JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1115 of 2026

Madeeha Bibi and others

VERSUS

Faiser Mehmood and another

PETITIONER BY: Ms. Mahreen Abbasi, Advocate

RESPONDENT BY: Mr. Muhammad Shakil Abbasi, Advocate

DATE OF HEARING: 17.09.2026

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***AYYAZ SHAUKAT, J*:-** By means of this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment dated 01.10.2025 passed by the learned Additional District & Sessions Judge, Islamabad-East (respondent No.2), whereby Family Appeal No. 198 of 2024 preferred by respondent No.1 was allowed, and the order dated 09.09.2024 of the learned Senior Civil Judge (Guardian)/Judge Family Court, Islamabad-East, dismissing his application for setting aside the ex parte judgment and decree, as well as the ex parte judgment and decree dated 30.11.2023 itself, were set aside subject to payment of costs of Rs.10,000/-, and the suit was remanded for proceedings afresh from the stage of the appearance and filing of the written statement.

2. Petitioner No.1 and respondent No.1 were married on 18.10.2015. Petitioners No.2 and 3, the minors, were born out of the wedlock. The parties separated in July 2022. On 07.07.2022, respondent No.1 caused FIR No. 1286/2022 to be registered at Police Station Koral, Islamabad, under section 496-A PPC, in which he recorded his own mobile telephone number as 0316-5164830. According to respondent No.1's own averments in his memorandum of appeal, petitioner No.1 had earlier instituted a suit for

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dissolution of marriage on the basis of khula on 28.07.2022, which was dismissed on 08.01.2023 after he had entered appearance therein.

3. On 17.06.2023, the petitioners instituted Family Suit No. 8425 of 2023 before the learned Family Court, Islamabad-East, for dissolution of marriage on the basis of khula, recovery of dowry articles, recovery of gold ornaments mentioned in the Nikahnama, and maintenance of petitioner No.1 and the minors. On the same day, the Family Court directed summons to be issued to the defendant for 25.07.2023. Summons were thereafter reissued for 04.10.2023. The report of the process server dated 03.10.2023 records that respondent No.1 was not found at the given address and that he was contacted on mobile number 0316-5164830 and informed of the date of hearing. He failed to appear. The Family Court proceeded on the premise that service through ordinary means was not possible, ordered publication of the notice in the daily "Ausaf", and, upon his non-appearance, proceeded against him ex parte on 25.10.2023.

4. Petitioner No.1 tendered her affidavit by way of ex parte evidence (Ex.P1) and produced the list of dowry articles (Ex.P2) and a copy of her CNIC (Ex.P3). She also produced Muhammad Shafique as PW-2, whose affidavit is Ex.P4. By ex parte judgment and decree dated 30.11.2023, the suit was decreed in respect of: (i) dissolution of marriage on the basis of khula; (ii) maintenance of petitioner No.1 at the rate of Rs.10,000/- per month from 07.07.2022 until the expiry of the period of iddat; (iii) recovery of gold ornaments; (iv) recovery of dowry articles as per Ex.P2; and (v) maintenance of both minors at the rate of Rs.15,000/- per month with 10% annual increase from 07.08.2022 until their legal entitlement. Petitioner No.1 was directed to return the dower to respondent No.1, if received by her, and a copy of the decree was directed to be sent to the concerned Union Council.

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5. It is averred in the petition that petitioner No.1 observed the period of iddat and that the concerned Union Council, after completing its proceedings, issued a certificate of divorce. The petitioners thereafter initiated execution proceedings. According to respondent No.1, learned counsel for the decree-holders transmitted to him the execution summons through WhatsApp on 23.02.2024, and when he appeared before the executing court on 27.02.2024, he became aware of the suit and the ex parte decree. He then filed an application for setting aside the ex parte judgment and decree, alleging non-service. The application was contested and was dismissed by the learned Family Court vide order dated 09.09.2024, holding that the affidavit of the process server showed personal service through telephone on the number provided by respondent No.1 himself in FIR No. 1286/2022, and that the plea of non-service was not substantiated by the record.

6. Respondent No.1 assailed the said order through Family Appeal No. 198 of 2024, filed on 23.09.2024, in which he also prayed for setting aside the ex parte judgment and decree dated 30.11.2023. The operation of the order dated 09.09.2024 was suspended on the same day. On 08.03.2025, on the request of the petitioners, the learned appellate Court directed respondent No.1 to pay interim maintenance to the minors at the rate of Rs.5,000/- each per month, adjustable against the final order. By the impugned judgment dated 01.10.2025, the appeal was allowed, principally on the grounds that: (a) the Family Court had not sent a notice of the passing of the ex parte decree along with a certified copy within three days as required by section 9(7) of the West Pakistan Family Courts Act, 1964 **("the Act")**; (b) no statement of the process server had been recorded to verify his report of service through a telephone call; (c) there was no evidence that the proclamation was circulated in the area of respondent No.1 or that a copy of it was dispatched to his address; (d) the mobile

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number of respondent No.1 was not verified; and (e) these omissions amounted to material irregularity, with the result that the ex parte decree, having been passed without lawful service, could not be sustained.

7. Learned counsel for the petitioners contended that respondent No.1 had actual knowledge of the proceedings through the telephonic intimation of 03.10.2023 on his own number, which is borne out by his own FIR, and had deliberately stayed away; that the learned appellate Court had misread the record; that non-compliance with section 9(7) of the Act merely postpones the commencement of limitation and does not vitiate a decree; that a decree of dissolution of marriage on the basis of khula is not appealable under section 14(2)(a) of the Act and, having been acted upon, with the iddat having expired and a divorce certificate having been issued, could not be undone; that the learned appellate Court had set aside the entire decree, including the reliefs of maintenance, dowry articles and gold ornaments, without examining them independently; and that the impugned judgment defeats the object of the Act, which is the expeditious resolution of family disputes and the protection of women and children. Reliance was placed upon the grounds urged in the petition.

8. Learned counsel for respondent No.1 defended the impugned judgment and submitted that the respondent was never served; that the respondent never resided at the address given in the plaint; that the petitioners were aware of the respondent's correct address; that no copy of the newspaper or of the ex parte decree was sent to the respondent; that the Family Court neither framed issues on his application nor afforded him an opportunity to lead evidence; and that the respondent has a valid defence on the claims for dowry articles, gold ornaments and maintenance, including his assertion that petitioner No.1 took away gold ornaments and cash of Rs.230,000/- when she left.

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

Points for determination

10. The petition raises the following questions for determination:

(i) The scope of the appeal before the learned appellate Court in view of the bar contained in section 14(2)(a) of the Act;

(ii) The legal consequence of non-compliance with section 9(7) of the Act;

(iii) Whether the finding of the learned appellate Court on the question of service calls for interference in the exercise of constitutional jurisdiction;

(iv) Whether the decree for dissolution of marriage on the basis of khula, which had been acted upon, could be set aside along with the ancillary reliefs; and

(v) The relief to be granted, including in respect of the maintenance of the minors.

(i) Scope of the appeal and the bar under section 14(2)(a) of the Act

11. Section 14(2)(a) of the Act provides that no appeal shall lie from a decree passed by a Family Court for dissolution of marriage, except in the case of dissolution for the reason specified in clause (d) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939. The decree in the present case was not passed on that ground.

12. The object of the bar was explained by the Hon'ble Supreme Court in ***Abid Hussain v. Additional District Judge, Alipur, District Muzaffargarh and another*** **(2006 SCMR 100)**, wherein it was observed that:

> *"…The object behind non-provision of appeal in case of dissolution of marriage is to protect women, an under privileged and generally*

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> *oppressed section of our society from prolonged and costly litigation…"*

The same view was followed in ***Shahbaz v. Fakhira Bibi*** **(2021 MLD 1506)** and ***Syed Ahmed Danish v. Mst. Mariam Baig*** **(2019 YLR 2362)**, where it was noted that a wife cannot be compelled to live with a husband against her wishes and must be protected from protracted litigation.

13. At the same time, an order refusing to set aside an ex-parte decree is independent of, and subsequent to, the decree for dissolution of marriage, and an appeal against such an order is competent. This was held in ***Babu v. District Judge, Sahiwal and another*** **(PLD 1978 Lahore 85)**, where the distinction was drawn in these terms:

> *"…If the petitioner would have filed two appeals; (i) against the decree for dissolution of marriage … and (ii) against the order … refusing to set aside the ex parte decree, then the first mentioned appeal would not be competent because of the bar contained in section 14(2) of the Act. The second mentioned appeal would be competent because it would not be against the decree of dissolution of marriage but against a decision by the learned Family Judge refusing to set aside the earlier decree."*

14. The appeal of respondent No.1 was, therefore, competent insofar as it was directed against the order dated 09.09.2024. However, in his memorandum of appeal respondent No.1 also prayed, in terms, for setting aside the ex-parte judgment and decree dated 30.11.2023, and the learned appellate court granted that prayer in its entirety, including the decree for dissolution of marriage. The competence of an appeal against an order under section 9(6) does not convert it into an appeal against the decree for dissolution of marriage, which the legislature has consciously barred. When reversing the order of refusal, the appellate court was required to be mindful of that bar and to consider whether the consequence of its decision should extend to the dissolution of marriage at all. The impugned judgment does

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not advert to section 14(2)(a) of the Act, nor to the fact that the dissolution had been acted upon. This aspect is examined further under point (iv) below.

(ii) <u>Effect of non-compliance with section 9(7) of the Act</u>

15. Sub-sections (6) and (7) of section 9 of the Act, as substituted by Ordinance No. LV of 2002, read as follows:

> *(6) In any case in which a decree is passed ex-parte against a defendant under this Act, he may apply within thirty days of the service of notice under sub-section (7) of the passing of the decree to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree as against him, and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also.*
>
> *(7) The notice of passing of the ex parte decree referred to in sub-section (6) shall be sent to the defendant by the Family Court together with a certified copy of the decree within three days of the passing of the decree, through process server or by registered post, acknowledgement due, or through courier service or any other mode or manner as it may deem fit.*

16. The scheme of these provisions is manifest. Sub-section (7) imposes a duty upon the Family Court to inform the defendant of an ex parte decree already passed, and sub-section (6) links the commencement of the thirty-day limitation for an application to set the decree aside to the service of that notice. Before the 2002 amendment, sub-section (6) permitted such an application "within reasonable time of the passing" of the decree *(see Maj. Matloob Ali Khan v. Additional District Judge, East Karachi and another, 1988 SCMR 747)*; the amendment substituted a fixed period and tied it to the notice under sub-section (7). The notice under sub-section (7) is thus

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merely a mechanism that sets the clock of limitation running. It is not a step in the trial of the suit, and it is not a condition upon which the validity of the decree depends. An omission that occurs after a decree has been passed cannot, by its very nature, render that decree invalid.

17. The consequence of non-compliance with section 9(7) is, therefore, that limitation under section 9(6) does not commence and the defendant cannot be non-suited on the ground of delay. That consequence was fully exhausted in the present case: respondent No.1's application was entertained and decided on the merits, and no question of limitation was raised against him. The only questions before the Family Court, and before the appellate Court, were those framed by section 9(6) itself, namely whether respondent No.1 "was not duly served" or "was prevented by any sufficient cause from appearing". The learned appellate Court, with respect, misdirected itself in treating the non-compliance with section 9(7) as a ground vitiating the ex parte decree and as depriving respondent No.1 of "fair trial and due process". Its discussion on the inconsistency between rule 13 of the Family Court Rules, 1965 **("Family Court Rules")** and section 9(6) of the Act was likewise not germane to any issue arising in the appeal.

(iii) <u>The finding on service</u>

18. This Court, in the exercise of its constitutional jurisdiction, does not sit as a further court of appeal over findings of fact recorded by the fora below in family matters, which the legislature has intended to bring to an end at the appellate stage. Interference is warranted only where a finding is based on misreading or non-reading of material evidence, is perverse, or suffers from a jurisdictional defect.

19. The learned appellate Court observed that the mobile number of respondent No.1 had not been verified. That observation is contrary to the record. The number on which the process server contacted respondent No.1,

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namely 0316-5164830, is the very number that respondent No.1 recorded as his own in FIR No. 1286/2022, a document authored at his instance and relied upon by the Family Court in its order dated 09.09.2024. Respondent No.1 has at no stage denied that the number belongs to him. To this extent the impugned judgment suffers from non-reading of the record, and the said circumstance is relevant, at the very least, to the bona fides of respondent No.1 and to the question of costs.

20. That, however, does not conclude the question of "due service". The record shows that the Family Court itself did not treat the telephonic intimation as service: the ex parte judgment records that service through ordinary means was not possible, whereupon the Court resorted to substituted service by publication in the daily "Ausaf". The statement of the process server was never recorded, and nothing has been pointed out on the record to show that a copy of the publication was dispatched to or affixed at the address of respondent No.1, or that the registered post A.D. or courier issued under the order dated 17.06.2023 was received by him. In these circumstances, the conclusion of the learned appellate Court that due service within the meaning of section 9(6) was not established is a view reasonably open on the record, and it cannot be characterised as perverse. Section 17 of the Act does exclude the strict application of the Code of Civil Procedure to proceedings before a Family Court, but the requirement of a fair opportunity of hearing before an adverse decree is passed remains.

21. The ancillary reliefs granted by the ex parte decree, namely maintenance, recovery of dowry articles and recovery of gold ornaments, are money and property claims whose quantum and entitlement depend on evidence, and respondent No.1 has raised specific factual pleas in respect of them. The principle that such claims should ordinarily be decided on the merits after affording the defendant an opportunity of hearing applies with full force in respect of these reliefs. This Court, therefore, finds no ground to

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interfere with the impugned judgment insofar as it sets aside the ex parte decree to the extent of the ancillary reliefs and remands them for decision afresh.

(iv) Whether the decree of dissolution of marriage could be set aside

22. The position is materially different in respect of the decree for dissolution of marriage on the basis of khula. The right of a Muslim wife to seek dissolution of her marriage by way of khula, where the Court is satisfied that the spouses cannot live together within the limits prescribed by Allah, was authoritatively recognised by the Hon'ble Supreme Court in ***Mst. Khurshid Bibi v. Baboo Muhammad Amin*** **(PLD 1967 SC 97)**. The legislature has since reinforced that right through the proviso to section 10(4) of the Act, under which, in a suit for dissolution of marriage, if reconciliation fails, the Family Court is required to pass a decree for dissolution of marriage forthwith and to restore to the husband the Haq Mehr received by the wife in consideration of the marriage. The Family Court in the present case relied upon that provision and upon the unrebutted sworn statement of petitioner No.1 that she could not continue in the marriage.

23. A decree of khula, once it has taken effect, stands on a different footing from a decree for money or property. In ***Muhammad Siddique v. Rabia Rafique etc.*** **(PLJ 2024 Lahore 584)**, the Lahore High Court held that:

> *"Islamic Law does not permit revocation of dissolution of marriage effected through Khula. Section 7 has not changed the Islamic Law. Dissolution of marriage under the Family Courts Act, 1964 once having attained finality does not make it ineffective merely on the ground that notice of decree for dissolution of marriage was not given and certificate of effectiveness of said divorce was not issued by the concerned Union Council."*

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24. In ***Faisal Imran v. Mst. Shaheen*** **(2026 YLR 1939)**, the Lahore High Court upheld the refusal to set aside an ex-parte decree of khula where the divorce had attained finality and the wife had contracted a second marriage, observing that no effective relief could be granted and that interference would disturb settled rights.

25. Most pertinently, in ***Saeed Ahmed Khan v. VIIth Additional Sessions Judge, Hyderabad and 2 others*** **(2019 CLC 643)**, the Sindh High Court, having found that the ex parte decree had been obtained on defective substituted service, nevertheless confined its interference to the ancillary claim and left the dissolution of marriage on the basis of khula intact, remanding the suit:

> *"…for proceedings afresh only in respect of recovery of dowry articles by allowing petitioner/defendant to file his written statement and contest the suit on merits…"*

26. Respondent No.1 may seek to rely upon ***Pervaiz Ahmed v. Tahra Shaheen alias Balquees Shah Zadi*** **(1988 CLC 1644)**, where it was held that the wife's second marriage was not by itself a valid ground for dismissing, without inquiry, an application for setting aside an ex parte decree of dissolution. That case is, however, distinguishable. There, the Family Court had dismissed the application without any inquiry into service, whereas here the application was duly inquired into and decided. More importantly, that decision preceded the proviso to section 10(4) of the Act, under which the Family Court is now bound to decree dissolution forthwith once reconciliation fails.

27. Applying these principles, the setting aside of the decree for dissolution of marriage in the present case cannot be sustained, for the following reasons:

(a) The decree for dissolution of marriage was passed on 30.11.2023 and, according to the petitioners, was followed by the

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observance of iddat and the issuance of a divorce certificate by the Union Council. By the time the impugned judgment was passed, nearly two years had elapsed. The dissolution had been acted upon and had attained finality in the manner contemplated by **Muhammad Siddique (supra)**. The learned appellate Court did not advert to this aspect at all.

(b) Setting aside the dissolution would serve no lawful purpose. Upon remand, the Family Court would be bound to attempt reconciliation and, if it failed, to decree dissolution forthwith under the proviso to section 10(4) of the Act. Respondent No.1's own case, as pleaded in his memorandum of appeal and reflected in the FIR lodged by him, leaves no room to suppose that reconciliation is possible. Nowhere has he asserted a desire to restore the marital tie; his grievances relate to dowry articles, gold ornaments, cash and access to the minors. The law does not compel a futile exercise.

(c) The only consideration to which respondent No.1 would be entitled on the dissolution of marriage by khula, namely the restoration of the dower received by petitioner No.1, is already secured by the direction contained in the decree dated 30.11.2023, which is not disturbed.

(d) Reviving a marriage that has been dissolved and acted upon would unsettle the personal status of petitioner No.1 and expose her to uncertainty, and possibly to legal jeopardy, for a period of time for which she cannot be blamed. This would run directly counter to the object of section 14(2)(a) of the Act identified in **Abid Hussain (supra)**, and to the protection of marriage, the family, the mother and the child enjoined by Article 35 of the Constitution.

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(e) Section 9(6) of the Act does not require that an ex parte decree be set aside in its entirety. It speaks of setting the decree aside "as against him", and its proviso itself recognises that the nature of a decree bears upon the extent to which it is to be set aside. A suit combining a claim for dissolution of marriage with claims for maintenance, dowry articles and gold ornaments involves distinct and severable causes of action, and the decree is correspondingly severable. The learned appellate Court was not obliged to set aside the dissolution merely because it found that the ancillary claims required a trial on the merits, and, for the reasons given above, it ought not to have done so.

28. The impugned judgment, to the extent that it sets aside the decree for dissolution of marriage on the basis of khula, is therefore contrary to law and suffers from a jurisdictional defect warranting interference under Article 199 of the Constitution. The petitioners have no other adequate remedy, as the Act provides no further appeal or revision against the judgment of the appellate Court.

(v) Maintenance of the minors

29. The claim for maintenance of the minors (petitioners No.2 and 3) now stands remanded. The minors cannot be left without support during the pendency of the remanded proceedings. The learned appellate Court had, by order dated 08.03.2025, fixed interim maintenance at Rs.5,000/- per month for each minor, adjustable against the final order. That arrangement ought to continue until the Family Court fixes interim maintenance under section 17A of the Act, which it shall do at the earliest.

Order

30. For the foregoing reasons, this petition is partly allowed in the following terms:

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(i) The impugned judgment dated 01.10.2025 passed by the learned Additional District & Sessions Judge, Islamabad-East, is set aside only to the extent that it sets aside the decree for dissolution of marriage on the basis of khula. The ex parte judgment and decree dated 30.11.2023 is restored to that extent, together with the direction for return of dower to respondent No.1 if received by petitioner No.1. The dissolution of marriage between petitioner No.1 and respondent No.1 shall remain in the field.

(ii) The impugned judgment is upheld insofar as it sets aside the ex parte judgment and decree dated 30.11.2023 in respect of (a) maintenance of petitioner No.1 till the expiry of iddat, (b) maintenance of the minors, (c) recovery of dowry articles, and (d) recovery of gold ornaments, subject to the costs of Rs.10,000/- imposed by the learned appellate Court. The suit shall stand remanded to the learned Family Court, Islamabad-East, confined to these claims.

(iii) The parties shall appear before the learned Family Court on 07.10.2026. As respondent No.1 is already aware of the proceedings, no fresh notice to him shall be required. He shall file his written statement within fourteen days thereof, failing which the Family Court shall proceed in accordance with law. If proceedings have already commenced on remand pursuant to the impugned judgment, they shall continue but shall stand confined to the claims mentioned in clause (ii).

(iv) Respondent No.1 shall continue to pay interim maintenance to petitioners No.2 and 3 at the rate of Rs.5,000/- per month each, as fixed by the learned appellate Court on 08.03.2025, and shall also clear any arrears thereof within thirty (30) days, until the

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learned Family Court fixes interim maintenance under section 17A of the Act. All amounts so paid shall be adjustable against the final decree.

(v) The learned Family Court shall decide the remanded claims on the merits within ninety (90) days from the date of first appearance, without granting unnecessary adjournments to either party.

(vi) The observations made herein are confined to the disposal of this petition and shall not prejudice the learned Family Court in deciding the remanded claims on merits.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **01.10.2026.**

JUDGE

Approved for reporting.

Saeed.

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