

**SHARIAT APPELLATE BENCH OF HIGH COURT OF AZAD  
JAMMU & KASHMIR**



Family Appeal No.330/2024;  
Date of Institution 30.10.2024;  
Date of hearing. 06.10.2025;  
Date of Decision 10.10.2025.

Yasir Bashir S/o Bashir Ahmed, R/o Madina Market Near HBL  
Muzaffarabad, Azad Kashmir.

....Appellant

**VERSUS**

Saba Yasir D/o Lal Muhammad, R/o Charkhana Road Notia  
Jadeed Tehsil & District Peshawar, presently resided at Central  
Plate Muzaffarabad.

.... Respondent

**FAMILY APPEAL**

**BEFORE:- Justice Chaudhary Khalid Rasheed, J.**

**APPEARANCES:**

Mr. Shahid Ali Awan, Advocate for the appellant.

M/s Fayyaz Ahmed Janjua and Khawaja Aamir Ahmed,  
Advocates for the respondent.

**VERDICT:**

The instant appeal is hereby dropped.

**JUDGMENT:-**

**FOREWORD:**

The captioned appeal has been preferred against  
the order passed by learned Additional District Judge/Judge

Family Court Muzaffarabad dated 30.09.2024, whereby the judgment debtor/appellant herein, has been ordered to deposit the decretal amount.

**STANCE OF THE APPELLANT:**

The learned counsel for the appellant vehemently argued that suit filed by respondents, herein, for recovery of dower and maintenance before Civil Judge-II/JFC Peshawar against appellant, herein, was decreed vide judgment dated 28.02.2012. Appeal filed by appellant, herein, before Additional District Judge-XIII, Peshawar was dismissed and an application for execution of decree was filed before the trial Court. He further argued that in the light of the judgment of the Peshawar High Court Peshawar dated 05.05.2023, the said application was transferred to Judge Family Court Muzaffarabad and the Judge Family Court Muzaffarabad passed the impugned order dated 30.09.2024. The learned counsel for the appellant mainly pressed into service that as per judgment of the learned Apex Court rendered in 2019 SCR 1, a decree passed by a Court of Pakistan can be executed in the Azad Jammu & Kashmir after reciprocal arrangements by both the Governments through a notification to be published in the official gazette, however, till date the Govt. of Pakistan has not issued any such notification, thus the decree passed by any Court of Pakistan cannot be

executed in Azad Jammu & Kashmir. He further argued that though the Govt. of Azad Jammu & Kashmir has issued notification dated 22.03.2023 for the purpose of section 44-A of the Code of Civil Procedure 1908, however, the said notification has not been given a retrospective effect whereas the decree sought to be executed has been passed prior to the said notification, thus the impugned order is liable to show the doors.

**REFUTATION OF THE RESPONDENT:**

The learned counsel for the respondent supported the impugned order on all counts by submitted that as the Govt. of Azad Jammu & Kashmir has issued notification dated 22.03.2023, thus the Court below was justified to pass the impugned order for payment of the decretal amount by the judgment debtor/appellant herein, hence, the same entails to be sustained.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

**COURT OBSERVATIONS AND RELEVANT LAW:**

In view of the arguments advanced at bar and in the light of the pleadings of the parties the only question which is required to be resolved by this Court is as to whether a decree

passed by Court of Pakistan can be executed in the territory of Azad Jammu & Kashmir or not? It is pertinent to mention that the territory of Azad Jammu & Kashmir, as per the Constitution of Islamic Republic of Pakistan, 1973 has not been mentioned in the territory of Pakistan. The territory of Pakistan has been defined in Article 1 of the Constitution of Islamic Republic of Pakistan 1973, which includes provinces of Balochistan, Khyber Pakhtunkhwa, Punjab, Sindh, Federal Capital, such States and territories as are or may be included in Pakistan, whether by accession or otherwise. Under Article 257 of the Constitution of Islamic Republic of Pakistan 1973, when the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State. The said article has been reproduced as under;

“257. Provision relating to the State of Jammu & Kashmir:- When the people of the State of Jammu & Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.”

So, till the time when the territory of Azad Jammu & Kashmir has been included in Pakistan either by accession or otherwise, until the relationship between the Pakistan and the State of Jammu and Kashmir are determined in accordance with

the wishes of the people of the State of Jammu & Kashmir after they decide to accede to Pakistan, the territory of Azad Jammu & Kashmir shall be deemed to be a separate State and cannot be considered as a territory of Pakistan.

Under Section 44-A of the Code of Civil Procedure, 1809, which deals with the execution of decrees passed by a Court of reciprocating territory, as adapted by the Govt. of Azad Jammu & Kashmir, the Government may declare a country or territory as a reciprocating territory through a notification to be published in the official gazette for the said purpose, as has been held by the Hon'ble Supreme Court of Azad Jammu & Kashmir in 2019 SCR 1, wherein at page 13 of the judgment it has been observed as under:-

“Therefore, it can be safely concluded that the decrees passed by the Courts of Islamic Republic of Pakistan can only be executed in the territory of Azad Jammu & Kashmir while complying with the statutory provisions of Section 44-A of CPC. The basic requirement of this statutory provision is that the Governments of Pakistan and Azad Jammu & Kashmir have to make reciprocal arrangements for execution of decrees by notification to be published in the official gazette.”

The Hon'ble Supreme Court of Azad Jammu & Kashmir while interpreting the provisions of Section 44-A CPC at page 16 of its judgment further observed in the following manner:-

“The appreciation of this statutory provision clearly speaks that for execution of such decree reciprocal arrangements between the Governments of Pakistan and Azad Jammu & Kashmir are required and in this context the basic requirement is the declaration through a notification to be published in the official gazette by both the Governments according to the spirit of Explanation 2 of section 44-A CPC.”

The supra observation of Honourable Apex Court reveals that decree of one side can be executed on both sides only if both declare it through a notification but if one side has issued the notification then the decree of the other can be executed inspite of the fact that it was done unilateral as no such precondition has been imposed by the statute. Moreover, the in hand proposition was not before the Honourable Supreme Court when the said judgment was passed.

The word “reciprocal” literally refers to a mutual joint, common or shared relationship or action belonging to more than one. The word reciprocal used in the statute is in a positive manner which means to engage the other with kind action that encourage a similar response from the other side which can cause the other to react in the same manner but it does not mean that the said act of reciprocation is a conditional pursuit. The Govt. of Azad Jammu & Kashmir has issued notification dated 22.03.2023 through which Pakistan has been declared as a reciprocating territory for the purpose of section

44-A of CPC. For ready reference notification dated 22.03.2023 is reproduced as under:-

**THE GAZETTE OF AZAD JAMMU & KASHMIR  
EXTRAORDINARY GAZETTE  
PUBLISHED BY AUTHORITY**

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**AZAD GOVERNMENT OF THE STATE OF JAMMU & KASHMIR**  
Law, Justice, Parliamentary Affairs and Human Rights Department

*“Muzaffarabad”  
Dated: 22.03.2023*

**NOTIFICATION:**

No. LD/Legis./104-117/2023. In exercise of the powers conferred under Section 44-A of the Code of Civil Procedure, 1908, as adapted and in force in Azad Jammu & Kashmir, the Azad Government of the State of Jammu & Kashmir is pleased to declare Pakistan as “Reciprocating Territory” for purposes of Section 44-A of the said Code, for execution of decrees passed by all Civil Courts of Pakistan.

**Sd/-**  
**(Khawaja Hashim Shaheen)**  
Section Officer (Legislation)

The phraseology used in section 44-A CPC makes it blatantly obvious that it is the prerogative of the Govt. to declare any country or territory as reciprocating territory irrespective of the fact that counterpart declared the territory of Azad Jammu & Kashmir as such or not? For proper appreciation of the matter section 44-A (1) and explanation 2 of the said section are reproduced as under:-

**“Section 44-A----- Execution of decrees passed by the Courts in the United Kingdom and other reciprocating territory.---(2)----where a certified copy of a decree of any of the superior Courts of the United Kingdom or any**

reciprocating territory has been filed in a District Court, the decree may be executed in [Pakistan] as if it had been passed by the District Court.

**Explanation 2.**--- “Reciprocating territory” means [the United Kingdom and such other country or territory as] the [Federal Government] may, from time to time, by notification in the [official Gazette], declare to be reciprocating territory for the purposes of this section; and “superior Courts”, with reference to any such territory, means such Courts as may be specified in the said notification.”

The above reproduced provision of law makes it apparent that issuance of such notification by the counterpart is not sine qua non. As observed earlier the reciprocal literally means to express mutual actions or relationship between two or more person, thus after issuance of notification by the Govt. of Azad Jammu & Kashmir for the purpose of section 44-A CPC and declaring Pakistan as reciprocating territory, the decrees of courts of Pakistan are now liable to be executed in Azad Jammu & Kashmir and any executing Court of Azad Jammu & Kashmir cannot refuse to execute it after the promulgation of the said notification because perusal of section 44-A(1) along with explanation reproduced hereinabove conspicuously portrays that it is a prerogative of the Govt. of Azad Jammu & Kashmir to declare any territory as a “reciprocating territory” under section 44-A(1) CPC regardless of the fact that the counterpart has

issued any such notification or not and the explanation-2 of the said section further clarifies that reciprocating territory means such other country or territory as the Govt. by notification declared to be a reciprocating territory for the said purpose. Though till date the Government of Pakistan has not issued any such notification to declare the territory of Azad Jammu & Kashmir as reciprocating territory of Pakistan for the purpose of execution of decrees passed by the Courts of Azad Jammu & Kashmir but when the Government of Azad Jammu & Kashmir has issued the notification thereafter it cannot be argued that till the issuance of notification by the Government of Pakistan the requirements of Section 44-A CPC have not been fulfilled, so, the decrees passed by the Courts of Pakistan can be executed in the Azad Jammu & Kashmir because as per the provisions of the said section (44-A CPC) the notification of the counterpart cannot be considered as a stipulation to give affect a notification regarding declaring reciprocating territory by one party, hence, the argument advanced by the learned counsel for the appellant has got no plausible substance in it. This argument can be raised before the Courts of Pakistan if any decree passed by the Court of Azad Jammu & Kashmir is presented but not before any Court of law in the territory of Azad Jammu & Kashmir. It is also pertinent to mark that the Peshawar High Court Peshawar also

considered notification dated 22.03.2023 issued by the Azad Govt. of the State of Jammu and Kashmir and transferred the execution petition before Family Court Muzaffarabad by declaring the notification dated 22.03.2023 as a reciprocal arrangement. In such state of affairs it can safely be concluded that decrees passed by all the Civil Courts of Pakistan are executable by the Courts of Azad Jammu & Kashmir.

The next argument advanced by the learned counsel for the appellant that the notification dated 22.03.2023 has not been given a retrospective effect, hence, a decree recorded by a Court of Pakistan prior to the promulgation of the said notification cannot be executed by the Court of Azad Jammu & Kashmir, has also got no water to carry because the decree passed by the Court of Pakistan was subjudice before the proper Court at Pakistan and during proceedings the notification dated 22.03.2023 was issued and in the light of said notification the execution petition was transferred to the Court of Azad Jammu & Kashmir for accomplishment as per the supra-mentioned provision of the law and the impugned order of execution by the Court below has been passed on 30.09.2024 after the issuance of the notification dated 22.03.2023, thus the argument is repelled.

**DISPOSAL:**

The crux and epitome of the above discussion is,  
finding no essence the instant appeal is hereby dropped.

**Muzaffarabad;**  
**10.10.2025.**

**JUSTICE**

Approved for reporting.

**JUSTICE**