

Stereo H.C.J.D.A.38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**LAHORE.**  
**JUDICIAL DEPARTMENT**

WP No. 12348 of 2014

*Allied Bank Limited*  
*versus*  
*Judge Banking Court-I, Gujranwala, etc*

**JUDGMENT**

Date of hearing

18.04.2017

Petitioner by	Mr. Ashar Elahi, Advocate.
Respondents by	Mr. Faiz Ahmad Ranjha, Advocate.

\* \* \* \* \*

**MUZAMIL AKHTAR SHABIR, J.-** This

constitutional petition is directed against order dated 10.10.2013 passed by Judge Banking Court-I, Gujranwala whereby the applications for leave to defend filed by respondent Nos. 2 to 7 were allowed.

2. The brief facts of the case are that the petitioner bank filed a suit for recovery of Rs.14,337,713/- under the provisions of Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**Ordinance**”) against respondent Nos. 2 to 7 before the Banking Court, Gujranwala on 09.03.2011. The respondent Nos. 2 to 6 filed a joint application for leave to defend whereas respondent No.7 filed a separate application. The petitioner bank filed replication to the said applications. The Banking

Court allowed the applications for leave to defend filed by respondent Nos. 2 to 7 vide order dated 10.10.2013. The said order is under challenge in constitutional jurisdiction of this Court.

3. The learned counsel for the petitioner has argued that the Judge Banking Court-I has granted leave to defend the suit to respondent Nos. 2 to 7 on account of alleged theft of pledged stocks whereas in terms of Section 10 of the Ordinance this was not a valid and lawful ground for grant of leave to defend the suit. He has relied upon judgments reported as *Apollo Textile Mills Ltd and others vs. Soneri Bank Ltd* (2012 CLD 337) and *Habib Bank Limited vs. Orient Rice Mills Ltd and others* (2004 CLD 1289) to argue that the security of pledged stocks has to be accounted for at the stage of execution and the Banking Court is precluded from granting leave to defend the suit to the defendants on the ground of availability or otherwise of the pledged stocks. The order passed by respondent No.1 being illegal is liable to be set-aside.

4. Conversely, the learned counsel for the respondents has argued that the Judge Banking Court-I has properly exercised jurisdiction vested in him and has rightly allowed leave to defend to the respondents. All the grounds raised by the learned counsel for the petitioner can be determined during the

pendency of the trial before the Banking Court and, therefore, this constitutional petition is liable to be dismissed.

5. I have gone through the order dated 10.10.2013 whereby the application for leave to defend filed by the respondents has been allowed. The order mainly revolves upon the misappropriation of pledged stocks by the bank officials. The Judge Banking Court had relied upon alleged misappropriation of pledged stocks while allowing application for leave to defend. The learned counsel for the petitioner has relied upon judgments reported as *Apollo Textile Mills Ltd and others vs. Soneri Bank Ltd* (2012 CLD 337), *Habib Bank Limited vs. Orient Rice Mills Ltd and others* (2004 CLD 1289) and *Allied Bank Limited through Maqsood Ahmed vs. Messrs Nasar Rice Mills and 4 others* (2016 CLD 324) to contend that where financial institution treats pledge of goods as collateral security, leave to defend the suit cannot be granted on the basis of status, condition and availability or otherwise of the pledged goods. With utmost regard to the judgments referred to by the learned counsel for the petitioner, it is observed that the judgment in the Apollo Textile Mills case was passed in appeal against the final judgment and decree passed by the Banking Court. The judgments in case of Nasar Rice Mills and Orient Rice Mills cases relate to the decision of applications for leave to defend and decisions of recovery suits by the courts while exercising

the powers vested in them as Judge Banking Court. None of the afore-referred judgments were passed in the Constitutional Jurisdiction wherein order of allowing or disallowing application for leave to defend had been called in question. In this case, the application for leave to defend has already been decided by Judge Banking Court by taking into consideration the facts of the case and arguments addressed by both the parties. The jurisdiction to decide the application was vested in the Judge Banking Court which the court has exercised according to the case argued before it. As per law, Banking Court could grant the respondents leave to defend the suit if on consideration of the contents of the plaint, the application for leave to defend and reply thereto it is of the view that substantial question of law and fact has been raised in respect of which evidence needs to be recorded. The Banking Court while deciding the application had only to be convinced that a substantial question of law or fact had been raised that required recording of evidence. Merely by mentioning the misappropriation of pledged goods and not mentioning the other grounds in the leave granting order does not lead to an ir-rebuttable presumption that the order is erroneous. Whether the jurisdiction has been properly exercised or not while deciding applications for leave to defend cannot be called in question by filing an appeal or a constitutional petition

before this Court. Section 22 of the Ordinance refers to appeals to be filed which reproduced below:

“22. *Appeal.*---(1) *Subject to sub-section (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.*

(2) .....

(3).....

(4).....

(5) *An appeal may be preferred under this section from a decree passed ex-parte.*

(6) *No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under section (11) of section 15 or sub-section (7) of section 19.*”

***(emphasis supplied)***

6. Sub-section (1) of Section 22 of the Ordinance clearly provides that only judgment, decree, sentence or final order of the Banking Court can be challenged in appeal. Sub-section 6 of Section 22 clearly mentions that no appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court. Section 27 of the Ordinance is reproduced below:

“27. *Finality of order.*--- *Subject to the provisions of section 22, no Court or other authority shall revise or*

*review or call, or permit to be called, into question any proceeding, judgment, decree, sentence or order of a Banking Court or the legality or propriety of anything done or intended to be done by the Banking Court in exercise of jurisdiction under this Ordinance:*

*Provided that the Banking Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree, sentence or order passed by it.”*

Section 27 provides for finality of orders passed by Banking Court which cannot be called in question other than the procedure provided under Section 22 of the Ordinance mentioned above.

7. It is settled proposition of law that where law does not provide an appeal, review or revision against an interlocutory order, a constitutional petition against the same can also not be entertained. Reliance in this regard is placed on *Syed Saghir Ahmad Naqvi vs. Province of Sindh through Chief Secretary, S&GAD, Karachi and another* (1996 SCMR 1165) wherein it is held that statute excluding a right of appeal from the interim order could not be bypassed by bringing under attack such interim orders in Constitutional jurisdiction. Party affected had to wait till it matured into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders. In *Shaikh Gulzar Ali & Co. Ltd. and others vs.*

**Special Judge, Special Court of Banking and another** (1991 SCMR 590) the Hon'ble Supreme Court has observed that mere erroneous exercise of jurisdiction does not render the order passed by a Civil Court of competent jurisdiction to be illegal and without lawful authority so as to be amenable to be questioned in the Constitutional jurisdiction of the High Court under Article 199 of the Constitution. In the said case, the order of Special Banking Court was challenged whereby according to the applicants harsh conditions had been imposed in the order granting leave to defend to the petitioner.

8. The Division Bench of Sindh High Court in **Messers Sajid Brothers & Co. through Proprietor and 2 others vs. Manager, Allied Bank Limited and 8 others** (2012 CLD 1858) has held that Section 22 of the Ordinance provides an aggrieved person remedy of appeal against a judgment, decree, sentence or final order passed by Banking Court but does not provide appeal, review or revision against an order accepting or rejecting the application for leave to defend or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court. As appeal against such order was expressly barred by law, therefore, there was no warrant for entertaining a constitutional petition as it will amount to circumvent and frustrate the law. With these observations, the Sindh High Court dismissed the constitutional petition. The

same view was also followed in Messrs Umar Auto Store and others vs. The Judge Banking Court and others (2014 CLD 1452) whereby a constitutional petition was not entertained by the Court against an order dismissing application for leave to defend by holding as under:

*“The honourable Supreme Court of Pakistan in a judgment reported in PLD 1989 Supreme Court 26 (Federation of Pakistan and another v. Malik Ghulam Mustafa Khar) has held that if the language used in the statute is such that it leads no room for doubt as to the intention of the legislature to oust the jurisdiction of the Court in all circumstances, then that will have to be given effect and even acts performed without jurisdiction or mala fides will not be open to judicial scrutiny.*

*This Court in a judgment reported in 2002 CLD 991 Lahore (Muslim Commercial Bank Ltd. through Chief Manager and Principal Officer v. Judge Banking Court No.II Faisalabad and 8 others) has held that if the constitutional petitions are to be entertained against the interlocutory orders passed by the Judge Banking Courts, it would deflect the legislative intent to promulgate the Ordinance, 2001.”*

9. It is a settled law that where law required an act to be done in a particular manner, it had to be done in that manner alone and such dictate of law could not be termed as a mere technicality. In this regard, reliance has been placed on Shahida Bibi and others vs. Habib Bank Limited and others (2016 CLD

2025) and **Muhammad Anwar and others vs. Mst. Ilyas Begum and others** (PLD 2013 SC 255).

10. Keeping in view the principles laid down in the afore referred judgments and provisions of Section 22(6) of the Ordinance I hold that the constitutional petition is not maintainable against the order passed by the Judge Banking Court whereby applications filed by the respondents No. 2 to 7 for grant of leave to defend have been allowed.

11. Besides Section 13(1) of the Ordinance provides as under:

*“Disposal of suit.---(1) A suit in which leave to defend has been granted to the defendant shall be disposed of within ninety days from the day on which leave was granted, and in case proceedings continue beyond the said period, the defendant may be required to furnish security in such amount as the Banking Court deems fit, and on the failure of the defendant to furnish such security, the Banking Court shall pass an interim or final decree in such amount as it may deem appropriate.*

*(2).....*

*(3).....*

*(4).....” (emphasis supplied)*

From perusal of above referred Section, it is clear that after grant of leave to defend to the defendant, the suit had to be decided by Banking Court within 90 days of the grant of leave to defendant. However, the petitioner instead of following the procedure prescribed in the Ordinance, has chosen to file

constitutional petition to challenge the order of leave to defend which has been pending in this Court for the last more than two years. Had the process provided under the law being followed, by now the suit might have been decided on merits.

12. In view of the above, this petition is *dismissed*.

*(Muzamil Akhtar Shabir)*  
*Judge*

*Naveed\**

*Approved for Reporting*

*Judge*