SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Shariat Appellate Jurisdiction]

BENCH:
Raja Saeed Akram Khan, C.J.
Khalid Yousaf Chaudhary, J.

Civil Appeal No.264 of 2025
[From the judgment of the High Court (Sh. A. B.) dated 18.06.2025, in Family Appeal No.413 of 2024]

Muhammad Sohail Aftabi s/o Muhammad Hussain Aftabi through attorney Muhammad Yasir s/o Muhammad Hussain Aftabi, r/o Nokot Karka, Tehsil Patika, District Muzaffarabad.

….APPELLANT

VERSUS

Saeeda Yasmeen ex-wife of Muhammad Sohail Aftabi, d/o Raja Gul Muhammad Minhas, r/o Nokot Karka, Tehsil Patika Naseerabad, District Muzaffarabad.

.....RESPONDENT

FOR THE APPELLANT: Mr. Shahid Ali Awan, Advocate.

FOR THE RESPONDENT: Mr. Javaid Iqbal Satti, Advocate.

Date of hearing: 08.01.2026

JUDGMENT:

Khalid Yousaf Chaudhary, J.— The present appeal, by leave of the Court, has been filed against the judgment dated 18.06.2025 passed by the learned Shariat Appellate Bench of the High Court (*hereinafter to be referred as "High Court"*), whereby the appeal preferred by the appellant (judgment-debtor/surety of dower) was dismissed and the order of the learned Executing Court, determining the current market value of gold ornaments weighing ten (10) tola in execution of the decree, was upheld.

2. The factual background reveals that the plaintiff-respondent instituted a suit for recovery of dower before the Judge

Family Court, Pattika/Naseerabad, on 26.10.2019. The suit was decreed ex parte vide judgment dated 29.10.2020, whereby the plaintiff-respondent was held entitled to receive deferred dower in the form of ten (10) tola gold ornaments or, in the alternative, the current market value thereof. An appeal filed by the appellant against the said decree was dismissed by the High Court vide judgment dated 03.01.2024, thereby attaining finality. During execution proceedings, the judgment-debtor/surety of dower, moved an application seeking payment of the decretal amount in instalments while objecting to payment on the basis of current market value of gold. The learned Executing Court, vide order dated 19.11.2024, determined the current market value of ten (10) tola gold ornaments. The said order was challenged by the appellant, herein, before the High Court, which dismissed the appeal and upheld the determination made by the Executing Court vide impugned judgment dated 18.06.2025. Hence, the present appeal, by leave of the Court.

3. Mr. Shahid Ali Awan, learned counsel for the appellant, assailed the impugned judgments passed by the learned Judge Family Court, Pattika/Naseerabad, and affirmed by the learned High Court vide judgment dated 18.06.2025, contending that the same suffer from manifest illegality, jurisdictional defect, and misreading as well as non-reading of the record, rendering the findings perverse and contrary to settled principles of law. He argued that the Courts below failed to properly appreciate the pleadings, evidence, and the applicable legal framework governing recovery of dower, while ignoring relevant material on the file, which resulted in grave miscarriage of justice. He further submitted that binding precedents laid down by the apex Court of Azad Jammu & Kashmir regarding payment of gold ornaments or their value were overlooked, making the impugned judgments legally infirm. The learned counsel contended that the learned Judge Family Court failed to resolve the core legal issue raised in the appellant's application seeking permission to pay the value of gold ornaments

prevailing at the time of passing the decree dated 29.10.2020; although the application was accepted, the question whether the payable value was that prevailing at the time of decree remained unaddressed, an illegality also not rectified by the learned High Court. He maintained that, under law and equity, dower is payable as fixed at the time of marriage, and where substitution by value is permitted, the relevant market value must be the value prevailing at the time of passing of the decree unless expressly provided otherwise; however, by directing payment of current market value at the stage of execution, the learned Judge Family Court travelled beyond its jurisdiction. He further argued that the respondent never claimed for recovery of current market value of gold ornaments in her plaint, and it is settled law that an executing Court cannot travel beyond the pleadings. Lastly, he contended that the judgments relied upon by the appellant were not considered in their true perspective, rendering the impugned judgments unsustainable in the eye of law, and prayed that the same be set aside or suitably modified in the interest of justice. In support of his submissions, the learned counsel referred to and relied upon the cases reported as [1995 SCR 307] and [1999 SCR 309].

4. Conversely, Mr. Javed Iqbal Satti, the learned Advocate representing the respondent, supported the impugned judgments while contending that both the Courts below have correctly appreciated the facts and law, and the judgments under challenge are well-reasoned, speaking, and based on proper evaluation of the pleadings, evidence, and issues framed in the case, suffering neither from misreading nor non-reading of evidence nor from any misinterpretation or erroneous application of law. He argued that the findings assailed in the appeal are concurrent findings of the facts and law, and the appellant has failed to point out any illegality or jurisdictional defect warranting interference by this Court. The learned counsel further submitted that it is settled and consistently applied principle of law that where dower (*Haq Mehr*) is stipulated in the form of gold ornaments or in alternative

market value, the Judge Family Court or executing Court is fully competent to determine and direct payment of its current market value at the time of execution or realization in order to ensure just, equitable, and effective enforcement of the decree. On these submissions, the learned counsel prayed that the appeal being devoid of merit be dismissed, and the judgment and decree under appeal be maintained in the interest of justice. In support of his contentions, the learned counsel placed reliance on the cases reported as [2013 SCMR 1049] and [2017 SCMR 321].

5. We have heard the learned counsel for the parties at some length and perused the record with due care. The record reveals that an ex-parte judgment and decree dated 29.10.2020 were passed by the learned Judge Family Court whereby the plaintiff-respondent was held entitled to recovery of deferred dower comprising 10 tola of gold ornaments and, in the alternative, the market value thereof. Since the decree remained unsatisfied, execution proceedings were initiated. The learned Executing Court, vide order dated 19.11.2024, directed the appellant to deposit the current market value of the gold ornaments instead of the value prevailing at the time of decree. The said order was upheld by the learned High Court through judgment dated 18.06.2025, which has been assailed before this Court. The sole and narrow question requiring determination, therefore, is whether, under the scheme of the decree dated 29.10.2020, the plaintiff-respondent is entitled to the current market value of ten tola of gold or only to the value prevailing at the time of passing of the decree. A plain and meaningful reading of the decree dated 29.10.2020 leaves no ambiguity that the appellant was directed to pay ten tola of gold ornaments and, in the alternative, to pay the market value thereof. The decree does not restrict or freeze the value of gold to any particular date, nor does it indicate that the value payable in substitution of gold would be that prevailing on the date of decree. Rather, the decree confers an option upon the judgment-debtor either to deliver the gold ornaments or to pay their value. It is equally settled that a decree must be construed in a manner that advances its effective

execution and gives full effect to the rights declared therein, rather than rendering it inequitable.

7. The gold, by its very nature, is a commodity of fluctuating value, the market rate of which is determined on a daily basis and is readily ascertainable. Where a decree entitles a decree-holder to delivery of gold or, in the alternative, its value, the decree can only be meaningfully satisfied if the value payable enables the decree-holder to purchase the same quantity of gold from the open market at the time of realization. Any other interpretation would defeat the very object of the decree and unjustly enrich the judgment-debtor at the expense of the decree-holder. This legal position stands authoritatively settled by the learned Apex Court of Pakistan whereby it has been categorically settled that where a decree is for recovery of gold or, in the alternative, its value, the decree-holder can be fully compensated only if she is paid the current market value of gold, as only then she would be able to purchase the same from the open market. It has further been clarified that determination of the value of gold at the time of payment is the only manner in which such a decree can be fully satisfied. Thus, this question of law no longer remains *res integra* in view of the pronouncements rendered by the Superior Courts in several cases. Few may be referred herein below for reference. In the case reported as *Mst. Zaib un Nisa and others vs. Additional District Judge, Taxila and others* [2025 CLC 1048], it was observed in para 9 of the report as under:-

> "9. Adverting to the second question as to whether the Executing Court was justified in accepting the application of the petitioner for payment of alternate price at the prevailing market rate regarding gold ornaments decreed in favour of the petitioner, suffice to observe that the purpose of determining alternate value is to enable the decree holder to obtain adequate compensation when the principal item (in family maters, dowry articles or the dower property) is not traceable or is in a condition/position that the same cannot be returned or recovered, for example a dowry article has been lost or damaged. Moreover, the word

> "alternate" has special significance. It can be used both as noun or an adjective. In the legal context, when used as an adjective, it describes something that offers or expresses a choice. When used as noun, it describes something that substitutes another. In the context of a decree passed in a case, this choice is vested with the decree holder-the petitioner in present case. In the instant case, dower is very much clear in terms of its weight i.e., 07-Tola gold and is easily available in the market. The petitioner cannot be compelled to accept its alternate value that was settled at the time of Nikah and/or the decree. The Executing C Court is ensuring implementation of the decree dated 17.12.2016, the satisfaction whereof is being delayed by the respondent, on one pretext, or the other. Such Practice on part of the respondent is deprecated in terms of dicta laid down by Supreme Court of Pakistan in case of "Haseen Ullah v. Mst. Naheed Begum and others" (PLD 2022 Supreme Court 686). The Supreme Court held that the entries recorded in Columns Nos. 13 and 16 of the Nikahnama are obligations of husband and any act whereby the said obligations are not discharged in timely manner is highly deplorable. Therefore, by no stretch of imagination, alternate value of Rs.100,000/- can be treated as adequate substitute of the actual dower i.e., 07-Tola gold ornaments. Hence, the Executing Court correctly allowed the application of the petitioner as it is for the petitioner to opt as to whether to go for the actual dower i.e., 07-Tola D gold ornaments, which became her property after the same was settled and delivered to her or accept its alternate value."

While dealing with such like proposition, this Court in the case titled *Muhammad Shahzad v. Neelum Shahzad* (C. A. No.73/2025, decided on 12.12.2025) has observed as under:-

> "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."

In the case reported as *Mst. Ayesha Shaheen vs. Khalid Mehmood* [2013 SCMR 1049] in the identical circumstances, the Apex Court of Pakistan has held as under:-

> "We heard the learned counsel for the appellant as well as the respondent have gone and through the judgments referred to in the leave granting order. As regards 17 tolas of gold, which were included in the list of dowry articles (Exh.P.5), the appellant had prayed for its recovery or its value, stated to be Rs.380,000. 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 appellant gold to the ornaments weighing 17 tolas and in case he is not in a position to provide the same the appellant and can be fully appropriately 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. The Mehbooba v. Abdul Jalil (ibid) is case of Mst. distinguishable as there the plaintiff wife had not claimed the recovery of gold ornaments or its value but only its value specified in the plaint. In order to highlight the

distinction the relief claimed in the suit filed by Mst. Mehbooba is reproduced:-

> '…for recovery of Rs.1,62,600, detailed as under:-
>
> ……
>
> (2) Rs.25,000/- the value of the golden ornaments exclusively given to her by her husband at the time of her marriage as given in para. 9 of the plaint; and (3) Rs.87,000 the market value of the golden ornaments belonging to the plaintiff, given to her by her parents mentioned in para. 10 of the plaint.'

The Court thus held that the petitioner before it was entitled to the market value of the gold ornaments decreed in her favour in accordance with the price fixed by her as "no decree for delivery of ornaments had been passed." The petitioner was granted a simple money decree. In the present case not only the relief claimed was for the recovery of gold ornaments or in the alternative its market value but the decree so granted was for the recovery of the gold ornaments. The case of Mst. Mehbooba v. Abdul Jalil turned on its own facts and does not in any way lay down a general rule that in all cases where the decree for recovery of gold is granted its value shall be determined at the market price prevailing on the date of grant of decree or filing of the suit. Where decree for delivery of gold or its market value is granted the value shall be determined with reference to the date of payment. As only then the decree can become fully satisfied."

Similarly, in the case reported as *Haji Muhammad Nawaz vs. Samina Kanwal and others* [2017 SCMR 321], the learned Apex Court of Pakistan while endorsing the findings recorded by the executing Court that the dower shall be paid in shape of gold ornaments or in alternative price thereof as per market value of the gold at the date of its payment, observed as under:-

> "This civil petition for leave to appeal is outcome of the proceedings for execution of decree dated 31.5.2003/31.1.2004, passed by the Family Court. Sialkot in favour of respondent No.1. which attained finality when the Supreme Court of Pakistan

dismissed the earlier petition of the petitioner vide its order dated 01.2.2011. The execution application filed by respondent No.1 was allowed by the Civil Judge 1st Class, Sialkot vide order dated 04.12.2013 in the following manner:-

> 'Now to come up for payment of all the remaining dowry articles mentioned at Sr. Nos. 23, 28, and 9 (A VCR only) of list Ex. Pl on the date already fixed i.e. 13.12.2013. It is made clear that golden ornaments mentioned at Sr. No.23 shall be paid either in the shape of golden ornaments or in alternative price thereof as A per market value of the gold at the date of its payment.'

2. Aggrieved by the above order, petitioner preferred appeal before the District Judge, Sialkot, which was dismissed vide order dated 17.12.2013. These concurrent findings regulating the terms about the execution of decree in favour of respondent No.1 were further challenged by the petitioner before the Lahore High Court, Lahore, in Writ Petition No.33208/2013, which was dismissed vide impugned order dated 22.12.2013, inter alia, seeking guidance from the judgment in the of Ayesha Shaheen v. Khalid Mehmood (2013 SCMR 1049). case

3. We have heard the arguments of learned ASC for the petitioner and perused the material placed on record with the petition as well as C.M.A. No.1614-L/2015. The judgment of the appellate Court dated 31.1.2004, reveals that the suit for recovery of dowry articles was decreed as per the list Ex.P-1, or in the alternative the costs of dowry articles at Rs.8,31,700/-, which remained unsatisfied for a period of over one decade. In such circumstances the executing Court in order to enforce the execution of decree in its letter and spirit, was fully justified in placing its reliance upon the ratio of judgment in the case of Ayesha Shaheen (supra) and some other cases referred to in its order dated 04.12.2013, which has been rightly upheld by the appellate Court and the High Court in their respective orders under challenge. 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. For this purpose, the ratio of judgment in the above cited case of Ayesha Shaheen (supra) is also fully applicable to the facts and circumstances of the present case."

The distinction drawn between a decree for delivery of gold or its value and a simple money decree has also been lucidly explained in *Mst. Ayesha Shaheen's* case (supra) that when a money decree for a fixed amount representing the value of gold is claimed and no claim for handing over gold ornaments is existed then only simple money decree can be granted but where a decree is for delivery of gold ornaments or their value in the alternative, the decree can only be truly satisfied if the decree-holder receives either: the gold ornaments themselves, or an amount of money sufficient to purchase the same quantity of gold from the market at the time of payment. This explanation/clarification leaves no doubt. In the present case, the plaintiff specifically claimed recovery of gold ornaments, and the Court actually passed a decree for delivery of gold ornaments, with an alternative relief of payment of their market value, therefore, the judgment-debtor is liable to deliver gold ornaments or their current market value.

8. In the instant case, the decree directs payment of gold ornaments or market value but does not specify the date and valuation of the gold ornaments. If the physical delivery of gold is not possible or is avoided by the husband, then it is preferable to valuate the amount at the time of execution because gold is a fluctuating commodity. The only lawful method is to assess the market value at the time of execution otherwise the judgment-debtor would unjustly benefit from his own delay.

9. The contention that the value of gold should be assessed with reference to the date of decree is misconceived and runs counter to both logic and settled jurisprudence. Accepting such a contention would render delay in execution of decrees involving gold ornaments

and would encourage judgment-debtors to withhold compliance to take advantage of fluctuations in market value. The law does not tolerate such an outcome. We find that the learned High Court has correctly appreciated the controversy, properly construed the decree, and rightly applied the law laid down by the apex Court of Pakistan and this Court. The impugned judgment neither suffers from misreading or non-reading of the record nor from any misapplication of law. On the contrary, it reinforces the settled principle that where gold ornaments are decreed or their value is awarded in the alternative, the relevant value is the current market value at the time of realization.

For the foregoing reasons, we find no merit in this appeal. The same is accordingly dismissed. No order as to costs.

JUDGE CHUIEF JUSTICE

Muzaffarabad
J-II
14.01.2026