IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL NO. 222 OF 2024

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 12.11.2024, passed in Appeal No. 139 of 2024).

Muhammad Junaid Azam s/o Sardar Muhammad Azam Khan.

…Appellant

VERSUS

Safina Kausar d/o Muhammad Bashir and others.

… Respondents

Appearances:

For the Appellant:	Mr. Shahzad Shafi Awan, Advocate. (written arguments)
For the respondents:	Miss. Nazia Saeed, Advocate. (written arguments)
Date of hearing:	23.05.2025

JUDGMENT:

***Raza Ali Khan, J*:-** This appeal, granted leave by this Court, stems from the judgment rendered by the Shariat Appellate Bench of the High Court (High Court) dated November 12, 2024. The appellant assailed the execution of the decree dated September 8, 2021, passed by the Family Court Kotli, whereby he was directed to pay a lump sum amount of Rs. 500,000 and a recurring monthly maintenance of Rs. 52,100, as per the order dated April 20, 2024. Aggrieved by the quantum of the monthly installment, the appellant, citing financial incapacity arising from his meager income of Rs. 8,000 per month as an Imam Masjid, preferred an appeal before the High Court. The High Court, while partially modifying the Family Court's directive, vide its judgment dated November 12, 2024, reduced the monthly installment to Rs. 30,000, maintaining, however, the aggregate monthly liability at the rate of Rs. 42,100, inclusive of Rs. 12,100 towards child maintenance. On previous dates of hearing, the appellant voluntarily undertook to deposit six months' child maintenance amounting to Rs. 100,000 within one month, which commitment was duly honored and acknowledged by this Court, thereby meriting consideration of his grievance regarding the installment mechanism. Resultantly, leave to appeal was granted and the status quo order was maintained. Subsequently, on May 23, 2025, counsel for the respondents filed written arguments, while counsel for the appellant sought an extension in time, which was acceded to, granting one week’s time for compliance. In consequence, the written arguments had duly been placed on the record.

2. In his written submissions, the counsel for the appellant reiterated the single plea that his client lacks the financial capacity to comply with the monthly payment of Rs. 42,100, as determined by the High Court. It was contended that the appellant serves as an *Imam Masjid* with a nominal salary of Rs. 8,000 per month, rendering the impugned installment oppressive and unsustainable. Reference was made to the prior payment of Rs. 500,000 pursuant to the decree of the Family Court and an additional sum of Rs. 100,000 deposited before this Court during the pendency of proceedings, both amounts being sourced through loans, the repayment of which remains an outstanding obligation. In view of the foregoing, it was urged that the installment plan be rationalized in accordance with the appellant’s actual financial means.

3. Conversely, in the written arguments submitted by counsel for the respondent, it is asserted that the appellant has deliberately entangled the respondent in protracted and vexatious litigation with the sole intent to delay and evade the financial obligations lawfully imposed by the courts. It is contended that the respondent has been single handedly bearing the entire burden of the minors' expenses from her own limited resources and is now facing acute financial hardship, rendering her unable to sustain herself and the dependents in the absence of the maintenance. Furthermore, it is averred that the appellant possesses sufficient means and undisclosed sources of income, and that his plea of impecuniosity is merely a facade to escape his legal and moral duty. It is, therefore, prayed that the present appeal be dismissed and the appellant be directed to discharge the installments as fixed by the competent court.

4. We have heard the counsel for the parties and gone through the record. The instant appeal arises from execution proceedings consequent upon the judgment and decree dated 08.09.2021 passed by the Family Court, Kotli, as modified by the High Court in its impugned judgment dated 12.11.2024. The Family Court had initially directed the appellant to pay a lump sum of Rs. 500,000 along with monthly maintenance of Rs. 52,100. The High Court, while partially allowing the appeal, reduced the monthly liability to Rs. 42,100, apportioned as Rs. 30,000 for the respondent-wife and Rs. 12,100 for the minor. The appellant, pleading financial constraints on the basis of a monthly income of Rs. 8,000 as an Imam Masjid, contested the execution process. Nevertheless, he voluntarily undertook to deposit six months' child maintenance, amounting to Rs. 100,000, which was duly complied with and acknowledged by the Court.

5. The legal framework governing this matter is unequivocal. Section 13(4) of the Family Courts Act, 1993, as applicable in Azad Jammu and Kashmir, mandates that decrees passed by Family Courts shall be executed in a summary manner. Moreover, Under section 17 of the Act, 1993, the applicability of provisions of CPC have been excluded meaning thereby, Order 21 XXI of CPC is not applicable to the decree executable by the Family Court. This statutory provision embodies the legislature's intent to ensure expeditious enforcement of decrees pertaining to maintenance, dower, custody, and dowry, thereby safeguarding the rights of vulnerable litigants, particularly women and children, from the delays often attendant upon ordinary civil proceedings. The consistent view of the Superior Courts in this jurisdiction has been that execution

is not a secondary or mechanical stage but an integral part of the judicial process, especially in family disputes where timely enforcement is critical to securing justice. The Family Court, as a specialized forum, is duty-bound to ensure that its decrees are implemented without undue delay, exercising the coercive powers vested in it under the law. Any failure in this regard not only undermines the authority of the Court but also frustrates the very purpose of the statutory protections afforded to the beneficiaries.

6. It is a well-settled principle that the Family Court, being a creature of statute with a specific mandate to provide swift and effective remedies in family matters, possesses the inherent jurisdiction to enforce its own decrees without being constrained by procedural formalities. Execution proceedings in such cases are not a separate or independent phase but a continuation of the Court's jurisdiction to ensure that justice is not rendered illusory. The doctrine of *functus officio* does not apply in a manner that absolves the Court of its responsibility to oversee the implementation of its orders. On the contrary, the Court retains an active role in ensuring compliance, and where necessary, it may initiate execution proceedings suo motu to prevent any miscarriage of justice.

7. Judicial experience reveals that execution proceedings before Family Courts are often plagued by unnecessary delays, primarily due to a lack of proactive measures by the Courts themselves. Given the summary nature of the procedure prescribed under Section 13(4) of the Act 1993, which deliberately dispenses with the cumbersome processes under Order XXI of the CPC, Family Courts are not only empowered but obligated to take

immediate steps to enforce their decrees without awaiting formal applications from decree-holders. This approach is essential to fulfill the legislative intent of providing speedy and effective relief to those in need. Moreover, it has been observed that decrees in family matters, particularly those involving financial obligations, frequently suffer from a lack of clarity regarding the mode and schedule of payments. This ambiguity often leads to avoidable delays and hardships for the beneficiaries. It is of paramount importance that Family Courts, at the time of adjudicating the principal lis, particularly in matters involving financial obligation such as maintenance, dower or child support, render judgments that not only determine the quantum of liability but also articulate with clarity the precise mode, manner and schedule payment. This includes stipulating whether the liability is to be discharged in a lump sum or through structured installments, taking into account realistic appraisal of the judgment debtor's financial circumstances.

8. This judicial approach is essential to give full effect to the legislature intent underlying the establishment of family Courts, which is to provide swift, accessible and effective relief to vulnerable parties particularly women and children. Empirical observation and judicial experience demonstrate that decrees in family matters often suffers from ambiguity regarding enforceability, especially with respect to the mechanics of payments, which in turn leads to protracted execution proceedings and ancillary litigation. Such outcomes defeat the very purpose of expeditious and efficacious justice that the Family Courts Act seeks to achieve. Accordingly, it is imperative that Family Courts, while issuing final decrees, ensure that the operative part

of the judgment include enforceable directions on the manner of compliance. This practice would mitigate post-decretal disputes, reduce the volume of execution related litigation and uphold the integrity and efficacy of Family Justice System. It would also serve the broader objective to mitigating the emotional and financial toll on the beneficiaries, who are often compelled to seek repeated recourse to the Courts merely to realize the fruits of a judgment already obtained.

9. In the present case, the judgment of the High Court dated 12.11.2024 is upheld and shall be given effect in its letter and spirit. The Family Court is directed to proceed with the execution of the decree in accordance with the observations made herein and to conclude the execution process to the extent of lump-sum recovery of Rs. 500,000/- within sixty days from the date of receipt of this judgment. A copy of this judgment shall be forwarded to the Registrar of the High Court of Azad Jammu and Kashmir for circulation to all Family Court Judges to ensure uniform compliance with the principles articulated above.

This appeal stands dismissed in the manner indicated above.

JUDGE **JUDGE**

Rawalakot:
29.05.2025