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

PRESENT:

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

CIVIL APPEAL No. 28 OF 2025
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 03.10.2024 passed in Family Appeals No. 152, 153, 154, 155, 156 & 157 of 2019)

Muhammad Riaz so Makhan Din r/o Taitran Panjkot Tehsil Naseerabad District Muzaffarabad.

…Appellant(s)

VERSUS

Sumaira Bibi w/o Muhammad Riaz r/o Taitran Panjkot presently Tariqabad Tehsil and District Muzaffarabad and others.

…Respondent(s)

Appearances:

For the Appellant(s):	Mr. Mudassar Hussain Abbasi, Advocate.
For the Respondent(s):	Mr. Shahzad Shafi Awan, Advocate.

Date of hearing: 07.01.2026

JUDGMENT:

***Raza Ali Khan, J*:-** This appeal, with leave of this Court, is directed against the consolidated judgment dated October 3, 2024, delivered by the Shariat Appellate Bench of the High Court *(hereinafter referred to as 'the High Court')* in Family Appeals Nos. 152, 153, 154, 155, 156, and 157 of 2019.

2. The material facts giving rise to the present appeal are that Sumaira Bibi, the plaintiff-respondent, instituted four separate family suits against Muhammad Riaz, the defendant-appellant, before the Additional District Judge, Family Court, Muzaffarabad, on March 24, 2017, and April 4, 2018, seeking dissolution of marriage, recovery of dower, maintenance allowance, and dowry articles. Simultaneously, the defendant-appellant filed a counterclaim for restitution of conjugal rights on March 24, 2017. Upon settlement of issues, appraisal of pleadings, and evaluation of oral and documentary evidence, the Family Judge decreed the suit for dissolution of marriage on the ground of cruelty, partially allowed the claims for dower and maintenance, dismissed the claim for dowry articles, and rejected the counterclaim for restitution of conjugal rights through consolidated judgments and decrees dated July 20, 2019. Aggrieved, both parties preferred the appeals. The High Court, vide judgment dated October 3, 2024, allowed the appeal filed by Sumaira Bibi to the limited extent of enhancement of maintenance allowance, while dismissing the remaining appeals. Consequently, the present appeal has been preferred.

3. Mr. Mudassar Hussain Abbasi, learned counsel for the appellants, assailed the impugned judgment and decree dated July 20, 2019, passed by the Family Judge, as well as the subsequent judgment of the learned High Court, contending that the same suffer from patent illegality, factual infirmity, and misappreciation of the record. He submitted that respondent No.1 failed to substantiate the allegations of cruelty and non-performance of marital obligations, and that the Family Court disregarded material evidence produced by the appellant, thereby rendering its conclusions perverse and unsustainable. It was further argued that although the decree for dissolution of marriage was challenged before the High Court, respondent No.1 contracted a subsequent marriage during the pendency of the appeal, despite the subsistence of the marital bond, in clear derogation of legal and Islamic injunctions. Emphasis was also laid on the contention that the father of appellant, described as guarantor of dower and alleged owner of the land, was not impleaded as a party, and therefore no decree for transfer of immovable property could lawfully be passed. Learned counsel asserted that the appellant does not hold title to the land in question and expressed readiness to discharge the dower obligation strictly in monetary terms as recorded in the nikah-nama. On these premises, acceptance of the instant appeal was prayed for.

4. Conversely, Mr. Shahzad Shafi Awan, Advocate for the respondent, supported the concurrent judgments and decrees, asserting that they are fully consistent with the law, the factual matrix, and the evidentiary record. He maintained that the plaintiff-respondent successfully discharged the burden of proof through credible and

convincing evidence and conclusively established sustained cruelty, warranting the reliefs granted.

5. With regard to dower, he submitted that the Family Court judiciously provided an alternative mode of satisfaction by determining the prevailing market value of the land and the house, supported by a duly produced valuation schedule, thereby affording the appellant the option to discharge the obligation through monetary payment in lieu of specific performance. He concluded that the submissions advanced on behalf of the appellant do not disclose any jurisdictional defect, legal infirmity, or perversity in appreciation of evidence that warranting appellate interference, and accordingly prayed for dismissal of the appeal.

6. We have heard the submissions of the parties and examined the record with due care. The principal contention advanced on behalf of the appellant relates to the mode of satisfaction of dower, which under the nikah-nama was fixed at Rs. 275,525, wherefrom Rs. 75,000 was stated to have been paid as prompt dower in the form of gold ornaments, while the remaining amount was stipulated to be satisfied through transfer of land measuring two kanals along with a house. Although the plaintiff alleged that the gold ornaments were subsequently taken back, such assertion remained unsubstantiated by reliable evidence; however, the liability in respect of the deferred dower stands admitted. The Family Judge decreed the unpaid dower in terms of the property specified in the nikah-nama and, in the alternative, permitted satisfaction through payment of the prevailing market value of the land and house. The controversy before

this Court is confined to this issue alone. The appellant has expressed willingness to pay only the original quantified amount mentioned in the nikah-nama, while resisting payment of the market value determined by the Family Judge. This submission is misconceived. Where the agreed mode of satisfaction is transfer of specific immovable property, the obligor cannot unilaterally substitute it with the original monetary figure. If the appellant elects not to transfer the property, or is unable to do so, the only lawful course available is to satisfy the decree by paying the market value thereof. Insistence on restricting liability to the original amount cannot be sustained.

7. The learned counsel for the appellant further contended that the appellant's father, being described as guarantor in the nikah, was not impleaded as a party and, therefore, no relief relating to the land could lawfully be granted. While there is no dispute with the proposition that a decree cannot operate against a person who was not impleaded and whose proprietary rights are sought to be affected; this contention does not advance the appellant's case. Under Muslim law, dower constitutes a personal continuing and enforceable debt flowing directly from the marriage contract, irrespective of husband's ownership of the specific property mentioned in the nikah-nama. Any defect affecting enforceability of a decree for transfer of a specific land impacts only the mode of satisfaction, not the existence of the obligations itself. Consequently, even where transfer of land cannot be enforced, the husband remains liable to satisfy the obligation through payment of its equivalent value. In this regard, guidance may be drawn

from the judgment of this Court in *Zeeshan Butt v. Jamila Shafi*[1] case wherein it was held as under: -

> "If marriage is a contract dower is the consideration and it is debt which has to be paid by the husband to his wife….. Thus we have no doubt in our mind that Mahr or dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage and if not paid remains outstanding as a debt and is to be paid as specified, the husband can settle any amount may be the same is beyond his means but once it has been fixed the same can neither be reduced by the husband or by anybody else except the wife herself."

8. So far as the claim for dissolution of marriage is concerned, the record clearly demonstrates that the plaintiff-respondent proved her case through cogent and credible evidence, proving that she was subjected to cruelty. Both the Family Judge and the learned High Court correctly evaluated the evidence and appropriately dissolved the marriage on the ground of cruelty. With respect to maintenance, the enhancement from Rs. 3000/- to 5000/- per month by the High Court is reasonable and consistent with settled principles of law.

In view of the foregoing discussion, this appeal is devoid of merit and is accordingly dismissed.

JUDGE **CHIEF JUSTICE**

Muzaffarabad,
07.01.2026
Approved for Reporting.

[1] [2007 SCR 187]