale behind this requirement is to ensure the appellate court has access to the complete and authoritative record of the case, thereby, facilitate a fair and informed adjudication.

10. When read together, section 14(5) of the Family Courts Act, 1993, and Rule 22(3) of the Family Courts Procedure Rules, 1998, create a cohesive framework for appellate proceedings. Section 14(5) establishes the jurisdictional basis for appeals to the Supreme Court, while Rule 22(3) operationalizes this framework by prescribing the procedural prerequisites, including the mandatory attachment of the decree. The decree serves as the formal embodiment of the judgment, delineating the precise rights and liabilities determined by the lower court. Its annexation is not a mere technicality but a substantive requirement enabling the appellate court to ascertain the scope of the dispute and the legal questions involved. After a thorough examination of the statutory provisions and the arguments advanced, we find that the requirement to annex a certified copy of the decree with the appeal is mandatory. The decree, as the formal and conclusive expression of the lower court's

decision, is an indispensable document for the exercise of the Supreme Court's appellate jurisdiction under section 14(5) of the Family Courts Act, 1993.

11. The learned counsel's argument that the omission of the decree constitutes a procedural irregularity that may be overlooked cannot be sustained in light of the explicit language of Rule 22(3) of the Family Courts Procedure Rules, 1998. This provision leaves no room for discretion and unequivocally mandates the attachment of the decree, ensuring that the appellate court has a complete and authoritative record of the case.

12. The additional contention raised by the learned counsel for the appellant, that the certified copy of the decree has since been placed on record by filing an application, is devoid of legal merit. Significantly, the said application was not filed within the prescribed statutory period but was instead presented after an inordinate delay of one year. Such belated filing renders the application time-barred and inadmissible under law.

In view of the mandatory requirements under Section 14(5) of the Family Courts Act, 1993, the failure to append the certified copy of the decree at the time of filing the appeal is a fatal defect. Consequently, the instant appeal stands dismissed for having been filed incompetently. No order as to costs.

JUDGE JUDGE

Mirpur,
30.01.2025