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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

W.P. No.6627 of 2023

Shagufta Bibi

Versus

Additional District Judge, Jahania & others

J U D G M E N T

Date of hearing:	11.09.2026.
Petitioner by:	Malik Muhammad Imtiaz Awan, Advocate.
Respondent by:	Mr. Muhammad Latif Khan Khattak, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.:- Through this petition, the petitioner has called in question the judgment and decree dated 15.03.2023 passed by the learned Additional District Judge, Jahanian, whereby the appeal filed by respondent No.3 was accepted, the judgment and decree dated 21.12.2022 passed by the learned Judge Family Court, Jahanian, were set aside and the suit instituted by the petitioner was dismissed on the ground of territorial jurisdiction.

2. Briefly stated, the petitioner instituted a family suit seeking dissolution of marriage through *Khula*, maintenance, recovery of dowry articles or their alternate value and reimbursement of treatment expenses. The marriage between the parties was solemnized on 13.03.2015. After failure of reconciliation proceedings, the marriage was dissolved through *Khula*. The remaining claims were thereafter adjudicated by the learned Family Court. Vide judgment and decree dated 21.12.2022, the claim for past maintenance and treatment expenses was dismissed, whereas Rs.15,000/- as lump-sum Iddat maintenance and Rs.1,50,000/- as alternate value of dowry articles were awarded to the petitioner. Respondent No.3 preferred an appeal.

The learned Appellate Court, instead of examining the correctness of the findings recorded by the learned Trial Court on the substantive claims, accepted the appeal on the ground that the Family Court at Jahanian lacked territorial jurisdiction. The learned Appellate Court principally relied upon a statement attributed to the petitioner in cross-examination that she was residing at Chak No.158/WB, Tehsil Mailsi, District Vehari, and concluded that the suit could not have been tried at Jahanian. Consequently, the entire judgment and decree of the learned Family Court were set aside. Hence, instant petition.

3. Learned counsel for the petitioner contends that the impugned judgment is the result of misreading and non-reading of material evidence, particularly the statement of PW-2, father of the petitioner, who supported her case regarding her residence at Chak No.119/10-R. He argues that the learned Appellate Court selectively relied upon one statement concerning Chak No.158/WB while ignoring the evidence explaining the petitioner's actual and ordinary residence after separation from her husband. He further submits that although an objection regarding jurisdiction was contained in the written statement, no issue on territorial jurisdiction was framed or decided, the parties participated in the complete trial and respondent No.3 failed to demonstrate any prejudice or consequent failure of justice. He lastly contends that the learned Appellate Court could not treat a question of territorial venue as one of inherent jurisdiction and thereby nullify the entire proceedings.

4. Learned counsel for respondent No.3 has supported the impugned judgment and decree, contending that the petitioner herself admitted that she resided within Tehsil Mailsi and, therefore, the learned Family Court at Jahanian lacked territorial jurisdiction.

5. Arguments heard. Record perused.

TERRITORIAL JURISDICTION AND THE STATUTORY SCHEME

6. The principal question is whether, on the facts and evidence available on record, the learned Family Court at Jahanian lacked

territorial jurisdiction so as to justify setting aside the entire adjudication. Section 5 of the Family Courts Act, 1964 confers exclusive jurisdiction upon Family Courts in respect of matters specified in Part-I of the Schedule, which includes dissolution of marriage, maintenance and dowry. Rule 6 of the West Pakistan Family Courts Rules, 1965 determines the territorial forum. Under the said Rule, jurisdiction may arise where the cause of action wholly or partly arises or where the parties reside or last resided together. Its proviso further provides that, in a suit for dissolution of marriage or dower, the Court within whose local limits the wife ordinarily resides shall also have jurisdiction.

7. The statutory scheme of the Family Courts Act has to be appreciated in the light of its object, namely, the expeditious settlement and disposal of disputes relating to marriage and family affairs and matters connected therewith. The Supreme Court in *Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan and others* **(PLD 2016 Supreme Court 613)** emphasized that the legislative scheme was designed to bring matrimonial disputes, including dissolution of marriage, dower, maintenance and dowry, within the specialized jurisdiction of the Family Court so as to avoid prolonged and fragmented litigation. The same judgment recognized the significance of Rule 6 and the jurisdiction of the Family Court where the wife resides. Likewise, in *Muhammad Imran v. Judge Family Court, Bahawalpur and another* **(2012 MLD 259)**, it was held that, in view of Section 7(2) of the Family Courts Act read with Rule 6, a wife may pursue claims relating to dowry along with dissolution proceedings before the Family Court where she ordinarily resides.

8. The expression “ordinarily resides” appearing in the proviso to Rule 6 is not synonymous with permanent residence. The superior Courts have consistently construed the expression in a manner which advances the statutory protection and convenience afforded to the wife. In *Khurram Shehzad v. Additional District Judge, Gujranwala and others* **(2017 MLD 580)**, it was held that ordinary residence does

not necessarily require residence for a long period; even a short stay may suffice, and the Court is required to examine the place where the wife has chosen to stay, irrespective of whether she is a permanent resident there, owns property there or has resided there for a considerable period. The same principle was reiterated in *Zahid Hussain v. Mst. Farhana* **(2019 MLD 720)**, wherein it was observed that the expression was deliberately employed for the benefit of the wife and that ordinary residence need not be established in the same manner as permanent residence. More recently, in *Muhammad Muneeb Arshad through Special Attorney v. Mst. Ammara Mahroof and 2 others* **(2026 YLR 1121)**, the Islamabad High Court, while considering Rule 6, reiterated the distinction between ordinary and permanent residence and, relying upon the authoritative interpretation in *Sohail Ahmed v. Mst. Samreena Rasheed Memon and another* **(2024 SCMR 634)**, recognized that "ordinary" residence means usual, settled, customary or reasonable residence and need not necessarily be of long duration.

9. Thus, the question before the learned Appellate Court was not simply whether the petitioner had at any point mentioned or stayed at an address in Tehsil Mailsi. The real question was whether, at the relevant time and in the circumstances of the matrimonial dispute, she ordinarily resided within the territorial limits of the Family Court at Jahanian. The statutory expression requires an assessment of the circumstances and evidence relating to the wife's ordinary residence rather than a mechanical determination on the basis of an isolated address.

PETITIONER'S ORDINARY RESIDENCE

10. The factual foundation of the impugned finding, when examined in this light, is found to be unsatisfactory. The learned Appellate Court principally relied upon the petitioner's statement regarding Chak No.158/WB, but did not undertake a meaningful appraisal of the evidence concerning her actual and ordinary residence

after separation from her husband. The record, as available, shows that the petitioner's consistent stance was that she was residing with her father at Chak No.119/10-R, and PW-2, her father, supported that position. The learned Appellate Court did not reconcile this evidence with the statement relied upon by it, nor did it explain why the reference to Chak No.158/WB necessarily established that the petitioner was ordinarily residing there for purposes of Rule 6.

11. An address referred to during cross-examination cannot, by itself, be treated as conclusive of ordinary residence when the remaining evidence is required to be examined in its totality. The authorities make it clear that ordinary residence is a flexible and wife-oriented statutory concept. In *Khurram Shehzad's case* supra, the Court specifically held that the length of residence, permanent status or ownership of property is not decisive; what is material is the place where the wife has chosen to stay. In *Zahid Hussain's case* supra, the Court further observed that a claim of ordinary residence supported by independent material may constitute sufficient basis for the Family Court to assume jurisdiction. The principle underlying these judgments is that the statutory expression is intended to prevent an estranged wife from being deprived of an accessible forum merely because her residence does not satisfy the characteristics of a permanent domicile.

12. In the present case, therefore, the learned Appellate Court was required to assess the entire evidentiary record concerning the petitioner's residence. Instead, it isolated one statement and treated it as decisive while failing to consider the evidence of PW-2 and the petitioner's case regarding her residence after separation. Such selective appreciation amounts to misreading and non-reading of material evidence. The finding on territorial jurisdiction, therefore, cannot be sustained merely because the petitioner happened to refer to Chak No.158/WB in her cross-examination.

***KHULA* AND ANCILLARY CLAIMS**

13. It is also significant that the suit was principally one for dissolution of marriage through *Khula*. The proviso to Rule 6 was, therefore, directly attracted to the principal relief. The ancillary claims of maintenance and dowry articles were capable of being joined with the dissolution proceedings under Section 7(2) of the Family Courts Act. The said provision expressly permits a plaint for dissolution of marriage to contain claims relating to dowry, maintenance, dower, personal property and belongings of the wife and other specified reliefs. In *Muhammad Imran's case* supra, the Lahore High Court specifically recognized the effect of Section 7(2) read with Rule 6 in permitting a wife to pursue a dowry claim before the Family Court where she ordinarily resides.

14. The same integrated approach is consistent with the philosophy underlying *Mst. Yasmeen Bibi's case* supra, wherein the Supreme Court emphasized that the Family Courts Act was enacted to bring matrimonial disputes and connected claims within one specialized forum and to avoid the delay, inconvenience and fragmentation which historically burdened matrimonial litigation. Likewise, in *Wing Commander Tipu Sultan Khan v. Rubina Saira Zaffer and another* **(2009 YLR 1021)**, this Court, in a dispute concerning territorial jurisdiction after *Khula*, observed that once dissolution of marriage had been adjudicated by one Family Court, ancillary matters ought, in order to avoid conflicting adjudication, to be dealt with by the same Court. The judgment also emphasized the convenience of the lady litigant in family disputes.

15. The present case falls within the same statutory philosophy. The petitioner approached the Family Court with a composite matrimonial claim; reconciliation failed; *Khula* was granted; and the remaining claims were thereafter adjudicated by the same Family Court. The proceedings were thus not unrelated causes artificially brought before an inappropriate forum. They constituted one matrimonial dispute with ancillary claims expressly contemplated by

the Family Courts Act. Once the petitioner had established, on the evidence available, the factual basis of her ordinary residence within the relevant territorial limits, the learned Appellate Court could not defeat the entire proceeding by treating an isolated reference to another address as conclusive.

EFFECT OF THE JURISDICTIONAL OBJECTION

16. It is correct that respondent No.3 had included an objection regarding jurisdiction in the written statement. Therefore, it would not be factually accurate to hold that the objection was raised for the first time in appeal. Nevertheless, the objection was not framed or adjudicated as an independent issue by the learned Trial Court. The parties proceeded with the trial, led evidence on the substantive claims and the learned Family Court ultimately adjudicated the matter. Respondent No.3 participated fully in those proceedings and did not demonstrate that the continuation of the trial at Jahanian caused him any actual prejudice or consequent failure of justice.

17. The distinction between a Court's inherent subject-matter jurisdiction and an objection concerning territorial forum is material. The learned Family Court undoubtedly possessed jurisdiction over the subject-matter, namely dissolution of marriage, maintenance and dowry. The controversy, at its highest, concerned the appropriate territorial forum. Such an objection cannot be treated as though the Court lacked inherent competence to adjudicate the matrimonial dispute. In *Mst. Yasmeen Bibi's case* supra, the Supreme Court underscored the special statutory scheme governing Family Courts and the significance of the wife's residence under Rule 6. The legislative object is to facilitate effective and expeditious adjudication of matrimonial disputes rather than to permit their fragmentation or defeat on technical considerations.

18. In the circumstances of the present case, even if the objection is considered independently of the question of ordinary residence, the learned Appellate Court was required to examine the actual

procedural consequence and prejudice, if any, flowing from the alleged territorial defect. It did not record any finding that respondent No.3 had been denied an opportunity to defend the suit, prevented from producing evidence, subjected to any procedural disadvantage or otherwise suffered prejudice because the proceedings were conducted at Jahanian. The mere assertion of territorial incompetence, without demonstrating consequent failure of justice, could not by itself justify obliteration of an adjudication reached after completion of trial.

19. The subsequent challenge to the same Family Court's territorial forum also assumes significance in the context of the earlier *Khula* proceedings. In *Wing Commander Tipu Sultan Khan's case* supra, the Court considered the fact that *Khula* had already been adjudicated by the same Family Court without a successful jurisdictional challenge and held that, to avoid conflicting adjudication, ancillary matters should remain with that Court. The present case is not identical on facts and that principle is not being treated as an absolute bar against a territorial objection; nevertheless, it is a relevant additional consideration against unsettling the entire matrimonial adjudication after the Family Court had already entertained and dealt with the dispute.

PROCEDURAL CONSEQUENCE

20. There is yet another significant aspect. Even if the learned Appellate Court was of the view that the suit had been instituted before an inappropriate territorial forum, the consequence could not automatically be the extinction of the petitioner's substantive claims. Rule 5 of the Family Courts Rules contemplates return of a plaint where it is presented before a Court not having jurisdiction, thereby recognizing the distinction between an objection to forum and destruction of the underlying cause of action. The learned Appellate Court, while holding that the territorial forum was inappropriate, did not examine this procedural aspect and instead dismissed the petitioner's suit after setting aside the entire decree.

21. This Court, however, need not rest its decision solely upon the question of the procedural consequence of territorial incompetence because, for the reasons already discussed, the learned Appellate Court itself failed to establish that the Family Court at Jahanian was without territorial jurisdiction. The evidence relating to the petitioner's ordinary residence was not properly appreciated, while the statutory purpose of Rule 6 and the integrated nature of the matrimonial proceedings were also not kept in view.

EFFECT OF THE APPELLATE JUDGMENT ON THE *KHULA* AND ANCILLARY RELIEFS

22. The impugned judgment further suffers from the infirmity that it set aside the entire judgment and decree without properly appreciating the different stages and reliefs involved in the family proceedings. The marriage had already been dissolved through *Khula* after failure of reconciliation, whereas the judgment dated 21.12.2022 dealt with the remaining monetary and property claims. The learned Appellate Court did not undertake the necessary exercise of identifying the precise legal effect of its finding upon each relief; rather, it treated the alleged territorial defect as sufficient to erase the entire adjudication.

23. Such approach is inconsistent with the object and scheme of the Family Courts Act. The superior Courts have repeatedly emphasized that matrimonial litigation must be dealt with in a manner which facilitates relief to the wife and avoids unnecessary fragmentation and delay. The statutory forum is intended to provide an expeditious and effective remedy in disputes concerning marriage and family affairs. Once the marriage had been dissolved and the remaining claims had been adjudicated upon evidence, the entire adjudication could not properly be obliterated on the basis of a territorial objection which itself had not been established on a correct appreciation of the evidence.

MERITS OF THE TRIAL COURT'S JUDGMENT

24. The judgment of the learned Trial Court has also been examined. It shows that the claims were considered independently and relief was granted only to the extent found proved. The claim for past maintenance and treatment expenses was dismissed for want of sufficient proof, whereas Rs.15,000/- as Iddat maintenance and Rs.1,50,000/- as alternate value of dowry articles were awarded to the petitioner. The learned Appellate Court did not examine the correctness of these findings on merits and instead set aside the entire judgment solely on the ground of territorial jurisdiction. Once the jurisdictional finding is held unsustainable, there remains no basis in the impugned judgment for disturbing the substantive findings of the learned Trial Court.

CONSTITUTIONAL JURISDICTION

25. This Court is mindful that, while exercising constitutional jurisdiction under Article 199 of the Constitution, it ordinarily does not substitute its own appreciation of evidence for that of the Court below. However, the constitutional jurisdiction may be invoked where the impugned decision suffers from misreading or non-reading of material evidence, misapplication of law, perversity or failure to exercise jurisdiction in accordance with law. In *Khurram Shehzad's case* supra, it was recognized that although factual controversies are ordinarily not interfered with in constitutional jurisdiction, an exception exists where the finding is perverse or based on no proper evidence.

26. The present case falls within that exceptional category. The learned Appellate Court failed to consider material evidence bearing directly upon the petitioner's ordinary residence, particularly the evidence of PW-2, and treated an isolated statement concerning Chak No.158/WB as conclusive without reconciling the same with the petitioner's consistent case. It further failed to appreciate the statutory character of the proviso to Rule 6, the integrated nature of the

matrimonial claims under Section 7(2), the object of the Family Courts Act and the absence of demonstrated prejudice or consequent failure of justice. The impugned judgment, therefore, cannot be sustained merely on the basis of the petitioner's reference to an address falling within Tehsil Mailsi.

CONCLUSION

27. For the foregoing reasons, this Court is of the considered view that the learned Appellate Court committed material illegality, misreading and non-reading of evidence and misapplication of the law relating to territorial jurisdiction. The petitioner had invoked the statutory jurisdiction of the Family Court in a suit principally seeking dissolution of marriage through *Khula*, to which the proviso to Rule 6 was directly attracted. The expression “ordinarily resides” does not require proof of permanent or long-standing residence; rather, the Court is required to determine, from the circumstances and evidence, where the wife had chosen and ordinarily resided. The learned Appellate Court failed to undertake that exercise in accordance with law.

28. The learned Family Court possessed jurisdiction over the subject-matter of the matrimonial dispute and adjudicated the petitioner's claims after a complete trial. The evidence concerning her ordinary residence was not properly appreciated by the learned Appellate Court, while the ancillary claims of maintenance and dowry were legally capable of being joined with the dissolution proceedings under Section 7(2) of the Family Courts Act. The respondent failed to demonstrate any actual prejudice or consequent failure of justice resulting from the proceedings having been conducted at Jahanian. The alleged territorial objection, therefore, could not lawfully be converted into a basis for extinguishing the petitioner's entire adjudicated claims.

29. Consequently, this petition is ***allowed***. The impugned judgment and decree dated 15.03.2023 passed by the learned Additional District

Judge, Jahanian, are **set aside**, and the judgment and decree dated 21.12.2022 passed by the learned Judge Family Court, Jahanian, are **restored**. No order as to costs.

(**Muhammad Sajid Mehmood Sethi**)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.