JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2059 of 2024

Mst. Adeela

VERSUS

Learned Addl. District Judge-1, Islamabad (East)

And

Writ Petition No. 2865 of 2024

Abdul Rauf

VERSUS

Learned Addl. District Judge-1, (East) Islamabad

PETITIONER BY: Mr. Muhammad Mazhar Javed, Advocate

RESPONDENT BY: Mr. Usman Ghani Swati, Advocate

DATE OF HEARING: 21.09.2026

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***AYYAZ SHAUKAT, J*:-** This judgment disposes of the connected constitutional petitions filed by Mst. Adeela and Abdul Rauf, which arise out of the judgment dated 27.05.2024 passed by the learned Additional District Judge-I, Islamabad (East), in Family Appeal No.157 of 2023. The said appeal arose out of the judgment and decree dated 11.07.2023 of the learned Judge Family Court, Islamabad (East). For the sake of convenience, the parties shall be referred to by their names hereinafter. Mst. Adeela impugns the setting aside of the decree in respect of maintenance, dowry articles and three tolas of gold ornaments given by her parents, whereas Abdul Rauf assails the concurrent finding concerning the recovery of 3¾ tolas of gold ornaments specified as dower.

2. The marriage between the parties was solemnized on 06.04.2018. Column 13 of the Nikahnama (Ex.P2) records the dower as 3¾ tolas of gold ornaments and column 14 records that it was paid. Delivery of the said

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ornaments at the time of the marriage is not in dispute. No child was born out of the wedlock. Mst. Adeela's case is that on 24.12.2018 Abdul Rauf turned her out of the matrimonial home in District Okara, having taken her gold and other belongings, and that she has since lived with her parents in Islamabad. Abdul Rauf instituted a suit for restitution of conjugal rights before the Family Court, Okara (Ex.D5), and subsequently divorced Mst. Adeela.

3. On 25.01.2021, Mst. Adeela instituted a suit seeking maintenance at Rs.20,000/- per month from the date of desertion until her legal entitlement ceased, with an annual increase; recovery of 6¾ tolas of gold ornaments, comprising 3¾ tolas as dower and three tolas given by her parents; recovery of dowry articles or their alternative value; and recovery of Rs.50,000/- allegedly advanced as a loan. The suit did not contain a prayer for dissolution of marriage. In paragraph 8 of the plaint, Mst. Adeela pleaded that the cause of action first arose at the time of the marriage, and again on 24.12.2018, when Abdul Rauf allegedly turned her out of his house, and finally one week ago when the defendant flatly refused to accede to her demands. She further pleaded that the cause of action was continuing. Abdul Rauf contested the claims. Issues were framed and both parties produced oral and documentary evidence. Some dowry articles were recovered through the court representative during the pendency of the proceedings.

4. By judgment and decree dated 11.07.2023, the learned Family Court partially decreed the suit. Mst. Adeela was awarded maintenance at Rs.10,000/- per month from January 2019 until the end of her iddat period; recovery of the two separately claimed quantities of gold, or their alternative current market value; and recovery of the remaining dowry articles according to Ex.P3, or their alternative value of Rs.400,000/-. The claim for

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recovery of the alleged loan was rejected for want of subject-matter jurisdiction.

5. On Abdul Rauf's appeal, the appellate court recorded that the point of territorial jurisdiction was raised in the course of the hearing of the appeal. It maintained the decree for 3¾ tolas of dower gold, holding that since Abdul Rauf admitted having turning Mst. Adeela out, no question arose of her having taken the ornaments. It set aside the remaining reliefs for want of territorial jurisdiction. In reaching this conclusion, the learned appellate court observed that the parties had last resided together in District Okara, where the matrimonial home was situated. It held that the proviso to Rule 6 of the West Pakistan Family Courts Rules, 1965 (the **"Rules"**) confers jurisdiction on the court where the wife ordinarily resides only in suits for dissolution of marriage or dower, and cannot be extended to other claims. As regards the second proviso to section 7(2) of the West Pakistan Family Court Act, 1964 **(" the Act"**), the learned court was of the view that it merely permits joinder of claims and does not by itself confer territorial jurisdiction. For this proposition it relied on ***Major Muhammad Khalid Karim v. Mst. Saadia Yaqub*** **(PLD 2012 SC 66)**, in which ***Muhammad Iqbal v. Parveen Iqbal*** **(PLD 2005 SC 22)** had been declared *per incuriam*. The learned court declined to follow ***Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan*** **(PLD 2016 SC 613)**, reasoning that the decision had not considered ***Major Muhammad Khalid Karim*** or the effect of Rules 5 and 6 and was, therefore, not binding under Article 189 of the Constitution. It further held that Mst. Adeela had not specifically pleaded any "exception" whereby jurisdiction under Rule 6(a) or 6(b) could be brought within the proviso. In its view, once the claim for dower had been decreed, the territorial jurisdiction of the Family Court over the remaining reliefs ceased. Since Rule 5 does not contemplate the return of a plaint piecemeal, those reliefs could only be declined. The learned court also observed that

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section 18 of the Act, Rule 4 and the availability of video-link facilities adequately cater to the convenience of a female litigant. In support of this approach, it relied upon ***Khalida Bibi v. Mst. Shabnam-un-Nisa*** **(2020 CLC 47)**, ***Sharaf Faridi v. Federation of Pakistan*** **(PLD 1989 Karachi 404)** and ***Suo Motu Case No.4 of 2021*** **(PLD 2022 SC 306)**. It also relied, by analogy with Order VII Rule 11 CPC, upon ***Diamond Rubber Mills v. Pakistan Television Corporation*** **(1989 CLC 1989)**.

6. Learned counsel for Mst. Adeela contended that the impugned judgment is self-contradictory: it accepts the Family Court's jurisdiction over dower yet denies it over connected claims in the same suit. He submitted that a fresh cause of action accrued to Mst. Adeela on each refusal of her demands while she resided in Islamabad (East) after being turned out; that the scheme of the Act favours the convenience of the wife and the expeditious disposal of family disputes; and that the impugned judgment compels her to litigate before two fora. He further argued that the appellate court decided a family dispute on authorities concerning the jurisdiction of civil courts, contrary to section 17 of the Act. He placed reliance on ***Sohail Ahmed v. Mst. Samreena Rasheed Memon*** **(2024 SCMR 634)**, ***Mst. Yasmeen Bibi*** **(PLD 2016 SC 613)**, ***Khalid Karim*** **(PLD 2012 SC 66)**, with emphasis on paragraph 11(c), ***Shehla Jabbar vs. Ali Raza*** **(W.P No. 55/2024)** and ***Shahida Parveen v. Zafar Iqbal*** **(PLD 2014 Lahore 317)**, where a husband's restitution suit was transferred to the forum where the wife's suit for dissolution, maintenance and dowry was pending. He resisted Abdul Rauf's petition.

7. Learned counsel for Abdul Rauf defended the jurisdictional finding. He urged that the suit contained no prayer for dissolution; that the second proviso to section 7(2) cannot confer territorial jurisdiction; and that residence in Islamabad did not bring every claim within the proviso to Rule

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6. In his own petition, he further contended that, delivery of the dower gold being admitted and recorded in the Nikahnama, the burden lay on Mst. Adeela to prove its later snatching or retention; that she gave no date, time or place of the alleged snatching; that in cross-examination she stated the ornaments were handed over to her in-laws, without naming anyone, and none of them was impleaded; that Mst. Adeela was required to prove her claim "beyond doubt"; and that both courts proceeded on probabilities and on weaknesses in his case rather than on the strength of her own case.

8. Learned counsel for the parties have been heard and the impugned judgments have been examined. Two questions arise for determination. First, whether the appellate court rightly excluded the claims other than dower from the territorial competence of the Family Court at Islamabad (East). Second, whether its affirmance of the decree for dower gold dealt with the material evidence and objections. At the outset, the scope of review must be kept in view. The Act brings finality to family litigation at the appellate stage, and Article 199 of the Constitution is not a substitute for a second appeal; the High Court does not reappraise evidence to substitute its own view of the facts (see ***Arif Fareed v. Bibi Sara*, *2023 SCMR 413*** and ***M. Hamad Hassan v. Mst. Isma Bukhari*, *2023 SCMR 1434***). Interference is warranted by way of an exception, where findings rest on misreading or non-reading of evidence, an erroneous assumption, misapplication of law, or excess or abuse of jurisdiction (see ***Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa*, *2001 SCMR 338***, as endorsed *in Hamad Hassan*). The first question is one of law and jurisdiction. The second is examined only within these limits.

9. Section 5 of the Act, read with Part I of the Schedule, confers upon Family Courts exclusive jurisdiction over dower, maintenance, dowry, and the personal property and belongings of a wife (items 2, 3, 8 and 9). The

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appellate court rightly held that the Family Court had subject-matter jurisdiction over every relief now in issue. Section 7(1) of the Act requires a suit to be instituted in the court prescribed. Rule 4(2)(e) of the Rules requires the plaint to state the facts constituting the cause of action and the place and time of which it arose. Rule 5 provides for the return of a plaint presented to a court lacking jurisdiction. Rule 6 designates the court:

> ***6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which—***
>
> ***(a) the cause of action wholly or in part has arisen, or***
>
> ***(b) where the parties reside or last resided together:***
>
> ***Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction."***

Clauses (a) and (b) and the proviso are independent of, and alternative to, one another. Each must be considered where even the pleadings attract it.

10. The second proviso to section 7(2) permits the claims it lists to be joined in a plaint for dissolution of marriage. It pertains to joinder, not to territorial competence. In as much as, this suit contained no prayer for dissolution, it cannot be sustained as a composite suit under that proviso. That, however, closes only one route. It does not decide whether Rule 6 furnish another. This also serves to distinguish ***Shehla Jabbar v. Ali Raza and others*** **(W.P. No.55 of 2024**, **decided on 06.07.2026)**, where this Court held that the Family Court at Islamabad, seized of a suit for dissolution, could decide the joined claims for dower and other reliefs. In that case, the plaint was one for dissolution and the proviso to section 7(2) applied in terms; here it does not.

11. In **Khalid Karim (PLD 2012 SC 66**), the Hon'ble Supreme Court examined the question of territorial jurisdiction in proceedings for custody and guardianship. The Hon'ble Court explained Rule 6 in paragraph 11(c)

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and identified three bases of territorial jurisdiction: where the cause of action wholly or partly arose; where the parties reside or last resided together; and, under the proviso, in a suit for dissolution or dower, where the wife ordinarily resides. It added that claims joined with dissolution under the second proviso to section 7(2) "shall also fall in the last category, otherwise not". In paragraph 10, the Hon'ble Court held that the joinder proviso does not decide territorial jurisdiction, which "still remains to be regulated by Rule 6", and declared the wider view in **Muhammad Iqbal (PLD 2005 SC 22)** per incuriam. These said propositions are binding upon this Court and the courts below.

12. The words "otherwise not" limit the reach of the proviso. They do not operate to displace clauses (a) and (b). ***Khalid Karim*** itself applied clause (a) to hold that, absent unlawful removal, the place where a minor resides may be the place where the cause of action arises. The question that it left open to be answered in each case is therefore not only whether the proviso applies, but whether a part of the cause of action arose within the court's limits. The appellate court did not ask that question. Paragraphs 41 and 42 of the impugned judgment treated clauses (a) and (b) as "exceptions" to be "subsumed" into the proviso, and found fault with Mst. Adeela for not pleading such an exception. That amounts to a misreading of Rule 6. Clause (a) is not an exception to the proviso; it is the Rule's primary basis of jurisdiction.

13. As regards clause (a) of Rule 6, the pleaded case called for examination. The duty to maintain a wife is a continuing one. Mst. Adeela's case, supported by Abdul Rauf's own admission, is that he turned her out on 24.12.2018 and never maintained her thereafter, while she resided in Islamabad. Her claims for dowry and personal property are founded on his retention of her belongings and refusal to return them after she was turned

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out. Whether the non-payment of maintenance and the refusal to restore her property gave rise, in part, to a cause of action within Islamabad (East) is a question of mixed fact and law to be determined on the pleadings. It cannot be answered merely by identifying the former matrimonial home. In **Shehla Jabbar (supra)**, this Court held that the cause of action under clause (a) is to be read broadly, as comprising all the material events leading to the dispute, drew upon section 20 CPC by analogy, and treated the solemnization of the Nikah at Islamabad as attracting clause (a) even though both spouses resided at Lahore. The same broad construction is applicable here. Residence alone does not create a cause of action; but the continued default of an obligation owed to a wife who lives, by her husband's act, at a particular place is a matter which clause (a) requires the court to weigh.

14. There is a further reason why the objection could not succeed. No issue on territorial jurisdiction was framed. The appellate court records that the point was raised in the course of the hearing of the appeal. Abdul Rauf contested the suit on the merits through counsel, led evidence and cross-examined Mst. Adeela's witnesses. Section 17 of the Act excludes the application of the Code of Civil Procedure, but the principle reflected in section 21 of the Code remains a sound guide: an objection to the place of suing is to be taken at the earliest opportunity, and a decree on the merits ought to be set aside on that ground unless a failure of justice has resulted. That principle rests on the settled distinction between a court which has no power over the subject matter, whose decree is a nullity, and a court which has such power but sits at a place said to be inconvenient to the defendant. No failure of justice has been shown in the present case.

15. The appellate court relied on **Khalida Bibi (2020 CLC 47)**, **Sharaf Faridi (PLD 1989 Karachi 404)** and **Suo Motu Case No.4 of 2021 (PLD**

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2022 SC 306) to treat territorial competence as a "first category" question the absence of which renders the proceedings a nullity. Those authorities enunciate general principles about jurisdiction and the judicial process. None of them construes Rule 6, and none arose out of a family suit. The general observation in **Khalida Bibi** that a territorial defect cannot be cured by consent must be read in the context of the controversy decided therein; it does not abolish the distinction drawn above. Equally, reliance on **Diamond Rubber Mills** and Order VII Rule 11 CPC could not displace the specific scheme of Rules 4 to 6 of the Rules. As learned counsel for Mst. Adeela rightly submitted, the question was required to be determined within the Act and the Rules.

16. **Mst. Yasmeen Bibi (PLD 2016 SC 613)** is the closer authority on the facts. There, after divorce, the wife instituted a suit at Multan for dower, maintenance and dowry, including enforcement of a Nikahnama undertaking about land in Dera Ismail Khan. The Hon'ble Supreme Court set aside the restrictive approach adopted by the courts below. For ease of reference, paragraph 17 is reproduced hereunder:

> ***"17. As in this case, the landed property, given to the wife, or the undertaking given in the 'Nikah Nama', to be transferred in her name is conclusive in nature and may be construed as a part of dower or a gift in consideration of marriage, therefore, it was falling within the exclusive domain of the Family Court at Multan, as the wife was/is residing there, which has not been denied by the respondent."***

Irrespective of whether or not that judgment discussed Rule 6 expressly, it upheld the jurisdiction of the Family Court at the wife's residence over post-divorce financial claims instituted together with dower. It is not to be understood as departing from **Khalid Karim**, a decision of a larger Bench. The two decisions address different situations and can be applied harmoniously: **Khalid Karim** fixes the reach of the proviso and preserves

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clause (a); **Yasmeen Bibi** shows that financial claims flowing from the marriage and instituted with dower are not to be fragmented on a narrow view of territorial competence. Before declining to follow **Yasmeen Bibi** under Article 189, the appellate court was obliged to identify the principle laid down therein and ask whether it could be reconciled with **Khalid Karim.** It did not do so.

17. **Sohail Ahmed (2024 SCMR 634)** clarifies that "ordinarily resides" in the proviso is not synonymous with permanent residence. It arose out of a marriage solemnized abroad and does not by itself extend the proviso to claims other than dissolution and dower. Here, however, Mst. Adeela's ordinary residence in Islamabad was accepted. The infirmity lies in the appellate court's treatment of the claims instituted with dower, not in the finding of residence.

18. The proposition that jurisdiction over the other reliefs "ceased" on 11.07.2023, when dower was decreed, cannot be sustained. Territorial competence is tested at the time of institution of the suit, with reference to the plaint and the governing law. The grant of one relief in the same final judgment does not extinguish competence over the others. Nor can the absence of a mechanism for returning a plaint piecemeal furnish a ground of setting aside a decree on the merits. If the court truly lacked territorial jurisdiction, the course prescribed by Rule 5 was the return of the plaint, not the substantive defeat of the claims. The observation that section 18, Rule 4 and video links meet a female litigant's convenience does not address the question either; those provisions govern how a party appears, not which court is competent.

19. For these reasons, the exclusion of Mst. Adeela's claims for maintenance, dowry articles and three tolas of parental gold on territorial grounds cannot be sustained. This conclusion rests on the failure to consider

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Rule 6(a), construed as in **Shehla Jabbar**, on the belated taking of the objection without any failure of justice, and on the errors noticed in paragraphs 15, 16 and 18. It is strictly confined to this suit, which included a claim for dower and was instituted where Mst. Adeela's ordinary residence was accepted. It does not lay down any general rule dispensing with Rule 6 in independent suits for maintenance, custody, guardianship or other matters.

20. Abdul Rauf's petition raises a different question. Delivery of the dower gold at the time of marriage is admitted and recorded in column 14 of the Nikahnama. Once delivered, the ornaments became Mst. Adeela's property. Her claim is therefore not for unpaid dower but for the return of her property alleged to have been taken or retained after delivery. The appellate court described the point as "restoration of dower in lieu of divorce"; that description does not accurately reflect the issue. Proof of the original delivery does not establish the later taking. Equally, delivery does not entitle the husband thereafter to appropriate the ornaments.

21. The standard of the proof is the balance of probabilities. The contention that Mst. Adeela was required to prove her claim beyond doubt is misconceived. Although section 17 excludes the formal application of the Qanun-e-Shahadat Order, 1984, the Family Court must still arrive at a reasoned determination as to where the burden lies and whether it has been discharged. Facts may be proved by credible testimony read with the surrounding circumstances, including facts that are peculiarly within one party's knowledge. But an inference must arise from the evidence and relate to the disputed transaction. That Mst. Adeela was turned out of the house is relevant; it does not by itself establish that every ornament remained in Abdul Rauf's possession.

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22. The record discloses materially different accounts. The plaint alleges that Abdul Rauf snatched the gold when he turned Mst. Adeela out. Paragraph 17 of the trial court judgment records the statement of PW-2 to the effect that the dower gold was given back by Mst. Adeela to Abdul Rauf's family. Abdul Rauf's petition attributes a similar statement to Mst. Adeela herself in cross-examination. In his restitution suit (Ex.D5) Abdul Rauf pleaded that Mst. Adeela left in his absence taking Rs.1,00,000/-, three tolas of his sisters' gold and one tola of his own, whereas in cross-examination he admitted having turning her out. The trial court also noted that neither side had put relevant questions in cross-examination. These accounts were required to be weighed together. A handing over to Abdul Rauf's family does not necessarily defeat the claim against him; equally, it cannot be treated, without examination, as proof that he received or retains the ornaments. Whether the members of his family were necessary parties, and whether he is answerable for ornaments said to be with them, also called for determination.

23. The appellate court's reasoning in paragraphs 7 and 8 rests on two considerations: the contradiction between Abdul Rauf's pleading in Ex.D5 and his admission in cross-examination, and the inference that because he turned Mst. Adeela out, she could not have taken the ornaments. It does not advert to the statement of PW-2 recorded by the trial court, to Mst. Adeela's own account in cross-examination, or to the question whether any handing over to the family is attributable to Abdul Rauf. That omission amounts to non-reading of material evidence going to the root of the finding. It brings the matter within the exception recognised in **Lehrasab Khan** and **Hamad Hassan**. The court representative's report on household articles is relevant context but does not settle where the gold was.

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24. Concurrent findings ordinarily warrant restraint, and this Court does not reappraise the depositions to substitute its own finding. For that reason it neither dismisses the claim to the dower gold nor sustains it on isolated passages. The appellate court is the final forum for fact finding under the Act and must decide the point on the entire evidence. Nothing in this judgment shall be construed as expressing any opinion as to which account should be accepted.

25. In view of its jurisdictional conclusion, the appellate court did not decide the merits of the other reliefs. These reliefs too, must be decided on remand, on the existing record. As regards maintenance, the appellate court shall determine entitlement, quantum and period, including the relevant dates of divorce and completion of iddat. As regards dowry, it shall distinguish the articles already delivered on 16.04.2023 from those remaining, and examine the basis of the alternative value of Rs.400,000/-. As regards the three tolas of parental gold, it shall examine Ex.P4 and the evidence of delivery and retention, in the light of section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976, under which dowry and bridal gifts vest absolutely in the bride. The matters enumerated above merely identify the questions to be decided; they are not findings. The appellate court shall decide each of them independently on the evidence, uninfluenced by any observation in this judgment.

26. The claim for recovery of Rs.50,000/- as a loan stands on a different footings. The Family Court declined it for want of subject-matter jurisdiction, the appellate court concurred, and Mst. Adeela's petition seeks restoration only of the reliefs that were decreed. This judgment does not revive that claim or enlarge the remand to include it. Any remedy otherwise available to the parties remains governed by law.

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27. In the result, both petitions are partly **allowed**. The appellate judgment dated 27.05.2024 is **set aside** to the extent that it decides Family Appeal No.157 of 2023 in respect of maintenance, dowry articles and both quantities of gold ornaments. The appeal shall stand restored before the competent appellate court for fresh decision on those matters, on the existing record and after hearing both parties, in the light of the observations recorded above, which are confined to the questions requiring decision. The judgment and decree dated 11.07.2023 shall, to that extent, remain the subject of the restored appeal. The appellate court shall endeavour to decide the appeal within **sixty days** from the date of receipt of this judgment. Amounts paid and articles delivered shall be duly accounted for, and no recovery already effected shall be reversed solely on account of this remand. There shall be no order as to costs.

28. The office shall forthwith transmit a copy of this judgment to the learned District Judge, Islamabad (East). The parties shall appear before the learned District Judge, Islamabad (East), on **07.10.2026** for the purpose of entrustment of the restored appeal to the competent appellate court.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **30.09.2026.**

JUDGE

Approved for reporting.

Saeed.

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