ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 454/2022

Mst. Umaira Sultan
Vs.
Additional Sessions Judge, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.02.2022	Ms. Farrah Naz Awan, Advocate for petitioner.

The instant writ petition is arising out of orders dated 13.07.2021 and 16.12.2021, passed by the Family Court and the Additional District Judge, Islamabad respectively whereby plaint in suit for dissolution of marriage on the basis of 'khula' filed by the petitioner was returned due to lack of territorial jurisdiction and the appeal was also dismissed.

2. Precisely, relevant facts are that on 24.02.2021 petitioner filed suit for dissolution of marriage on the basis of 'khula' against respondent No.3 (*Muhammad Shoaib*). The latter, in response to notice, entered appearance and on 06.04.2021 filed an application for the return of plaint for its presentation before the court of competent jurisdiction. The petitioner responded the said application through a written reply. The Family Court after hearing arguments returned the plaint to the petitioner for its presentation before the court of competent jurisdiction vide order dated 13.07.2021. The petitioner then preferred an appeal which was dismissed by the Addl. District Judge Islamabad-West vide order dated 16.12.2021, hence instant writ petition.

3. The learned counsel contended that the petitioner contracted marriage with respondent No. 3 on 22.02.2017; that her father has migrated to Pakistan from Kashmir many years ago; that after migration, her father served in the Printing Cooperation Of Pakistan Press, Islamabad, remained posted at Islamabad till his death on 01.11.2012; that subsequently her brother was offered the job in the Printing Press Cooperation Of Pakistan, who is still serving in the said department and that as the father of the petitioner was a Pakistani citizen therefore, petitioner also retains the same status.

4. Arguments heard, record perused.

5. Perusal of record reveals that respondent No.3 in his application for the return of the plaint objected upon the maintainability of the suit of the petitioner before Family Court at Islamabad on the ground that that both the parties are subject of State of Azad Jammu& Kashmir; that their marriage was solemnized and registered over there; that Azad Jammu & Kashmir is not a Constitutional part of Pakistan and due to the same, the application of the West Pakistan Family Act, 1964 cannot be extended to Azad Jammu & Kashmir and their subjects.

6. Record further reveals that petitioner in her reply to above stated application admitted the facts that the marriage ceremony and the registration of "*Nikah Nama*" took place in the State of Azad Jammu & Kashmir, and that she is residing in Family Protection Rehabilitation Center I-8, Islamabad for the last 5-6 months.

7. The learned Court of First Instance, while forming its view qua return of plaint

placed reliance upon a reported judgment of this Court in the case of '*Majid Hussain v. Farah Naz & others'* (**2017 YLR 84)** wherein by referring Section 14-B of the Pakistan Citizenship Act, 1951, it was held that the citizens of Azad Jammu &Kashmir do not fall within the definition of Citizen of Pakistan. Para No. 9 of the judgment is reproduced hereunder;-

> " *Now, Section 14B ibid speaks of subjects of the 'State of Jammu and Kashmir' and not of subjects of citizens of Ázad Jammu and Kashmir'. Who the subjects of the 'State of Jammu and Kashmir' are has been well-explained by the Supreme Court in the case of Inam-ul-Haq v. Chairman F.P.S.C, Islamabad (2005) SCMR 622), in the following terms;-*
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> *"After the partition of the Sub-Continent in the year 1949, the State of Jammu and Kashmir was forcibly occupied India. Some parts of the said State were, however, got liberated and are since called Azad Kashmir Territory while the remaining parts of the same are still under the Indian Occupation. Some residents of this Indian occupied Kashmir Migrated to Pakistan and are living in different parts of Pakistan and the Azad Kashmir Territory, marking time to return to their homeland, on settlement of the Kashmir dispute. These immigrants and their descendants, though living in Pakistan and Azad Kashmir appear to have preferred to continue to retain their status as subjects of the State of Jammu and Kashmir and their said status appear even to have been recognized by the State of Pakistan."*

8. The judgment referred to above guides to hold that in order to maintain a suit before the Family Court at Islamabad, it is mandatory for the plaintiff to show that any cause of action has arisen within the territorial limits of Family Court at Islamabad.

9. The facts of the instant case, as highlighted above, lead to draw inference that the case of the petitioner lacks essentials enumerated in the case of ***Majid Hussain*** (supra), therefore, the concurrent view of the two courts below does not call for any interference. Consequently, there left no need to proceed further with the instant writ petition which is accordingly **dismissed in limine**.

(ARBAB MUHAMMAD TAHIR*)*
JUDGE

Kamran