IN THE HIGH COURT OF SINDH AT KARACHI

Spl. HCA No. 51 of 2018

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Haji Abdul Razzak (deceased) through legal heirs V. MCB Bank Limited]

Date of hearing	:	10.09.2025
Date of decision	:	10.09.2025
Appellant	:	Through Mr. Asim Mansoor Khan, Advocate alongwith Zeeshan Bashir Khan, Advocate.
Respondent	:	Through Mr. Salman Aslam Butt, Advocate along with M. Shoaib Rashid and Shahid Iqbal Rana, Advocates.

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Appeal arises out of Order dated 17.01.2018, passed by the learned Single (Banking) Judge in Suit No. B-1674/1997 (**"the Impugned Order"**). Learned counsel for the Appellant submits that they were the Defendant in the said Banking Suit and their Leave to Defend was allowed in Order dated 12.11.2004 ("**First Order"**). Counsel contends that in the said First Order, there are certain observations made, which should be considered as *issues* framed. The relevant portion relied upon by the learned counsel for the Appellant is at typed page no.12 of the First Order, which reads as follows:

> *"I am therefore of the opinion that the substantial questions of law and facts i.e. i) whether the defendant is liable for the guarantee furnished by the Plaintiff in favour of Al-Taufiq investment Bank, Jeddah Standard Chartered Bank Ltd., Dubai and Bank Al Mashriq, Dubai as well as the overdraft facilities, ii) whether Promissory Note Annexure P/5 and letter of Lien P/6 are forged. iii) Whether the banks are prohibited from extending finances to its directions and therefore, indirectly the finance was obtained from Al-Taufiq on the basis of guarantee given by the*

> *Plaintiff. Utilizing the account of Defendant at EPZ Branch. iv) Whether it has a private arrangement between the Defendant and the directors of the bank, v) Whether the Defendant sought and availed financial facilities from the Plaintiff. vi) Whether the Plaintiff could have, in absence of any written request from the Defendant, approved, grant and issue a bank guarantee without first accepting any margin and collateral tangible security. Vii) Whether the Plaintiff was entitled to charge interest in absence of any agreement, have arisen which require a regular trial for adjudication.*

2. Learned counsel for the Appellant stated that under Section 10 (11) of Financial Institutions (Recovery of Finances) Ordinance, 2001 ("**the FIO 2001"**), the said observations by the learned Trial Judge should have been considered as issues framed, on the basis of which the matter should have proceeded further to the evidence stage.

3. Learned counsel submits that however this did not happen, and that the Plaintiff filed an application under Order XIV Rule 5 of the Code of Civil Procedure 1908 (**"CPC"**)[1] in which he sought framing of issues, and three issues were framed by the learned Trial Judge[2] vide the Impugned Order dated 17.01.2018, which were:

i. Whether the finance facilities were availed by the Defendant from Plaintiff in the form of guarantee(s), over draft or under any mode permissible by law?
ii. Whether Plaintiff rightly held security / lien over shares / vouchers, of other companies as well as amounts lying in various Accounts of the Defendant and / or his business concerns.
iii. Whether the Plaintiff is entitled to a Decree as prayed for?

4. Learned counsel for the Appellant contended that the First Order dated 12.11.2004 had finalized the *Issues*, and that the Impugned Order had the effect of reviewing the earlier First Order, by amending / changing the Issues stated in the First Order. Learned counsel submitted that the same was contrary to Section 27 of the FIO 2001.

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[1] CMA No.7685/2009
[2] Available at Page 63 of the File.

5. Counsel then referred to Section 22 of the FIO 2001 and stated that since the same could be deemed as a *'Final Order'*, an Appeal to the High Court was possible, and hence the Appellant has approached this Court in its Special Appellate Jurisdiction. Counsel further referred to Page 1151 of the File, which he states were *Issues* already previously settled by the Court.

6. Counsel submitted that re-settling *Issues* as done in the Impugned Order was erroneous, and therefore the said Impugned Order is liable to be set-aside. Counsel for the Appellant concluded by stating that only three *Issues* were framed in the Impugned Order, whereas initially there were several more *Issues* framed, and the narrowing of *Issues* (as per the Appellant) is contrary to law and procedure.

7. Learned counsel for the Respondent vehemently opposed the submissions made by the Appellant, and has premised his counter arguments on two basic grounds, which are:

i. That the Appeal was incompetently filed; and

ii. That the Appeal does not stem from any final order or judgment, and as such is barred under the special law (being FIO 2001).

8. Learned counsel for the Respondent stated that this Appeal was not filed by all legal heirs, but that one legal heir has not joined these Appellate proceedings. Counsel submitted that there are nine (9) Appellants, (being legal heirs of Haji Abdul Razzak "the deceased") but he had left behind ten (10) legal heirs. As per counsel, the claim is a collective claim against all legal heirs, and since one legal heir has not joined, therefore filing of the instant Appeal was void, which is a defect that cannot be subsequently remedied. Counsel submits that he has already raised this objection previously as can be seen from orders dated 25.02.2019 & 14.03.2019.

9. Learned counsel then contended that even otherwise, under Section 22 of the FIO 2001, re-settling of issues does not fall under category of 'Final Order', and as such there is a statutory bar under

Section 22 of the FIO 2001 for filing such an appeal. In support of his contentions, learned counsel for the Respondent relied upon several case laws.[3]

10. Learned counsel for the Appellant utilized his right to rebuttal, and has submitted that in the first instance under Order XLI Rule 20 Code of Civil Procedure 1908 (**"CPC"**), the Court is competent add any person to the proceedings who are interested in the matter. He further submitted that all legal heirs were not required, and that any/some of the legal heirs interested in the matter were sufficient to file an Appeal. He further reiterated his initial submissions, and stated that the Impugned Order is final nature and hence it can be appealed from. He submitted there is no bar under law preventing an appeal against the Impugned Order. In support of his contentions learned counsel for the Appellant has relied upon several case laws:[4]

11. We have heard learned counsel and perused the available record.

12. The first point we will consider is whether the Impugned Order is barred from being appealed under law. The Suit pending before the Trial Court has been brought under the Banking Jurisdiction, which is a Special Law governed under the FIO 2001. Section 22 of the FIO 2001, which deals with appeals, reads as under:

> 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.

13. It therefore rests on the initial question as to whether the Impugned Order passed for resettling of the *Issues* would fall under

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[3] PLD 1981 BJ 43, PLD 1982 SC 46, PLD 1974 SC 322, 2001 MLD 1964, 1986 CLC 1706, 2003 SCMR 965, 2019 CLD 9, 2013 CLD 805, 2014 CLD 1596, 2017 CLD 1428, 2018 CLD 203, 2012 CLD 317, 2003 CLD 1033, PLD 1973 SC 49, 2013 SCMR 338, 1998 CLC 1718, 2015 CLD 269, 2007 CLD 1532, 2014 CLD 1636, PLD 2005 Lahore 662, 1986 CLC 2652 & 1984 CLC 2599.

[4] 2008 CLD 338, 2013 CLD 1922, 2017 CLD 1428, 2015 CLD 1875, 2014 CLD 1452, 2003 CLD 1788, 2019 CLC 1578, 2013 SCMR 338, 2010 LR 3211, 1998 CLC 911, 2007 MLD 1647, PLD 2004 SC 430, 1993 CLC 2174, PLD 1989 SC 532, PLD 1989 SC 541, PLD 1991 SC 218, 1993 SCMR 363, 1988 CLC 1857, PLD 2003 SC 979, PLD 2003 Khi 466, 2018 SCMR 762, 2003 SCMR 318, 2003 SCMR 181, PLD 2000 Khi 31 & 2015 SCMR 56

category of *'Final Order'*? The terms *'Final Order'* has been deliberated in detail through various jurisprudence throughout the years. In the recent case of *Syed Wajahat Zaidi*[5], a learned Division Bench of this Court held in a Special High Court Appeal (Banking) that there is a clear bar against filing an Appeal against any interlocutory order, and even against an order dismissing a *Leave to Defend Application*. The learned Division Bench held that it is only when arguments on the merits of the case are available, that an order can be deemed to be a *'Final Order'*. The relevant portion of the Judgment reads as follows:

> *"7. It is prima facie apparent that there is a statutory bar upon preferring any appeal against an order rejecting a leave to defend application and / or any interlocutory order passed by the Court. The reference to interlocutory order is qualified as being an order of the Court which does not dispose of the entire case.*
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> *8. It is obvious that the cited statutory provision specifically precludes the possibility of any appeal being preferred against an order rejecting a leave to defend application, in addition to the other apparently disjunctive proscriptions contained in the said provision.*
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> *9. The law in such regard was considered by the Superior Courts on numerous occasions and an illuminating Division Bench judgment of this Court, in the case of Nadeem Athar and another v. Messrs Dubai Islamic Bank (Pakistan) Ltd reported as 2013 CLD 805, maintained as follows:*
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> > *"11. From perusal of the provisions of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 it appears that no appeal lie against an interlocutory order passed by the Banking Court. Undoubtedly. Order passed by the learned single Judge, for all intents and purposes, is an interlocutory order as lis is still pending before the learned single Judge who has still to render its final verdict. The legislature has made such order passed by single Judge, as non-appealable by specifically making provisions in that respect by virtue of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.*

[5] 2019 CLD 91

12. Under the circumstances, when the legislature has specifically prohibited the filing of an appeal against the interlocutory order no exception can be drawn from such legislative intent, which otherwise would amount to defeating the clear intent of the legislature. After having examined the provisions of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 we do not find any merit in this appeal and the same was accordingly dismissed vide our short order dated 20.11.2012 and these are the reasons for such order."

10. A similar view was expounded by the honorable Lahore High Court in the case of Muhammad Khan v. Zarai Tarakiati Bank Limited through President reported as 2014 CLD 1596, wherein it was maintained as follows:

"7. While subsection (1) of section 22 (supra) confers an absolute right upon an aggrieved person to assail the validity of a judgment, decree, sentence or final order (emphasis added), subsection (6) circumscribes it and hedges it respecting interlocutory orders. It is noteworthy that while subsection (1) uses the word "may" implying the permission to file an appeal, subsection (6), in contradistinction, opens with the imperative language, employing the words "No appeal, review or revision shall lie against....any interlocutory order of the Banking Court". The choice phraseology used by the legislature to emphasize two facets of the same coin leaves no room for doubt that it intended to stonewall a challenge to interim or intermediate or interlocutory orders, with the underlying object to let the suits/cases tried by the Banking Court conclude within the shortest possible time. In other words, the law on the subject is so designed as to allow the matters proceed apace, without any hiccup.

8. Black's Law Dictionary (Sixth Edition) defines final order as under:-- "One which terminates the litigation between the parties and the merits of the case and leaves

> *nothing to be done but to enforce by execution what has been determined."*
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> *9. The words "final order" and "an interlocutory order" have repeatedly come up for consideration before the superior Courts in the subcontinent. In (10 Rang.335). It was held as under:--*
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> *"A final order means an order which finally disposes of the rights of the parties. (54 all 401). The real test for determining whether the order is final ought to be this: "Does the judgment or order, as made, finally dispose of the rights of the parties"? If it, does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order. Whether an order is final or not depends on the facts of each case."*

14. The matter of framing of *Issues* is dealt under Order XIV of the Code of Civil Procedure 1908. The relevant excerpts are reproduced:

ORDER XIV

> **Rule 1: Framing of issues:** (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. (3)Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. (4) Issues are of two kinds: (a) issues of fact, (b) issues of law. (5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. (6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.
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> **Rule 5: Power to amend and strike out issues:** (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit. And all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. (2) The Court may also, at any time

> before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

15. A perusal of the above provisions illustrate two fundamental points: The definition of what constitutes an *issue*; and that the Court may at any stage before passing a decree amend, strike-out or frame *issues*. Since this power is held by the Court up to the final moments, i.e. until a decree is passed, the framing of *issues* cannot be considered to have attained any finality (until a decree is passed). Since finality has not been obtained, framing of *issues* would have to be considered as *interlocutory*.[6]

16. As the instant Appeal falls within the confines of the FIO 2001 (*a special law*), the right of appeal under a special law also remains restricted and must be permissible under the governing statute. This principle was enunciated in the matter of *Mian Manzar Bashir v M.A. Asghar & Co.*,[7] where Mr. Muhammad Haleem, J. (as he then was) while opining for the 3 Member Bench of the Apex Court, held:

> *"The question now arises as to whether this order was appealable as contended. The test for determining whether such an order is appealable or not was enunciated by, this Court in Ibrahim v. Mahammad Hussain (P L D 1975 S C 457).. It was held*
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> *"It is well-settled principle that right of appeal is a creature of the statute and it is not to be assumed that there is right of appeal in every matter brought before a Court for its consideration. The right is expressly given by a statute or some authority equivalent to a statute such as a rule take the force of a statute. Therefore, existence of right of appeal cannot be assumed on any a priori ground. This is an sharp contrast with the right to sue. A litigant has a general right to institute a suit of civil nature independently of any statute, unless such general right is expressly or by necessary implication barred by a statute to the contrary. Therefore, in respect of any order made in proceedings before the Rent Controller, right of appeal will have to be clearly established within the four corners of subsection (1) of section 15 of the Ordinance.*
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> *It is plain that subsection (1) of section 15 is restrictive in character and limits right of appeal against an order falling under section 4, 10, 12 or 13 of the Ordinance. Therefore, when an appeal is sought against any order made by the Rent Controller, the question*

[6] There is undisputedly a plethora of case law available which provides the definitions of 'Final Order' being an order vide which finality of the dispute has been reached.
[7] PLD 1978 SC 231

> *will always be, whether the order sought to be appealed against properly falls under any of the above sections."*
>
> *Accordingly, an interlocutory order which is either incidental or collateral is excluded. It is only that order which embraces the whole gamut of the dispute which is appealable."*

17. As already stated *ibid.*, the FIO 2001 being a special law in nature, only grants the right of appeal under specific conditions. Since we are of the view the Impugned Order cannot be deemed as a *'Final Order'*,[8] none of the conditions for appeal as mandated under Section 22 FIO 2001 were met, and hence the appeal would be barred under statute. We are further fortified in this view by the Supreme Court judgement in *State Life Corporation v Mst. Sardar Begum*[9] and a Division Bench judgement of this Court in *Brecast Industries (Pvt.) Ltd. v HBFC.*[10]

18. It has been tritely settled that where the law provides something to be done in a particular manner, it needs to be done in that manner. Therefore, FIO 2001, being the governing special law in the circumstances, must be followed in both letter and spirit.

19. Even a scrutiny of the proceedings has shown the Impugned Order has only resettled *Issues* by narrowing them down for purposes of ease and which would have the effect of expediting the case. The FIO 2001, was specifically promulgated with the intention to ensure a speedy resolution of banking / financial matters, as can be read through the objectives and Preamble of the FIO 2001, which has since also been interpreted in various case law.[11]

20. Furthermore, when we confronted the learned counsel for the Appellant by asking as to how they were aggrieved by the Impugned Order and / or resettling of *Issues* by the learned Trial Judge, he was unable to give a satisfactory reply. The onus to prove the case remains on the Respondent (Plaintiff in the Suit), and it is the Respondent /

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[8] There can be no cavil the Impugned Order is also not a judgement, decree or sentence as per section 22 FIO 2001, and hence the same is not discussed here.
[9] 2017 CLD 1080
[10] 2021 CLD 557
[11] 2023 CLD 655; 2015 CLD 1202

Plaintiff's prerogative to have requested for particular *Issues* to be framed. It is also not the case of the Appellant that any of their proposed *Issues* have not been considered by the Trial Judge. Therefore, even in this regard we have failed to understand the Appellant's bone of contention with the Impugned Order. Moreover, the powers of the Court to amend / re-frame *issues* under Order XIV Rule 5 have not been denied or otherwise challenged, and hence a reading of the said provision clearly maintains the Court's powers to amend/re-frame *issues*.

21. In light of the above, we find this Appeal to be barred under the *Financial Institutions (Recovery of Finances) Ordinance 2001*, as the same has been filed against an Order which in our opinion does not pass the criteria settled under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001, to be considered as a *'final order'*. As the Appeal itself is barred by statute and cannot be entertained, there appears no need for us to delve further and deal with the second objection of the Respondent, relating to competency of some (not all) legal heirs of the (late) Haji Abdul Razzak filing this Appeal, without including one legal heir.

22. Accordingly for the reasons aforementioned, the instant Appeal being barred under law is hereby dismissed.

These are the reasons for our short order dated 10.09.2025 announced in Court.

JUDGE

JUDGE

Karachi.
Dated: 10.09.2025.
M. Khan