JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 223 OF 2025

IMRAT RAFIQUE

VS.

ADDITIONAL DISTRICT JUDGE, WEST-ISLAMABAD, ETC

Petitioner by	**:**	**Mr. Imran Feroz Malik and Mr. Muhammad Sajjad Baloch, Advocates.**
Respondents by	**:**	**Ch. Nasir Abbas Minhas, Advocate for the Respondent No.2.**
Date of hearing	**:**	**30.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), the Petitioner has assailed the Judgment and Decree dated 19.12.2023 ("**Impugned Judgment and Decree-I"**) passed by the learned Senior Civil Judge-II/Judge Family Court, Islamabad-West **("Family Court")**, whereby the Suit for Recovery of Gold Ornaments, filed by Faisal Iqbal **("Respondent No.2/Plaintiff")**, was decreed to the effect that Mst. Imrat Rafiq **("Petitioner/Defendant")** shall return the gold ornaments weighing 4.25 tolas to Respondent No.2/Plaintiff, or pay their current market value. The Petitioner/Defendant has also challenged the Judgment dated 11.12.2024 (**Impugned Judgment and Decree-II**) whereby her Appeal, filed against the Impugned Judgment and Decree-I, was dismissed by the learned Additional District Judge, Islamabad-West **("Appellate Court")**.

2. The brief facts of the case are that Respondent No.2 filed a Suit for Recovery of Gold Ornaments before the learned Senior Civil Judge/Judge Family Court, West-Islamabad, contending that he contracted marriage with the Petitioner/Defendant on 17.09.2017. Subsequently, differences arose between the parties and the Petitioner/Defendant filed a Suit for Dissolution of Marriage, which was decreed on the basis of a compromise between the parties, vide Judgment and Decree dated 19.12.2022. The Respondent No.2/Plaintiff alleged in the recovery suit that it was

agreed that the Petitioner/Defendant would return 4.25 tolas of gold within 45 days of the decree, which she has not yet returned.

3. The suit was contested by the Petitioner/Defendant through a written statement. Vide Order dated 23.11.2023, issues were framed by the learned Trial Court. In order to prove their respective claims, Respondent No.2/Plaintiff appeared as PW-1 and recorded his statement via Affidavit in evidence (Ex.P-1/1-3). In documentary evidence, he produced a copy of the Affidavit titled "Imrat Rafiq vs. Faisal Iqbal" as Ex.P-1/2, copy of *Nikahnama* as Ex.P-2, copy of Iqrar Nama/Compromise Deed as Ex.P-3, and copy of the suit titled "Mst. Imrat Rafiq vs. Faisal Iqbal" as Ex.P-4. The Petitioner/Defendant appeared as DW-1 and submitted her Affidavit in evidence as Ex.D-1. After hearing arguments, the learned Trial Court**,** vide Impugned Judgment and Decree-I**,** decreed the suit filed by Respondent No.2/Plaintiff. Being aggrieved, the Petitioner/Defendant filed an Appeal before the learned District Judge, West-Islamabad, which was entrusted to the learned Appellate, which after hearing arguments, dismissed the Appeal vide Impugned Judgment and Decree-II. Hence, the instant Writ Petition.

4. The learned counsel for the Petitioner argued that the Impugned Judgments reflect a reckless exercise of discretion and are therefore liable to be set aside; that the Impugned Judgments are oppressive and warrant interference by this Court; that it has been ignored by the Courts below that amount was paid to the respondent in presence of counsel of the parties; that no proper appraisal of the Petitioner's financial condition was undertaken, nor was her version properly considered; that the Judgment of the learned Appellate Court is discriminatory, as similar appeals were treated differently, contrary to law; that the Petitioner was made to suffer without proper reasoning, violating principles of natural justice; and that the Impugned Judgments are against societal norms and established precedents of superior Courts. Lastly, the learned counsel for the Petitioner prayed for acceptance of the instant petition, setting aside of the Impugned Judgments, and dismissal of Respondent No.2's/Plaintiff's suit.

5. On the other hand, learned counsel for Respondent No.2/Plaintiff opposed the petition and prayed for its dismissal on the ground that the Impugned Judgments are well-reasoned and based on the evidence available on the record; and that there is no misreading or non-reading of material evidence.

6. I have heard the learned counsel for the parties and carefully gone through the record, including the Impugned Judgments and evidence led before the learned Trial Court. The /Defendant challenges the concurrent findings of fact rendered by both the learned Trial Court and the learned Appellate Court, which decreed the Suit for Recovery of 4.25 tolas of Gold Ornaments or their market value in favour of Respondent No.2/Plaintiff. The challenge is primarily based on alleged misreading of evidence, failure to consider financial constraints, violation of principles of natural justice, and unequal treatment in appeal outcomes.

7. At the outset, it must be clarified that the scope of jurisdiction under Article 199 is supervisory and not appellate. The High Court does not sit as a court of appeal over the factual findings of subordinate Courts. Interference is warranted only if there is a jurisdictional defect, legal infirmity, gross misreading/non-reading of evidence, or if the Impugned Orders are perverse or arbitrary. Mere dissatisfaction with the conclusion reached by the subordinate Courts is not sufficient ground to invoke Constitutional jurisdiction.

8. On merits, the record reveals that Respondent No.2/Plaintiff contracted marriage with the Petitioner/Defendant on 17.09.2017. Subsequently, differences led to the filing of a Suit for Dissolution of Marriage by the Petitioner/Defendant, which was decreed on the basis of a compromise. The document relied upon by Respondent No.2/Plaintiff to claim return of gold ornaments is the Iqrar Nama/Compromise Deed (Ex.P-3), wherein it was allegedly agreed that the Petitioner would return 4.25 tola of gold ornaments within 45 days of the execution of the Compromise Deed.

9. The Respondent No.2/Plaintiff appeared as PW-1 and recorded his statement via Affidavit, supported by Ex.P-1 to Ex.P-4, including Iqrar Nama/Compromise Deed (Ex.P-3). This document, Ex.P-3, is central to the case. It clearly mentions the obligation upon the Petitioner to return the gold ornaments. The Petitioner did not deny the execution of this document during trial, nor did she move any application seeking its cancellation, disputing its genuineness, or challenging its evidentiary value. No forensic or rebuttal evidence was brought to discredit the same.

10. The Petitioner/Defendant, while asserting in her statement that she had returned the ornaments to the Respondent No. 2/Plaintiff, failed to produce any

receipt, acknowledgment, or other documentary evidence in support of this assertion. In cases involving recovery or return of gold, particularly in family matters, Courts require substantive proof of such return. The law demands that a party asserting discharge of obligation must prove it affirmatively. Mere self-serving statements, unsupported by documentation, do not suffice.

11. Additionally, the Petitioner/Defendant claimed that the gold ornaments were returned in the presence of the Respondent No. 2's/Plaintiff's counsel and other persons**,** yet not a single such witness was produced during the trial. The record is completely silent on why these witnesses were not brought or examined under oath. This failure to corroborate a material assertion through independent evidence significantly weakens the Petitioner/Defendant's credibility.

12. The burden to prove an affirmative defense, such as return of property, lies on the party asserting it. Where a party claims to have discharged a legal obligation, it must establish the same with cogent, reliable, and preferably documentary evidence. The Petitioner's/Defendant's bare statement, unsupported by any proof, is legally insufficient.

13. The learned Trial Court and the learned Appellate Court, after appreciating the oral and documentary evidence, reached a consistent finding that the Petitioner/Defendant failed to rebut the contents of Ex.P-3 and also failed to establish the return of gold ornaments. The Impugned Judgments and Decrees are well reasoned, lawful, and based on a sound appreciation of evidence. No element of misreading, non-reading, or perversity is visible from the record that would attract interference by this Court under Article 199.

14. The Petitioner's/Defendant's contention that her financial condition was not considered is also unsubstantiated. No financial documents, statements of income, or evidence of indigency were brought on record. The argument is devoid of any evidentiary backing and appears to be an afterthought raised for the first time during Constitutional proceedings. The Courts decide matters on the basis of record and evidence, not on hypotheticals or vague assertions.

15. As to the grievance that "appeals were treated differently," the Petitioner/Defendant has not cited any comparable appeal or shown how such alleged differential treatment occurred. No record of the parallel appeal has been

placed before this Court, and even otherwise, uniformity of outcomes cannot be claimed unless facts and evidence are identical, which is not demonstrated here. Therefore, the allegation of discriminatory treatment remains vague and misconceived.

16. Lastly, the assertion that the Petitioner/Defendant was not afforded fair opportunity is unsupported by any portion of the trial or appellate record. The Impugned Judgments and Decrees reflect due consideration of evidence, proper reasoning, and do not suggest any violation of natural justice. The findings are neither arbitrary nor capricious.

17. In view of the above detailed analysis, it is evident that both the Courts below have exercised jurisdiction lawfully and rendered findings supported by the material available on record. No Constitutional or legal ground has been made out for interference in Writ Jurisdiction. The Petition is meritless and is hereby ***dismissed***.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of July 2025.

JUDGE

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