ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.60 of 2014

Date	Order with signature of Judge

Present: Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Nazar Akbar

Appellant	:	Arif Oosman, through Mr. Abdul Sattar Lakhani, advocate.
Respondent	:	Habib Bank Ltd., through Mr. Tasawar Ali Hashmi, advocate.
Dates of hearing	:	25.4.2017 & 26.04.2017.

JUDGMENT

NAZAR AKBAR, J:- The appellant through this appeal has impugned the judgment and decree dated **10.02.2014** and **24.02.2014** passed by Banking Court No.l at Karachi whereby suit No.5375 of 2000 filed by the Respondent/Plaintiff for recovery of Rs.55,39,216.00, was decreed against the appellant/ Defendant.

2. Brief facts of the case are that Respondent is a Banking Company incorporated in Pakistan under the Companies Act, 1913. The appellant is a Pakistani citizen who had guaranteed repayment of loan extended by the respondent through Al-Boorj Avenue **Branch, Sharjah, UAE** of Habib Bank (Overseas) Limited to M/s Ascot International, a sole proprietary concern having office at Al-Boorj Avenue, P.O Box No.300 **Sharjah, UAE**. The guarantee was also executed at Sharjah, UAE. The Respondent submitted that in consideration of the grant of loan, M/s. Ascot International, executed and delivered to the Respondent the following documents:-

i. An undated Demand Promissory Note for QDs.500,000.00.
ii. Undated Facility Letter for the said amount.
iii. Undated Letter regarding overdraft.
iv. Undated Letter of guarantee.

The respondent further alleged in the plaint that the appellant alongwith letter of guarantee had handed over twelve cheques dated from **18.10.1978** to **09.09.1979** all drawn on the Union Bank of the Middle East Ltd., Dubai (UAE) but these cheques were bounced due to insufficient funds when presented on different dates during the period from **11.12.1978** to **10.10.1979**. The Respondent further averred in the plaint that the appellant acknowledged his liability and undertook to make payment of the guaranteed amount by letters dated **18.4.1990**, **06.4.1991** and **22.4.1991** but did not keep his promise and left Sharjah and is now carrying on business at Karachi. The Respondent claimed that on **22.5.2000** a sum of **DH.392,018.14** equivalent to Pak Rs.55,39,216.00 was due and payable by the appellant as **"Guarantor"** for the loan advanced to M/s. Ascot International by the respondent. The respondent, therefore, filed a suit for judgment and decree in the sum of DH.392,018.14 equivalent to Pak Rs.55,39,216.00 with interest at the rate of 14% per annum with monthly rests before of Banking Court No.1 at Karachi.

3. The Appellant/Defendant filed an application for leave to defend the suit and raised several legal issues namely:-

(i) The suit was filed without board resolution; power of attorney and/or any other document authorizing the person signing/verifying the plaint. Therefore, the person purportedly signed the plaint on behalf of Habib Bank Limited lacked the requisite authority for doing so;

(ii) This Court has no jurisdiction to decide the matter since finance was not granted by the respondent to either M/s. Ascot International or the appellant/Defendant and therefore there is no relationship between the alleged respondent and the appellant that may be properly categorized as that of a "Financial Institution and the Customer" in terms of the Financial Institutions (Recovery of Finance) Ordinance, 2001;

(iii) The suit is bad for the non-joinder of the sole proprietor of M/s. Ascot International, who is the alleged principal borrower;

(iv) That no cause of action has arisen in favour of the Respondent;

(v) The suit is hopelessly time barred on account of the period of limitation prescribed by the Limitation Act, 1908;

(vi) The requisite stamp duty payable on the documents listed at Sr. No.(i) and (iv) of the list of documents and marked as annexure A-1 to A-4 has not been paid to make then enforceable at law;

(vii) These documents are undated and the same were not executed in Pakistan, therefore, no decree can be passed on these documents;

(viii) The provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 are not attracted since none of the documents filed with the plaint have been executed by or on behalf of M/s. Ascot International and that none of the said documents allude to or establish the grant of any loan by the alleged respondent/plaintiff to M/s. Ascot International.

4. On merit it was averred in leave to defend application that in annexure A-2 to A-4 the relevant currency has not been specified and Annexure A-4, even if it were to be regarded as a guarantee from the appellant, it may at the most be regarded as intended to render the appellant liable for a sum of **Rs.500,000/-** only. It was also averred by the appellant that annexure-4 cannot validly be regarded as a guarantee as it makes no mention of the sole proprietor of M/s. Ascot International in his/her capacity as the principal borrower. Annexure-4 purports prima facie to grant the alleged respondent the right to set off the balance standing to the credit of a specified account maintained by the principal borrower with the respondent in its **London branch**. It has also been specifically pleaded that the loan was obtained by M/s Ascot International at the overseas branch of the respondent situated at Al-Boorj Avenue in Sharjah. Annexure A-4 prima facie relates to an advance, credit or other facility granted at **Deira Dubai**. Regarding acknowledgement, it was averred that if at all

annexure C-1 to C-3 were to be regarded as binding obligation of the appellant to the Respondent, the extent of such obligation, at the most, was for an amount of **Rs.500,000/-** only. It was also urged by the appellant that the respondent has failed to provide any particular of the alleged default on the part of M/s. Ascot International in its pleadings. The respondent is not entitled to receive either the amount claimed therein or any other amount from the appellant.

5. Leave to defend application was granted by order dated **27.5.2003** and by treating the application for leave to defend as written statement, following issues were framed by the Banking Court:-

i. Whether the Plaintiff can file suit against the Defendant, a proprietor in Pakistan when finance was obtained by Ascot International from Dubai Branch?

ii. Whether the suit is time barred?

iii. Whether the cause of action has arisen to the Plaintiff?

iv. Whether the suit is bad for non-joinder of parties?

v. Whether an amount is outstanding against Ascot International at the time of filing of suit?

vi. Whether Defendant is liable to adjust the liability of Ascot International, if any?

vii. What should the decree be?

6. The respondent/plaintiff produced their evidence and they were cross examined. However, the appellant instead of leading evidence preferred to file a statement that since no case is made out against the appellant, he would prefer to rely on the question of jurisdiction of the Banking Court and limitation. The Banking Court after going through the written synopsis of arguments filed by the appellant and the respondent, decreed the suit by impugned judgment dated

10.2.2014. The appellant has questioned the correctness of the impugned judgment through this First Appeal under **Section 22** of the Financial Institutions (Recovery of Finances) Ordinance 2001 (hereinafter referred as the Ordinance of 2001).

7. Before us the learned counsel have advanced their respective arguments only on the following **two** questions of law raised by the appellant:-

1. Whether the Banking Court at Karachi under Section 9 of the Banking Companies (Recovery of Loan, Advances, Credit and Finances), Act 1997, (hereinafter referred to as the Act of 1997) had the territorial jurisdiction to entertain the suit filed by the respondent against the appellant for recovery of loan advanced at Deira Dubai through its branch at Sharjah, UAE?

2. Whether the suit filed by the respondent was hopelessly time barred and **Section 22** of the Act of 1997 has not revived limitation against the appellant for recovery of facility which was an interest bearing loan extended by the respondents in the year 1978?

It is an admitted position that the loan transaction, if at all, has taken place in Sharjah (UAE) where the principal borrower namely M/s. Ascot International at Al-Boorj Avenue, P.O Box No.300, **Sharjah (UAE)** was running its business. It is also admitted position that the cheques issued by the appellant as guarantor were also drawn on Union Bank of the Middle East Ltd., **Dubai (UAE)**. The appellant has executed letter of guarantee dated **21.2.1978**, at Dubai available at page 203 which was produced as exhibit P/10. All the cheques were dishonored sometime in **1979**, therefore, learned counsel for the applicant relying on the definition of the Banking Companies as given in **Section 2(a)(i)** of the Act of 1997 contended that the provisions of **Section 9** of the Act of 1997 to bring the suit in respect of the banking transaction which has taken place in Sharjah, UAE was outside the territorial jurisdiction of the Banking Court

established under Section 4 in respect of cases covered by **Section 2(b)(i)(ii)** of the Act of 1997 and it continues to be so even after the promulgation of the Ordinance of 2001.

8. Learned counsel for the respondent has contended that since the guarantor having left the place where banking transaction has taken place i.e. Sharjah and now carrying on the business at Karachi (para-5 of the plaint), therefore, this Court can proceed against him in view of **Section 20** of Civil Procedure Code, 1908. He has also referred to the correspondence between the appellant and the respondent dated 18.4.1990, 06.4.1991, 22.4.1991 in which the address of the appellant is of Karachi. However, he has not disputed that the banking business transaction between the respondent Bank and the appellant/ guarantor has taken place at **Sharjah, UAE** in **1978**.

9. Learned counsel for the appellant in support of his contention that the Banking Court lacks territorial jurisdiction has relied on two judgments of the single benches of this Court reported as ***(1) Nadeem Ghani vs. United Bank Limited and others*** *(2001 CLC 1904)* ***(2) Habib Bank Limited vs. Highway General Trading Co. and others*** *(2014 CLD 491)*. In the former case the Act of 1997 was examined and in the latter case the Ordinance of 2001 was under consideration and in both the cases provision of **Section 2(a)(i)** of the two enactments were mainly interpreted to hold that the Banking Courts in Pakistan have no territorial jurisdiction to enforce recovery of finances by the defaulter in respect of the facility advanced by the "Banking Company" or a "Financial Institution" outside Pakistan. The relevant provisions of the Act of 1997 and Ordinance of 2001 are

reproduced below. **Section 1(2)** is common in both the Act and the Ordinance. It reads:-

> **1. Short title, extent and commencement.—**(1) . . . . . .
>
> (2) It extends to the whole of Pakistan.
> (3) . . . . . .

Section 2 "Banking Company" means--

Section 2(a)(i) in the Act of 1997 reads:-

> *Any company whether incorporated within or beyond Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan and includes a government saving bank;*

Section 2 "Financial Institution" means and includes:-

Section 2(a)(i) in the Ordinance of 2001 reads:-

> *Any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan* ***through its branches within or outside Pakistan*** *and include a government saving bank, but excludes the State Bank of Pakistan;*

There is hardly any difference in the definition of "Banking Company" a term used in the Act of 1997 from the definition of "Financial Institution" substituted in the Ordinance of 2001 except use of some additional words reproduced above in bold letter from the earlier act.

10. The careful examination of the judgments cited above and reading of the provisions of the Act of 1997 and the Ordinance of 2001, we are also in agreement with the findings of the two learned single Judges to the extent that the Banking Courts in Pakistan lack territorial jurisdiction to entertain the suit filed by the "Financial Institution" for recovery of loan arising out of the Banking transaction executed in foreign land. In this context para 22 from the first citation i.e 2001 CLC 1904 and para 15 from the second citation i.e 2014 CLD 491 are relevant and reproduced as under:-

(2001 CLC 1904)

22. It is universally accepted that according to the comity of nations all legislation of a country is territorial, all exercise of jurisdiction is territorial in nature and the laws of a country apply to all its subjects, things and acts within its territory. Section 1(2) of the Banking Act, 1997, clearly states that its provisions extend to Pakistani territory and, prima facie, the Act does not envisage extra-territorial application. Therefore, the provisions of the Act would not apply to banking transactions conducted beyond the territories of Pakistan in another country under the laws of that country where the branch of a banking company incorporated or operating in Pakistan may be doing business. To understand it properly, let us take an example. Suppose A.B.C. Bank which is incorporated in New York also has a branch among others in Karachi and Tokyo. It enters into a loan transaction in New York or Tokyo with its customer who commits a default in payment of the debt, leaves New York or Tokyo had settles in Karachi, A.B.C. Bank can file the suit against its customer in Karachi because the defendant resides in Karachi as permitted by section 20, C.,P.C. but the question is whether A.B.C. Bank can file a claim in the Banking Court established under section 4 of the Banking Act, 197, which provides a speedy remedy or would it have to file the claim in the ordinary Court of civil jurisdiction. The answer is simple; even though A.B.C. Bank has a branch in Karachi, it cannot file the above-referred claim in the Banking Court because the transaction did not take place under the terms and conditions enforced by the State Bank of Pakistan for the business of banking in Pakistan but under the laws of New York or Tokyo and does not come within the definition of finance as defined in the Banking Act, 1997. However, it can file the claim in the ordinary Court exercising civil jurisdiction in accordance with the provisions of C.P.C. In the present case, the transaction between the parties took place beyond the territories of Pakistan i.e in England where it was subject to English Law and not subject to Pakistan Law or the present banking system enforced by the State Bank of Pakistan. It is, therefore, apparent that the transaction between the parties cannot be said to be covered under the provisions of the Banking Act, 1997. After reading the provisions of the said Act which is a special law enacted to meet the special situation prevailing in the country and the fact that the transaction in dispute took place in England under English Law between parties who were domiciled in England at the time of transaction, ***I am of the opinion that the dispute between the parties is not covered by the provisions of the Banking Companies (Recovery of Loans Advances, Credits and Finances) Act, 1997. Consequently, exercising the power***

> ***under section 7(4) of the said Act. I hold that the plaintiffs' claim is not a loan or finances as defined in the Banking Act, 1997 and the High Court exercising jurisdiction under section 5 of the Banking Act, 1997 does not have jurisdiction to decide the said dispute between the plaintiff and the defendants herein and accordingly under Order VII, Rule 10 C.P.C the plaint is ordered to be returned to the plaintiff for presentation in the competent Court of ordinary civil jurisdiction****. (Emphasize provided).*

(2014 CLD 491)

> *15. After having considered the matter, it appears to me that the crucial point is that the definition in the 2001 Ordinance uses the definition in the 1997 Act in is entirely and merely adds certain words to it. In particular, the specific limiting words "in Pakistan" have not been omitted and the new words, "through its branches within or outside Pakistan" have simply been added at the end. In my view, these words are clarificatory in nature. They give recognition to the fact that the bank concerned may be transacting banking business in Pakistan not merely through branches located here, but also abroad.* ***In other words, it is clarified that while the cause of action sued upon must relate to or arise out of banking business transacted in Pakistan,*** *it is immaterial whether such business originates from within or outside Pakistan. In either case, a suit under the 2001 Ordinance would be maintainable. This point was not clear in the 1997 Act.* ***It could plausibly have been concluded on the basis of the definition therein contained that the limiting words "in Pakistan" localized both the substance of the banking business as well as its origination.*** *In other words,* ***the banking business had to both arise and be transacted in Pakistan****. The additional words used in the 2001 Ordinance now make clear that this is not so.* ***The banking business may originate anywhere, i.e., either from a branch inside the country or abroad; all that is required that the business be transacted in Pakistan****. (Emphasize provided).*

11. Learned counsel for the respondent has candidly conceded that the Banking Court has no territorial jurisdiction, however, he insisted that the plaint should have been returned by the Banking Court under Order VII Rule 10 CPC to the plaintiff for presentation in the Curt of competent jurisdiction. The learned counsel for respondent has relied on the following operative parts in the two judgments

(2001 CLC 1904 relevant page 1921 side note H and 2014 CLD 491 para 17).

(2001 CLC 1904)

> ***Consequently, exercising the power under section 7(4) of the said Act. I hold that the plaintiffs' claim is not a loan or finances as defined in the Banking Act, 1997 and the High Court exercising jurisdiction under section 5 of the Banking Act, 1997 does not have jurisdiction to decide the said dispute between the plaintiff and the defendants herein and accordingly under Order VII, Rule 10 C.P.C the plaint is ordered to be returned to the plaintiff for presentation in the competent Court of ordinary civil jurisdiction. Accordingly under Order VII, Rule 10 C.P.C the plaint is ordered to be returned to the plaintiff for presentation in the competent Court of ordinary civil jurisdiction****. However, as the Head Office of U.B.L. is in Karachi and the plaintiff's claim which is in excess of Rs.500,000 will be adjudicated in the original civil jurisdiction of this High Court; the Superintendent of the "D" Branch is directed to treat this suit as an ordinary suit filed in the original civil jurisdiction of the high Court. (Emphasize provided).*

(2014 CLD 491)

> *17. In view of the foregoing discussion, I am of the view that in relation to, and for, the facts and circumstances of the present case,* ***the plaintiff bank is not a "financial institution" within the meaning of section 2(a)(i).*** *The suit is therefore not maintainable under the 2001 Ordinance. Accordingly, the office is directed to number and register the suit as an ordinary suit on the original side. Since an ordinary suit may be defended as of right, the defendants are entitled to file their written statements, which may be done within six weeks from today. The leave applications stand disposed off in the foregoing terms. (Emphasize provided).*

12. While opposing the contention of the learned counsel for the respondent, the counsel for the appellant has contended that the facts of both the cited cases were different and in none of the cases, suit were barred by limitation and therefore, in both the cases, the findings of converting the banking suit into an ordinary suit on the original jurisdiction of this Court is not applicable in the case in hand on account of being barred by limitation. His main contention was

that since the facility advanced by the respondent bank in **UAE** was an interest bearing loan, therefore, the limitation did not revive on the promulgation of the Act of 1997. Learned counsel in support of his contention, has relied upon the following case law.

i) Khalid Qureshi and 5 others vs. United Bank Limited I.I Chundrigar Road, Karachi (2001 SCMR 103);

ii) Mst. Shaheen Noon and another vs. Allied Bank of Pakistan through Manager and others (2006 CLD 706);

iii) Messrs Industrial Development Bank of Pakistan vs. Mst. Rooqaiya Begum and others (1986 CLC 1592);

iv) Habib Bank Limited vs. Shamim Qureshi (PLD 1988 Karachi 481);

13. Learned counsel for the respondent has contended in rebuttal that limitation has not been available to the appellant since right from 1979 when for the first time, law for recovery of bank loan was promulgated through the Banking Companies (Recovery of Loans) Ordinance, 1979, (Ordinance of 1979) the Limitation Law was not applicable in suit for recovery of loans. According to him, in view of **Section 4(2)** of the Ordinance of 1979, the plea of limitation is not available to the appellant and it was in the Act of 1997 that the concept of limitation in banking law has been introduced. In support of his contention, learned counsel for the Respondent has relied upon the following case law.

i) Industrial Development Bank of Pakistan vs. Messrs Naqi Beverages (Pvt.) Ltd. and 7 others (2002 CLD 712);

ii) Valuegold Limited and 2 others vs. United Bank Limited (PLD 1999 Karachi 1);

iii) T. Zubair Limited and 2 others vs. Judge, Banking Court No.III, Lahore and another (2000 CLC 1405);

iv) Bank of America National Trust and Saving Association vs. Messrs Saad Company Ltd. (1988 MLD 2285);

v) United Bank Ltd vs. Haji Bawa Company Ltd and 3 others (1981 CLC 89);

14. The contention of the learned counsel for the respondent that limitation was not applicable in the case of recovery of bank loan appears to be misconceived in the case in which the banks have advanced interest based loan. The reference to **Section 4** of Banking Companies (Recovery of Loans) Ordinance 1979 is also of no help to the respondent since it has only revived the limitation in respect of the outstanding loans on the commencing day of the Ordinance of 1979, which was **12.3.1979** after the first day of January, 1974. **Section 4** of the Ordinance of 1979 is reproduced below:-

> **4. Securing and repayment of loan due on the commencing day**.—(1) This section applies only to loans outstanding on the commencing day.
>
> (2) A loan or part thereof outstanding on the commencing day shall, unless secured or repaid earlier, be secured and repaid as provided in this section **notwithstanding the fact that the period of limitation within which a suit for the recovery of the loan or part thereof could have been** or may be filed expired or expires on or after the first day of January 1974.

Learned counsel has emphasized on the underlined portion in the above quoted section. However, in the case in hand loan facility was advanced by the respondent in the year **1978** and **Section 4** of the Ordinance of 1979 was not attracted since the facility was not time barred on the commencing day of the Ordinance of 1979 and there was not any specific provision declaring that the Limitation Act, 1908 shall not apply to the proceeding under the Ordinance of 1979. The reliance placed by the learned counsel for the appellant on **2001 SCMR 103** clarifies the position that in the case of "interest based loan" the provisions of limitation act were applicable and it was only **Section 12** of the Banking Tribunal Ordinance, 1984, which has excluded the application of Law of limitation in the case for recovery of finance provided by Banking Companies under a system of finance

which was "not based on interest". **Section 12** of the Banking Tribunals Ordinance 1984 is reproduced below:-

> **12. Limitation act, 1908 (Act IX of 1908), not to apply.** The provisions of the Limitation Act, 1908 (Act IX of 1908), shall not apply to any suit, application or other proceedings filed by a banking company under this Ordinance.

In the above context before appreciating the law laid down by the Hon'ble Supreme Court in 2001 SCMR 103, it would be advantageous to read and reproduce for convenience the preambles of the three enactments i.e Ordinance of 1979; the Banking Tribunals Ordinance, 1984, and the Act of 1997 whereby the two Laws were re-enacted with certain modifications.

Preamble of Ordinance of **1979** reads as follows:-

> An Ordinance to repeal, and with certain modifications to consolidate and re-enact the Banking Companies (Recovery of Loans) Ordinance, 1978.

Preamble of Ordinance of **1984** reads as follows:-

> An Ordinance to provide a machinery for recovery of finance provided by banking companies under a system of financing which is **not based on interest**.

Preamble of the Act of **1997** reads as follows:-

> An Act to repeal and with certain modifications to consolidate and re-enact, the Banking Companies (Recovery of Loans) Ordinance, 1979 and the Banking Tribunals Ordinance, 1984.

15. The above survey of the circumstances in which the two laws have been promulgated and re-enacted through the Act of 1997 has definitely created an anomaly since both the laws were in the field. It is pertinent to note that the Ordinance of 1984 has not repealed the then existing Ordinance of 1979. The **Ordinance of 1979** was dealing with the **"interest based"** transactions and the **Ordinance of 1984** was dealing **"markup based"** transactions. Therefore, the

Hon'ble Supreme Court in para 8 & 9 of the judgment reported in **2001 SCMR 103** clarified the anomaly in the following terms.

> 8. In the light of what has been discussed hereinabove it can be said with certainty that the right extinguished due to bar of limitation could not be revived by virtue of the provisions as contained in section 22(1) of the Act as no retrospective effect has been given to it. The provisions as contained in section 22(1) are free from any ambiguity and thus, hardly call for any scholarly interpretation. It simply says that the provisions of Limitation Act shall not be made applicable to all those suits, proceedings or applications pending adjudication and transferred to Banking Court as a result of promulgation of the Act. The section 22(2) of the Act was enacted to remove the anomaly pertaining to "**mark-up based transactions**" as admittedly the Limitation Act was not made applicable in such-like cases by virtue of section 12 of the Banking Tribunals Ordinance, 1984 but "**interest-based transactions**" were-excluded from the domain of provisions of section 12 of the Banking Tribunals Ordinance, 1984. In order to remove such distinction or disparity-in between "mark-up-based transactions" and that of "interest-based transactions" **section 22 of the Act** was enacted so that it could save the financial institutions/banks from huge loss which could have collapsed them and, accordingly, "**fresh cause of action**" was made available regarding "mark-up-based transactions" to overcome the hurdle of limitation. While discussing the similar proposition it was held in case titled N.D.F.C. v. Anwar Zaib White Cement Ltd. **(1999 MLD 1988)** as follows:--
>
> > "The only reasonable and justifiable effect of the proviso would be that extended period of limitation has been provided in relation to the 'past' transactions, distinct from the 'closed' transactions involving barred or extinguished remedies. The result, therefore; would be two-fold. In regard to all the mark-up-based transactions disbursed prior to enforcement of Act XV of 1997, three years' period of limitation has been prescribed from the enactment of the Act and in relation to the interest-based transactions which were enforceable and the period of limitation, on the date of promulgation of Act XV of 1997, was still alive, an extended and additional period of limitation has been prescribed "
>
> 9. We are not persuaded to agree that no remedy whatsoever was available to petitioners prior to promulgation of the Act as he could have invoked the jurisdiction of Special Court under section 6(1)(a) of the Banking Companies (Recovery of Loans) Ordinance, 1979, and suit have been filed because Special Court had jurisdiction in respect of a claim filed by Banking Company against a borrower or by a borrower against a Banking Company. The said remedy was **not** availed by the petitioner and now at this later stage on the basis of provisions as contained in section 22(2) of the Act no fresh suit could be filed.

16. In the other citation relied upon by the learned counsel for the appellant, the Hon'ble Lahore High Court in the case of Shahjehan reported as **2006 CLD 706** has relied on the aforesaid judgment of the Supreme Court. The other judgments reported as 1986 CLC 1592 and PLD 1998 K 481 have no relevance and significance in presence of the subsequent judgment of Hon'ble Supreme Court reported as **2001 SCMR 103**. The case law relied upon by the learned counsel for the respondent is also not relevant for the present controversy regarding application of limitation in respect of the banking transaction between the appellant and the respondent since the transaction was admittedly interest bearing loan advanced by the respondent. Even in the plaint the respondent has claimed recovery of loan with interest @ 14% per annum and the loan was provided to M/s. Ascot International Ltd., sometime in 1978. Since it is an admitted position that the loan was interest bearing, therefore, the suit had already been barred by limitation. So far as the question of acknowledgment by the respondent is concerned, suffice is to say that all the so called acknowledgments without prejudice to the claim of the appellant were dated 1991 or prior. The suit has been filed in 2000 and even from the date of acknowledgement of the interest bearing loan, the suit was hopelessly time barred.

17. In view of the given facts when it was established that the suit was time barred that even if banking court (though it did not) had territorial jurisdiction, the plaint had to be rejected in terms of **Order VII Rule 10(d) CPC**, whereby plaint is to be rejected where suit appears from the statement in the plaint to be barred by any law. In view of the above factual position, the contention of the counsel for the respondent to return the plaint has no force. We may observe that in the two citations of single bench discussed above, irrespective

of the fact that the suits were barred by limitation or not, the learned Courts have exercised power under **Order VI Rule 10 CPC** in the pending suits. In the case of Nadeem Ghani, the Court was seized of an application under Order XXXIX Rue1 & 2 CPC in a case filed against the Banking Company and from the statement in plaint the Court came to the conclusion the transaction was not banking transaction and therefore, for want of jurisdiction, it was ordered that the plaint may be returned. In the second case the Hon'ble Court was seized of an application for leave to defend in the suit filed by a Bank and the conclusion of the Court was that in the relevant facts the bank was not financial institution within the meaning of **Section 2(a)(i)** of the Ordinance of 2001, therefore, the suit was not maintainable. However, the binding effect of the two judgment has been nullified by the law makers through the latest amendments introduced in the **Ordinance of 2001** by amending the definition **"customer"** and **"finance"** in its clause 2(c) and 2(d) respectively through the Financial Institutions (Recovery of Finances) (Amendment) Act, 2016 which reads as follow:-

> 2. **Amendment of section 2, Ordinance XLVI of 2001.-** In the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001), hereinafter referred to as the said Ordinance, in **section 2,**--
>
> (a) . . . . . .
> (b) . . . . . .
>
> (c) **"Customer"** means a person to whom finance has been extended by financial institution **within or outside Pakistan** and includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier;
>
> (d) **"finance"** includes:-
> (i) . . . . . .
> (ii) . . . . . .
> (iii) . . . . . .
> (iv) . . . . . .
> (v) . . . . . .
> (vi) . . . . . .
> (vii) . . . . . .

(viii) any amount of loan or facility availed by a person from a financial institution outside Pakistan who is for the time being resident in Pakistan."

Underlined portion in the above quotations are the amendments brought in the Ordinance of 2001 through Act No.38 of 2016 gazetted on **August 15, 2016**. Initially on the date of promulgation of the Ordinance, 2001 the legislature has only amended the definition of "Banking Companies" given in **Section 2(a)(i)** of the Act of 1997 whereby, they have added the similar words i.e "through its branches **within or outside Pakistan**" but the definition of **customer** and **finance** given in Section 2(c) and 2(d) of the Ordinance of 2001 have not been amended, therefore, in our humble opinion, the impact of the two judgments of the two single benches of this Court is that it has provided a guideline to the Law makers to further amend the definition **clause 2(c) and 2(d)** in line with the original amendment in **Section 2(a)(i)** of the Ordinance of 2001. Now through the amending Act of 2016, Banking Courts in Pakistan are empowered to even adjudicate on the issues of recovery of loan/finance facilities advanced by the financial institution through its branches outside Pakistan, provided, the defaulter of Bank Loan/facility has **"for the time being resident in Pakistan"**. This was probably originally intended when the words **"through its branches within or outside Pakistan"** was added in the Section 2(a)(i) of the Ordinance of 2001. However, after 15 years and probably after examining the interpretation of **Section 2(a)(i)** of the Ordinance of 2001 by this Court, the damage seems to have been controlled by the latest amendment in the Ordinance of 2001. Nevertheless, the advantage of this amendment to the financial institutions to bring their cases in the banking courts in Pakistan on the ground that the defaulter of loan/finance for the time being is resident in Pakistan would still be

subject to law of limitation, therefore, in the case in hand neither the observation of the two single benches in the two cited judgments regarding return of plaint nor the amendment has changed the position of the respondent.

In view of the above facts and circumstances, this First Appeal was allowed vide our short order dated **26.04.2017** and above are the reasons for the same.

JUDGE

JUDGE

Karachi
Dated: .05.2017.

Ayaz Gul