

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Case No. Ex. A. No.13/2017

MCB Bank Limited. Vs Eden Developers Ltd.

| S.No.of order/ Proceeding | Date of order/ Proceeding | Order with signature of judge, and that of parties or counsel, where necessary. |
|------------------------------|------------------------------|--|
|------------------------------|------------------------------|--|

| | | |
|------------|--|---|
| 26.11.2018 | | Mr. Hafeez Saeed Akhtar, Advocate for the applicant-judgment debtor. Mr. Majid Ali Wajid, Advocate for decree holder bank. |
|------------|--|---|

C.M No.2 of 2017

This application has been filed by the judgment debtors and seeks the transfer of the execution petition filed by the decree holder bank to the court of competent jurisdiction which in the estimation of the applicant is the Banking Court at Lahore which has the pecuniary jurisdiction to decide the claim in the execution petition.

2. The execution petition seeks the enforcement of the consent decree passed on 27.01.2016 on the basis of Settlement Agreement which was executed on 25.01.2016. An amount of Rs.125 Million constituted the consent decree which was to be paid in nine installments of 40.00 Million by 26.01.2017. The other terms of the Settlement Agreement are not relevant to be adverted to at this juncture. The execution petition was filed on 8.3.2017 alleging that the judgment debtors had reneged on their commitment made under the Settlement Agreement

and a sum of Rs.63,750,000/- remained outstanding for which the claim was made in the instant execution petition. The precise submission of the learned counsel for the judgment debtors is that since the claimed amount was less than Rs.100 Million, the execution petition was wrongly filed in this Court and ought to have been filed in the Banking Court having the pecuniary jurisdiction and ought to be returned to that court to be agitated in accordance with law. The entire reliance of the applicant is on the definition of the “Banking Court” as given in section 2(b)(i) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 which provides that:

“in respect of a case in which the claim does not exceed hundred million rupees or for the trial of offences under this Ordinance, the Court established under Section 5.”

3. Thus, according to the learned counsel for the applicant the instant execution petition represents a case within the meaning of term reproduced and in which the claim does not exceed Rs.100 Million. In a nub, the learned counsel seeks to argue that the execution petition has to be treated independently and as a stand-alone petition and its maintainability to be judged on the basis of the execution petition being an independent claim and hence the case to be adjudicated by a Banking Court established under Section 5.

4. However, the present case is more pertinently covered by Order XXI, Rule 2, CPC, which reads as follows:

“(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2-(1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) Any payment not made in the manner provided in rule 1 or any adjustment not made in writing shall not be recognized by the Court executing the decree.

5. Order XXI, Rule 2 CPC enunciates that where any money payable under a decree of any kind is paid out of court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree. The judgment-debtor shall inform the court of such payment or adjustment and the court shall record the same accordingly after service of notice on the decree-holder. It is not in dispute that a consent decree was for Rs.125 million passed by this

Court on a joint application made by the parties and the judgment-debtors paid the money under the decree out of court to the decree-holder and which is required to be adjusted by this Court. It is not the case of the applicant that that money duly paid by the applicant is not to be adjusted in whole or in part to the satisfaction of the decree-holder. If that be so, then the only payment that is required to be made is the remainder of the amount of the consent decree. By way of illustration, had the decree-holder filed a claim for the execution of the entire amount of consent decree, the judgment-debtors would have filed a proper intimation informing the court regarding the moneys which had been paid under the decree and which would be an adjustment as contemplated by Order XXI, Rule 2 CPC. That would have resulted in the reduction in the amount of decree which was required to be executed and in that eventuality the judgment-debtors could not urge that the claim in the execution petition having gone below the pecuniary limit ought to be transferred to the Banking Court having jurisdiction in the matter. This would be a contradiction in terms.

6. The fact that a decree for an amount of Rs.125 Million was passed is undisputed. This is within the pecuniary limits of the High Court. Also this will determine the threshold for the purposes of execution

of decree and any money payable, out of court, shall be certified in terms of Order XXI, Rule 2, CPC. Quite obviously, the payment of money out of court cannot be made the determining factor of a forum for execution otherwise the entire purpose of enacting Order XXI, Rule 2 CPC will be lost. It would also have the unsavory effect of causing a fluctuation in the forum with each payment made out of court.

7. Be that as it may in terms of section 19 the decree once passed by a Banking Court is converted into an execution petition. Section 19 says that:

“19. Execution of decree and sale with or without intervention of Banking Court.---(1) Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree.”

8. Although in the instant case no specific order was made and a consent decree was passed, even then any execution petition filed by the decree-holder would be deemed to be in continuation of the proceedings under the decree, as the tenor of Section 19 is without equivocation and the conversion is statutorily mandated. The arguments proffered by the applicant will have the effect of nullifying the intent of the legislature. If it is deemed that the

conversion took place under the law, then any payment made out of court shall trigger the procedure laid down in Order XXI, Rule 2 CPC and the question of jurisdiction does not arise.

9. The entire reliance of the learned counsel for the applicant was on the judgment of a learned Single Judge of this Court reported as *Habib Bank Limited through Attorneys v. Messrs Rehmania Textile Mills (Pvt.) Ltd., Jhang Road Faisalabad and 30 others* (2003 CLD 689). However, the facts in the cited precedent are distinguishable from the facts in the present case and, therefore, the said judgment cannot form a binding precedent for the purposes of the present case. In *M/s Rehmania Textile Mills* the judgment and decree was passed by the Banking Tribunal, Faisalabad (as it then was under the Banking Tribunals Ordinance, 1984) for a sum of Rs.4,36,06,891/-. On appeal, the Division Bench of this Court allowed the appeal and modified the terms of the decree as a result of a compromise between the parties. The execution petition was filed by the decree holder for enforcement of the modified judgment and decree dated 18.3.1999. However, the fact remains that the claim filed by the plaintiff was for a higher sum and the consent decree was passed for lesser amount. The holding of the learned Single Judge was swayed by the definition of the term

“Banking Court” given in section 2(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. However as distinguished above, in the present case the consent decree was for an amount of Rs.125 Million which was within the pecuniary jurisdiction of this Court. Thereafter certain amounts were paid out of Court and as observed in the preceding paragraph, they were merely required to be certified by the decree holder or the judgment debtor as the case may be and an execution for the rest of the amount after deducting the certified amount is liable to take place. In my opinion, the present case does not turn on the definition of Banking Court as relied upon in *M/s Rehmania Textile Mills*. Moreover, the learned Single Judge did not advert his full attention to the concept envisaged by the Ordinance, 2001 whereby the decree passed by this Court is automatically converted into an execution petition. One may also visualize a situation where the amount of decree ultimately passed by this Court may be much less than the amount claimed in the suit by a plaintiff and which amount may fall below the threshold of pecuniary limit for the High Court to exercise its jurisdiction. Can it be said in that case that the execution of the decree be transmitted to the Banking Court for further proceedings? Clearly the answer to

this question is in the negative and the proceedings will be held in the High Court which passed the decree in the first place. The correct view has been taken in Mashriq Bank v. Messrs Amtul Rehman Industries (Pvt.) Limited and others (2002 CLD 336) where under similar circumstances, it was held that:

“No doubt, subsequently, the then Banking Tribunal proceeded to pass a decree for the recovery of Rs.3,03,25,593.66, however, it has been incorporated in the decree-sheet that the amount claimed was Rs.1,76,80,544.45, but the decree was passed for Rs.3,03,593.66. In this case jurisdictional value, originally fixed by the decree-holder was Rs.1,76,80,544.45, which will determine the forum of appeal /revision, which definitely falls within the pecuniary jurisdiction of the Banking Court. It is settled law that the valuation of the suit, itself fixed by the plaintiff in the plaint, determines the jurisdiction of the Court and will subsequently be the basis for determination of the forum for the purposes of filing of the appeal etc. Valuation, which also means the subject-matter of the suit, of the relief claimed by the plaintiff in the plaint determines the forum of appeal. It has been held in Government of Pakistan v. Messrs Allah Bakhsh 2000 CLC 1598 and Ditta Khan v. Muhammad Zaman and others 1993 MLD 2105 that forum of appeal will depend not only on the amount mentioned in the suit as per Order VII Rule 2, C.P.C. but also on the valuation fixed by the plaintiff himself for the purposes of court-fee and jurisdiction.

6. In view of the case-law cited by the learned counsel of both the parties I am of the considered view that the determining factor, for the purposes of jurisdiction, shall be the amount fixed by the plaintiff in the suit and on which amount the subject-matter of the suit has been valued. Once the plaintiff determines the value of the suit/relief in the plaint that shall be conclusive for the purpose of determining the forum of appeal etc.

7. In view of the above conclusions and findings I am of the considered view that this Court can neither entertain this execution petition nor undertake the execution proceedings on account of lack of pecuniary jurisdiction. In this case the Banking Court, which initially assumed the

jurisdiction on the basis of the value fixed by the decree-holder in the plaint itself, is the only Court which has the pecuniary jurisdiction to execute the decree, to decide the other matters relating to the execution, discharge and satisfaction of the decree and to deal with all the ancillary matters relating thereto. The net result is that the objection of the learned counsel of the judgment-debtors regarding the want of pecuniary jurisdiction prevails, thus, I am constrained to hold that this Court has no jurisdiction to try this execution petition and, therefore, the decree shall stand transferred to the Banking Court No-4, Lahore, for its execution. Resultantly, the execution petition shall be deemed to be pending before the Banking Court No.IV, Lahore, who shall take cognizance of the matter, decide the pending applications, including C.M. No.395-B of 2001 and shall proceed to execute the decree, of course, in accordance with law.”

10. Thus, the Division Bench of this Court held that the Banking Court which initially assumed the jurisdiction on the basis of the value fixed by the decree holder in the plaint was the only forum which had the pecuniary jurisdiction to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree.

11. In view of the above, the instant application is without merit and is **dismissed**.

Main Case

12. Relist on 28.02.2019.

**(SHAHID KARIM)
JUDGE**

Approved for reporting.

JUDGE

★

Rafiqat Ali