JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 530 OF 2025

AZHAR IQBAL

VS

ADDITIONAL DISTRICT JUDGE-XI, WEST, ISLAMABAD, ETC.

Petitioner by : Mr. Abdul Quddos Warraich Advocate.

Respondents by : Mr. Shafqat Abbas Tarar, Advocate for Respondent No. 3.

Date of hearing : 21.03.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition, the Petitioner/Defendant No. 1 has assailed the Judgment and Decree dated 21.10.2021 **("Impugned Judgment and Decree I")** passed by learned Judge Family Court (West), Islamabad **("Trial Court")** whereby Civil Suit for Recovery of Maintenance Allowance filed by the Respondent No. 3/Plaintiff has been decreed. The Petitioner/Defendant No. 1 has further assailed the Judgment and Decree dated 10.01.2025 **("Impugned Judgment and Decree II")** whereby the Petitioner/Defendant No. 1's Appeal against the Impugned Judgment and Decree I has been dismissed by the learned Additional District Judge-XI (West), Islamabad **("Appellate Court")**.

2. The brief facts of the case in hand are that Respondent No.3 contracted marriage with the Petitioner/Defendant No. 1 on 15.06.2015 as per Muslim Laws. Prior to marriage, the Petitioner/Defendant No. 1 was abroad in connection with his job and came to Pakistan at the time of marriage. After the marriage, the Petitioner/Defendant No. 1 again went abroad without informing Respondent No. 3/Plaintiff and has been there for the last three and half years and Respondent No. 3/Plaintiff was left at the mercy of Respondents Nos. 4 & 5. The Respondent No. 3/Plaintiff time and again asked the Petitioner/Defendant No. 1 to pay for maintenance of the Respondent No. 3/Plaintiff but he failed to do so. Hence, Respondent No. 3/Plaintiff filed a Suit for Recovery of Maintenance before the learned Trial Court. The learned Trial Court issued notices to the Petitioner/Defendant No. 1 who failed to appear before the court and ex-parte proceedings were carried out against him. The Respondents Nos. 4 & 5/Defendants Nos. 2 & 3 appeared before the learned Trial Court and submitted their written

statement, opting to contest the suit. The learned Trial Court after framing of issues, directed the parties to produce their respective evidence. The Respondent No.3/Plaintiff appeared in the witness box as PW-1 and produced her affidavit as Ex.P-1. She also produced Saleem Ahmed son of Muhammad Aslam and Muhammad Aslam son of Nazar Muhammad who got recorded their statements as PW-2 & PW-3 through affidavits Ex.P-3 & Ex.P-4. She also produced a copy of Nikahnama as Ex.P-2. Statements of Respondents Nos. 4 & 5/Defendants No.2 & 3 were recorded as DW-1 & DW-2 respectively. After hearing arguments from both sides, the learned trial court vide impugned judgment and decree-I dated 21.10.2021, held that Respondent No.3 was entitled for recovery of maintenance allowance from the Petitioner/Defendant No.1 at the rate of Rs. 20,000/- per month from the date of Nikkah till subsistence of her marriage. Thereafter, the Petitioner/Defendant No. 1 filed an application for setting aside Ex-parte Judgment and Decree dated 21.10.2021, which was dismissed vide order dated 11.06.2024. Being aggrieved from the Impugned Judgment and Decree-I and Order dated 11.06.2024, the Petitioner/Defendant No. 1 filed an appeal before the learned Appellate Court which was dismissed vide Impugned Judgment and Decree dated 10.01.2025. The Petitioner/Defendant No. 1 being aggrieved from the Impugned Judgments and Decrees, has filed the instant writ petition.

3. The learned counsel for the Petitioner/Defendant No. 1 argued that the Impugned Judgment and Decree dated 10.01.2025 is illegal, unlawful, and without any lawful justification, hence, the same is liable to be set-aside; that the learned Trial Court without any lawful reason granted maintenance allowance from the date of Nikah till subsistence of her marriage, which is absolutely illegal and unlawful; that the Respondent No. 3/Plaintiff admitted that she left the house of the Petitioner/Defendant No. 1 in year 2017, but the learned Trial Court granted the maintenance allowance from the date of Nikah i.e.15.06.2015, hence, the Impugned Judgment and Decree dated 21.10.2021 is liable to be set aside; that in fact, the Respondent No. 3/Plaintiff has been divorced in the year 2016 but the concerned Secretary, Union Council has not issued the Divorce Certificate in connivance and with collusion of Respondent No. 3/Plaintiff; that the Impugned Judgments and Decrees are result of misreading and non-reading of evidence; that Respondent No. 3/Plaintiff was entitled to file the family suit in the District Court of Gujrat, however, she filed the suit in the Family Court, Islamabad, with *malafide* intentions and ulterior motives and with the same malicious intent, impleaded the Petitioner/Defendant No. 1's real brother and his wife as parties to the case, solely to delay the proceedings and waste the Court's time, as well as to blackmail and

pressurize them. that the impugned Judgements and Decrees are not sustainable in the eyes of law; that the learned lower courts have miserably failed to decide the matter on its true perspective, hence, the Impugned Judgments and Decrees are liable to be set aside; that the Impugned Judgments and Decrees are violative of dictums of the superior Courts as well as the Family Court Act; that the learned lower courts have not applied their judicial mind and passed the Impugned Judgments and Decrees in hasty and perverse manner; that the Impugned Judgments and Decrees are clear violation of Article-4 and other provisions of the Constitution. Lastly, the learned counsel prayed that the instant Writ Petition may be accepted and the Impugned Judgments and Decrees may graciously be declared as illegal, unlawful, and without any lawful authority in the interest of justice and equity.

4. On the other hand, the learned counsel on behalf of Respondent No. 3/Plaintiff argued that the Petitioner/Defendant No. 1's counsel has failed to point out any illegality in the Impugned Judgments and Decrees; that the learned Trial Court has rightly decreed the suit of Respondent No. 3/Plaintiff, based on the correct appreciation of facts and by applying a proper judicial mind; that the learned lower courts have passed the Impugned Judgments and Decrees, keeping in view the facts and evidence available on record. Finally, the learned counsel prayed for the dismissal of the instant petition.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. The Respondent No. 3/Plaintiff filed Suit for Recovery of Maintenance Allowance for the last three and half years and future maintenance allowance at the rate of Rs. 125,000/- per month against the Petitioner/Defendant No. 1, his brother, and his sister-in-law. Notices were issued against the Defendants and the Petitioner/Defendant No. 1 was served through substituted service by publication in the international newspaper, while his brother and his sister-in-law appeared and contested the suit. The Petitioner/Defendant No. 1 was in the knowledge of the said suit as his real brother and his sister-in-law contested the suit but despite that, he failed to appear before the learned Trial Court and he was proceeded ex-parte and ultimately the Impugned Judgment and Decree dated 21.10.2021 was passed. The Petitioner/Defendant No. 1 then challenged the said Judgment and Decree before the learned Appellate Court and his Appeal was dismissed vide the Impugned Judgment and Decree dated 10.01.2025.

7. The Petitioner/Defendant No. 1 has now challenged both the Impugned Judgments and Decrees of the learned Trial Court and the Appellate Court on the ground that the Respondent No. 3/Plaintiff left his house in the year 2017 and she cannot claim maintenance allowance from the date of marriage i.e. 15.6.2015 and the learned Courts below have not considered this aspect. The Petitioner/Defendant No. 1 despite knowledge did not appear before the learned Trial Court to contest or defend his claim or version and now he is agitating it before the Appellate Court and before this Court in Writ Jurisdiction. The Petitioner/Defendant No. 1 claims that he was not served with proper notice of the proceedings or the decree as required under Section 9(7) of the Family Courts Act, 1964; however, this is not true, as his brother, acting as a Special Attorney, contested the suit. The purpose of Section 9(7) of the Family Courts Act, 1964 is to ensure that a copy of the ex-parte decree, along with the notice, is served upon the defendant to prevent delays in execution, particularly in cases involving the rights of women and children. Under Section 9(6) of the Act, the defendant must demonstrate sufficient cause for failing to file an application for setting aside the decree within the prescribed time. In the present case, the Petitioner/Defendant No. 1 contends that he was not served with the decree as required; however, without providing sufficient cause or a satisfactory explanation for his lack of knowledge of the proceedings, this claim will hold no ground. The legislature's intent in providing one appeal is to expedite the litigation process, ensuring that women and children do not have to endure prolonged delays in seeking justice for their rightful claims. Moreover, the Petitioner/Defendant No. 1 has failed to point out any illegality or irregularity in the Impugned Judgments and Decrees.

8. For the foregoing reasons, the concurrent findings of the learned Courts below require no interference. Therefore, the Petition lacking merits is hereby **dismissed.**

(MUHAMMAD AZAM KHAN)
JUDGE

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