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

PRESENT:

RAJA SAEED AKRAM KHAN, C.J.
RAZA ALI KHAN, J.

CIVIL APPEALS No. 73 & 74 OF 2025
(On appeal from the consolidated judgment of the Shariat Appellate Bench of the High Court dated 29.11.2024 passed in family appeals No. 22 & 74 of 2021)

Muhammad Shahzad s/o Manzoor Hussain and others.
(In both the appeals)

…Appellant(s)

VERSUS

Neelum Shahzad d/o Chaudhary Muhammad Razzaq.
(In both the appeals)

…Respondent(s)

Appearances:

For the Appellant(s):	Mr. Anis Riaz Arvi, Advocate.
For the Respondent(s):	Sardar Ejaz Nazir, Advocate.
Date of hearing:	11.12.2025

JUDGMENT:

***Raza Ali Khan, J*:-** This instant appeal, instituted with the leave of this Court, arises from the consolidated judgment of the Shariat Appellate Bench of the High Court *(hereinafter to referred as "the High Court")*, dated November 29, 2024, rendered in Family Appeals Nos. 22 and 74 of 2021. Given that both appeals emanate from a consolidated judgment and involve common questions of law and fact, it is both expedient and appropriate to adjudicate them through this unified pronouncement.

2. The material facts necessary for adjudication of the instant appeals are that Neelum Shahzad, plaintiff/respondent, instituted three separate suits before the Court of Additional District Judge, Family Court, Mirpur, seeking (i) maintenance allowance, (ii) recovery of dowry articles, and (iii) delivery of dower in the form of 19 tola of gold ornaments against the defendant/appellant. It was averred that the parties contracted marriage on February 14, 2009, with an agreed dower of 10 tola of gold. Initially, the conjugal relationship remained amicable; however, following the birth of the first child, tensions emerged, which intensified upon the birth of a second child in 2012, leading to allegations of persistent physical abuse by the defendant. In 2015, when the plaintiff became pregnant, it is contended that the defendant attempted to cause grievous bodily harm and expelled her in a perilous condition, necessitating medical intervention at CMH Malir, Karachi. The defendant purportedly sent the plaintiff with minor daughters to Mirpur and executed a divorce deed. It was further asserted that the gold ornaments given at Nikkah and Rukhsati by the plaintiff's

parents remain in the possession of the defendant's mother. The plaintiff alleged non-payment of maintenance from July 2019 and refusal to return dowry articles. The defendant contested all claims, and the trial Court consolidated the suits, framed issues, and, upon the defendants' non-appearance, proceeded ex parte on October 29, 2021. Ex parte evidence was adduced, and the Court awarded maintenance of Rs. 10,000/- per month to each minor, decreed recovery of dowry articles or, alternatively, Rs. 250,000/-, but dismissed the claim for 19 tola of gold for want of proof, by judgment dated March 9, 2021. Both parties appealed; the appellant challenged the decrees relating to maintenance and dowry, while the respondent assailed the dismissal of her dower claim. The High Court affirmed the trial court's findings on maintenance and dowry but allowed the respondent's appeal, entitling her to recover the 19 tola of gold ornaments or their current market value.

3. Mr. Anis Riaz Arvi, counsel for the appellant in both appeals, contended that the High Court failed to appreciate the well-settled principle that documentary evidence outweighs oral assertions. He emphasized that the prompt dower of ten tola of gold was duly fixed and delivered to the respondent at the time of nikah in the presence of witnesses and remained in her exclusive and uninterrupted custody throughout the ten-year of subsistence of marriage, during which no claim for its return was made. He further argued that the respondent's separate claim for nine tolas of gold allegedly gifted by her parents fell beyond the jurisdictional competence of the Family Court, a contention which was overlooked. The learned counsel submitted that the judgment was rendered in disregard of law and record, as the appellant was denied a

meaningful opportunity to adduce evidence, particularly when Court functioning was restricted during the Covid-19 period and no post-pandemic notice of appearance was issued. He maintained that the respondent had, in fact, handed over her dowry articles to the appellant during the pendency of the suit, yet the appellant was deprived of establishing this fact. He further asserted that the list of dowry articles presented by the respondent was exaggerated, included consumables items, and was contradicted by documentary evidence showing restitution of the remaining items. He submitted that the impugned judgment was unsupported by law, contrary to the record, and therefore liable to be set aside.

4. In contrast, Sardar Ejaz Nazir, counsel for the respondent in both appeals, submitted that the impugned judgment of the High Court is consonant with law, the evidentiary record, and the factual matrix. He contended that the plaintiff had satisfactorily demonstrated that the defendants, had appropriated both the ten tola of gold fixed as dower at the time of nikah and the nine tola gifted by her parents at rukhsati, a fact the trial Court failed to evaluate in its proper legal perspective. He argued that the High Court, on appellate reconsideration, correctly recognised her entitlement to the full nineteen tola of gold and decreed her claim accordingly, in accordance with law and the established facts. He therefore prayed that the appeals be dismissed.

5. We have considered the submissions of both counsel and perused the record. It is apparent that, upon institution of the suit, the defendants initially appeared and filed written statements but subsequently, absented themselves on successive dates. Consequently, ex-parte

proceedings were initiated, culminating in the judgment and decree dated March 9, 2021. Although an application to set aside the ex_parte decree was thereafter, filed before the Family Judge, it was dismissed on the grounds of being hopelessly time-barred and devoid of any satisfactory explanation for the defendants' non-appearance.

6. As the appellant's counsel has confined arguments to the claim for gold ornaments, we are concerned solely with the issue of recovery of dower decreed by the High Court, entitling the respondent to 19 tola of gold or their current market value. The trial Court, after examining the evidence, dismissed the suit for want of proof. The record, however, demonstrates that the plaintiff-respondent asserted that she was given 10 tolas of gold ornaments as dower at nikah, and an additional 9 tola were gifted by her parents, now allegedly in the custody of the appellant's mother. She produced two receipts from Mughal Jewelers indicating that the 9 tola were purchased by her father, Chaudhry Muhammad Razzaq, on October 5, 2008, and February 1, 2009, respectively. This documentary proof was corroborated by oral testimony of Chaudhry Muhammad Razzaq and Islam Hussain, confirming that the ornaments were indeed gifted and remained with the mother of the appellant. The respondent herself recorded a statement affirming the dower and parental gifts, which remained uncontroverted. Despite this robust evidentiary foundation, the trial Court overlooked this critical material and dismissed her claim. On appellate review, the High Court re-evaluated the record in its entirety and rightly concluded that the respondent is entitled to recover a total of 19 tola of gold from the appellant or their prevailing market value. For reference regarding delivery of gold or its prevailing market

price at the time of execution of decree, reliance may be made to the case of Apex Court of Pakistan titled *Haji Muhammad Nawaz vs. Samina Kanwal and others*[1], wherein, it has been held as under: -

> *"The learned ASC for the petitioner has repeatedly contended that as the executing Court cannot go beyond the decree, therefore, the course for execution of decree followed by the three Courts below is unwarranted by law. We are not convinced with such submission, as grant of requisite relief regarding payment of price of golden ornaments at the prevalent market B rate, in case the golden ornaments are not returned, is fully justified and it cannot be said that it amounts to going beyond the terms of decree by the executing Court."*

Similar view has been taken by the Supreme Court of Pakistan in the case reported as *Mst. Ayesha Shaheen vs. Khalid Mehmood and another*[2], wherein, it has been observed that: -

> *"The Trial Court granted decree for recovery of dowry articles and not its market value in the alternative. The appellant was therefore held entitled to the recovery of 17 tolas of gold. This part of the decree can be satisfied either upon the handing over by the judgment debtor/respondent to the appellant gold ornaments weighing 17 tolas and in case he is not in a position to provide the same the appellant can be appropriately and fully compensated in terms of money only if she is paid an amount that would enable her to purchase the same from the open market. She can do that only if she is paid the current market value of gold. Unlike other property, moveable or immoveable determination of the market value of the gold does not pose any difficulty as the same is fixed by the gold market on daily basis and is readily exchangeable for cash."*

---

[1] [2017 SCMR 321]
[2] 2013 SCMR 1048]

Therefore, we concur with the conclusions reached by the High Court, finding them fully consonant with law, supported by the evidentiary record, and reflective of the factual matrix. In these circumstances, no interference is warrantend. Accordingly, the appeal is dismissed.

JUDGE **CHIEF JUSTICE**

Mirpur,
11.12.2025
Approved for Reporting.