

## **HIGH COURT OF AZAD JAMMU AND KASHMIR**

Family Appeal No.154/2025.

Date of Institution 13.05.2025.

Date of decision 27.05.2025.

Syed Mehmood Hussain Shah S/o Syed Sain Shah R/o Dhariayan  
Syedan, Ward No.21 Tehsil & District Muzaffarabad.

(Appellant)

Versus

1. Syeda Ujala Batool D/o Syed Mehmood Hussain Shah.
2. Syed Hamza Raza.
3. Syed Abdullah Raza.
4. Syed Ibraheem Raza sons of Syed Mehmood Hussain Shah through real mother Ghazala Fatima, R/o Gulshan Colony, Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

(Respondents)

### **FAMILY APPEAL**

Before:- **Justice Syed Shahid Bahar,** **J.**

#### **PRESENT:**

Syeda Ambreen Kazmi, Advocate for the appellant.

Syed Tabish Imam Kazmi, Advocate for the respondents.

#### **JUDGMENT:**

1. Through instant appeal, the appellant has called in question the interlocutory order passed by Family Court, Muzaffarabad dated 12.05.2025, whereby the application for installments and cancellation of warrant of arrest of the petitioner was rejected.

2. Brief facts of the instant appeal are that respondents- Syeda Ujala Batool D/o Syed Mahmood Hussain Shah and others filed a suit for maintenance allowance against defendant/appellant before Family Court, Muzaffarabad. During proceedings before the court below appellant filed an application for depositing Rs.10,000/- interim

maintenance alongwith order for cancellation of warrant of arrest issued against him. The learned Family Court rejected the application of the appellant vide impugned order dated 12.05.2025.

3. Arguments heard. Record perused.

4. The litigation between the parties is pending adjudication before Family Court, Muzaffarabad, regarding maintenance allowance *inter alia* monthly maintenance. The AJ&K Family Courts Act, 1993 is a special law governing and regulating the family disputes and appeal under Section 14 of the Family Courts Act, 1993, is competent only against decision or decree passed by Family Court, within 30 days of the date of decree or decision. Keeping in view the scheme of special law and in order to avoid the protracted litigation no appeal or revision is provided against interlocutory/interim order of the Family Court. Such interim or interlocutory orders in a sense which do not finally dispose of the cases are not appealable before Shariat Appellate Bench of High Court of AJ&K. In this regard I am fortified to follow the rational of judgmade law rendered by the Apex Court i.e. 2005 SCR 409, 2006 SCR 602, 2004 MLD 510, PLJ 2004 (AJK) 57, 2012 YLR 2231, 2012 SCR 205 and 2006 MLD 618.

5. After going through the preamble clause of the special law i.e. AJ&K Family Courts Act, are meant for expeditious settlement and disposal of the dispute relating to marriage and family affairs and for the matter connected therewith and in this connection a specific time line has been provided i.e. 120 days. In this view of the matter leaving aside the factual controversy I am not inclined to upset interlocutory

order of Family Court. Let the matter to be decided by the Family Court expeditiously and judiciously in accordance with law and as per scheme of rules made thereunder.

6. **Very purpose of the Statue i.e The Family Court Act require adjudication of the suits within a prescribed period of 04 months, that is why no right of appeal has been provided against interlocutory orders of the Family Court.**

7. Establishment of Family Courts is meant for settlement and disposal of the disputes within a prescribed short span of time i.e. 4 months. Provisions of Civil Procedure Code, 1908 and Qanoon-e-Shahadat are not made applicable to the proceedings before the Family court.

8. It is noteworthy to reproduce the preamble clause of the Family Court Act, 1993.

“Whereas, it is expedient to make provision for that Establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith.”

9. Thus, in this sense Family Courts vests with the judicial powers to entertain the matrimonial matters and other issues connected therewith within a prescribed timeline.

10. It can safely be held that to avoid protracted litigation no appeal or revision is provided against an interim order.

11. **Interim orders are being passed by trial Courts/Family Courts pertaining to ancillary matters,** which are off shot of the main controversy raised in the suit, and ultimately could be relooked by the

Appellate Court in final appeal against the judgment and decree.

(Underlining is mine).

12. It is celebrated principle of canon of construction that any provision of the statute cannot be read in isolation. It is to be read in combine manner alongwith the other provision of the same statute.

Thus, in this sense, section 14(1) of the Family Court requires to be read with provision of section 12 of the Family Court Act, which reads as under:-

12 (2) Provided that a Family Court shall finally decide a case before it, within a period of four months from the date of the presentation of the plaint.

13. Above mandatory command of the statute makes it abundantly clear that cases before the Family Court are to be decided within the prescribed timeline.

14. Wisdom of legislature by not giving right of appeal or revision against interim orders is to ensure the adjudication of family matters within prescribed statutory period of 4 months.

15. Definitely every order passed by the family Court cannot be regarded as interlocutory order. It is nature of the orders or decision which can determine as to whether it is conclusive in its nature or of shot of the main controversy which can be agitated in the appeal against the decision of main lis.

16. Particularly in such like matters and applications where resultantly the cause is buried into to the extent of that particular matter and no final and further remedy is available can be regarded a decision for the purpose of filing appeal. While rest of the

interim/interlocutory orders of the family Court connected with the main lis can be challenged collaterally through appeal against the final judgment of the family Court, by inserting a specific ground of attack in the memo of appeal before the appellate fora, such interlocutory orders are immune from challenge in appeal before the court independently. The order impugned herein is not a final order which disposed of the controversy or matter conclusively. The appellant has got a right of appeal against such order in the main suit, he can attack the order before the appellate fora in main appeal as it will definitely merge in the final decision and decree of the family Court.

(Underlining for emphasis)

17. Matter qua controversy at hand was came up for consideration before the Apex Court, I am fortified to follow the rational of the judgemade law handed down by the Hon'ble Supreme Court.<sup>1</sup>

18. Before parting with the order, I would like to observes that while deciding the matters qua propriety of the quantum of the maintenance allowance, Family Court should keep into mind the verdict of Apex Court and always pass a judicious order which shall match with the guideline given by the Apex Court, particularly in a case titled "Abdul Khaliq vs. Sidra Khaliq and 3 others" reported as 2014 SCR 280.

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<sup>1</sup>. Firdos Barkat vs. Javed Khan 2012 SCR 205 --- Shahnaz Bibi vs. Munawar Din 2005 SCR 409 --- Mohammad Ramzan vs. Rukhsana 2006 SCR 206 --- Naseem Bashir vs. Abdul Jabbar 2004 MLD 510.

19. Crux of above, the appeal at hand is not competent, thus, fails and accordingly dismissed. Record of the case summoned be sent back immediately to the Family Court, seized with the matter.

File shall be kept in archive.

Muzaffarabad,

27.05.2025.

**JUDGE**