



that this Court cannot entertain and try the suit for want of pecuniary jurisdiction. It has categorically been mentioned by the appellant/ defendant in para No.4 of the affidavit in support of the application that through amendment made in **Section 7** of the Sindh Civil Courts Ordinance, 1962, the pecuniary jurisdiction of this Court is above **Rs.15 million** with effect from **02.3.2011**. The respondent/plaintiff has filed the instant suit on **09.8.2011** for recovery of money valued at **Rs.13,375,034/-**, therefore, the plaint is liable to be returned to the plaintiff for presentation before the Court having jurisdiction. The respondent/plaintiff did not file any counter affidavit to the said application and the argument of learned counsel for the respondent as incorporated in the impugned order was that:

*“This Court ceased to have the jurisdiction on account of the increase in the valuation in respect of the matters that can be filed on the original side, the instant suit should be transferred to the Court having jurisdiction”.*

Therefore, instead of returning the plaint to the plaintiff, as required under **Order VII Rule 10 CPC**, the learned Single Judge disposed of the said application through the impugned order holding that:

*“The suit is hereby transferred to the relevant Court having jurisdiction.”*

4. The appellant being aggrieved of the above findings of the learned single Judge has preferred this High Court Appeal, amongst other, on the ground that the order is hit by **Article 175(2)** of the Constitution of the Islamic Republic of Pakistan, 1973 since this Court lacks jurisdiction to try the suit. It is also contended that when the Court lacks jurisdiction it cannot pass even an order for transfer of the suit in exercise of the powers under **Section 24 CPC** since the consequences of “transfer of suit” under **Section 24 CPC** and “return

of plaint” under **Order VII Rule 10 CPC** are entirely different and distinct.

5. Learned counsel for the respondent has filed objections to the High Court Appeal and supported the findings of the learned single Judge on the ground that in terms of **Section 15 CPC** this Court can try the suit on merit once filed as it has ultimate pecuniary jurisdiction and also by referring to the provision of **Section 120 CPC** and **Order XLIX Rule 3 CPC**, whereby the provisions of **Section 16, 17 and 20 CPC** and **Order VII Rule 10 CPC** are not applicable to the proceedings before the High Court. Even otherwise, according to learned counsel for the respondent, the order of transfer of suit is not an adverse order since the suit would be decided on merit.

6. We have heard learned counsel for the parties and perused the record and examined the case law cited by them.

7. Learned counsel for the appellant has contended that the institution of the suit by the respondent before this Court was patently illegal since the only enactment which confers civil jurisdiction on this Court to entertain a civil suit is the Sindh Civil Courts Ordinance, 1962 whereby Civil jurisdiction of High Court is subjected to the pecuniary value above **Rs.15 million**. Suits with less than **Rs.15 million** value are to be filed in the Civil District Courts of Karachi. On the date of filing of the suit, **Section 7** of the Sindh Civil Courts Ordinance, 1962 had already been amended through the **Sindh Civil Courts (Amendment) Act, 2010** to be read as follows:-

**2. Amendment of section 7 of West Pakistan Ordinance, No.II of 1962.**---In the Sind Civil Courts Ordinance, 1962, hereinafter referred to as the said Ordinance, for section 7, the following shall be substituted.

“(7). Original Jurisdiction of Court of District Judge.-----

Subject to this Ordinance or any law for the time being in force, the original jurisdiction of the Court of the District Judge in civil suits and proceedings shall be without limit of the value thereof **excepting in the Karachi Districts where the original jurisdiction in civil suits and proceedings of the value exceeding fifteen million rupees shall be exercised by the High Court:**

Provided that nothing contained hereinabove shall affect any suit or proceedings pending in the High Court prior to the commencement of the Sindh Civil Courts (Amendment) Act, 2010 and all such suits and proceedings shall continue to be tried and decided by the High Court.”

**3. Amendment of Section 24 of West Pakistan Ordinance No.II of 1962.** ----In the said Ordinance, in section 24, for the words “thirty lacs of rupees” wherever occurring, the words “fifteen million of rupees” shall be substituted.

8. Learned counsel for the appellant has further contended that except the aforementioned provision of law there is no other constitutional or any other enactment which confers civil jurisdiction on the High Court to entertain a civil suit below the valuation of Rs.15 million within the districts of Karachi and therefore, it was a case of “No jurisdiction” and the exercise of the power was in violation of the provision of **Article 175(2)** of the Constitution of Islamic Republic of Pakistan, 1973 which reads as follows:-

**175. Establishment and jurisdiction of Courts.**---

(1) -----.

(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

9. Learned counsel arguing further on the question of exercise of original civil jurisdiction by the High Court has referred to the various statutes starting from the creation of Chief Court in Sindh and its jurisdiction through the **Sindh Court Act, 1926** and various

enactments and amendments down to 1962 when the Sindh Civil Courts Ordinance, 1962 was enacted. The Sindh Chief Court was established under **Section 3** and in terms of **Section 8** of the Act, 1926 the Chief Court was declared to be the **highest civil Court of Appeal and Revision** and the highest Court of Criminal and Revision in Sindh. Right from day one the districts Courts were the principal Courts of original civil jurisdiction in the Civil District as it was envisaged in **Section 22(2)** of the **Sindh Courts Act, 1926** which reads as under:-

**District Courts**

21. ....
22. (1) *There shall be in each civil district a district court and the Provincial Government shall appoint a district judge to each such court.*
- (2) *The district court shall be the **principal court of original civil jurisdiction** in the civil district.*

A full bench of this Court in the case of *Rimpa Sunbeam Co-operative Housing Society Ltd. vs. Karachi Metropolitan Corporation through Administrator (PLD 2006 Karachi 444)* has comprehensively discussed the history of civil jurisdiction of High Court to entertain civil suit. The full bench was seized of a “Reference” in which the full bench was require to answer the following question:

*“Whether the provision of Sindh Civil Court (Amendment) Ordinance 2002, transferring the suits of the value of Rs.30,00,000/- and less were constitutionally valid in terms Article 143 of the Constitution”.*

10. The full bench examined the preposition right from the **Sindh Court Act, 1926** and other legal and constitutional enactments including the High Court of West Pakistan Establishment Order, 1955, the High Court (Establishment) Order, 1970 and Balochistan and Sindh (High Courts) Order, 1976. In each of these

Presidential Orders for establishment of High Courts, as observed by my lord Mr. Justice Sabihuddin Ahmed (the then Chief Justice) which speaking for the full bench in para-11 held that none of the legislative instruments had the effect of altering the terms or the statutes of the legal provisions under which jurisdiction was conferred. The full bench finally concluded that civil jurisdiction of this Court is simply district Court jurisdiction which was conferred and regulated by the provincial statutes. The relevant para-19 and 20 of the judgment are reproduced below:-

19. *The upshot of the above discussion, therefore, is that the jurisdiction of this Court to entertain suits is basically neither the ordinary nor the extraordinary original civil jurisdiction of the High Court but simply a District Court jurisdiction, which was conferred and regulated by provincial statutes. The Karachi Courts Order, 1956, was also not a law made by the Parliament in exercise of powers under the concurrent Legislative list.*
20. *For the foregoing reasons, we are clearly of the view that there is no conflict between a federal and a provincial law in the above context and, therefore, **in accordance with section 7 of the Sindh Civil Courts Ordinance, the jurisdiction of this Court to try civil suits is confined to matter where the pecuniary value of the subject-matter exceeds Rs.30,00,000 all other suits are liable to be tried by the District Court.***

11. Learned counsel for the appellant relying on the above referred findings of the Hon'ble full bench of this Court has further supplemented his contentions by referring to a recent judgment of the Hon'ble Supreme Court in the case of *S.M Waseem Ashraf vs. Federation of Pakistan and others* reported as **2013 SCMR 338** and relevant portion from the said judgment reads as follows:-

----- . From the above quoted language of this Sub-Article, it is unambiguously clear that a bar, and a prohibition has been placed that "No" Court in Pakistan shall exercise any jurisdiction in any matter brought before it until and unless, such jurisdiction has been conferred upon it by the Constitution itself or under any law.

**The word “save” appearing in the Sub-Article has clear connotation of the word “except” for the purpose of construing the above, meaning thereby that “No” Court shall have the jurisdiction except as has been conferred upon it by the Constitution and/or law. It is a settled law that any forum or court, which, if lacks jurisdiction adjudicates and decides a matter, such decision etc. shall be void and of no legal effect.-----.**

12. Learned counsel for the respondent has candidly even conceded the question of pecuniary jurisdiction on the basis of valuation of the suit. However, he has attempted to argue that this Court can still try the suit in view of the provision of **Section 15** of Civil Procedure Code, since the High Court, according to him, has ultimate pecuniary jurisdiction. The basis of the argument is that “the greater include the lesser”, therefore, according to him, it is not the case of total lack of jurisdiction of High Court since the High Court has the authority to try suits of more valuation than the valuation of suits triable by District Courts. In support of his contention he has relied upon the following three cases:-

- i) National Bank of Pakistan vs. Humayun Sultan Mufti **(1984 CLC 1401)**;
- ii) Malik Jehangir Khan vs. Banking Tribunal No.1, Karachi Division Karachi and 4 others **(2002 CLD 1466)**;
- iii) National Logistic Cell through Commanding Officer NLC vs. Abdul Qayyum Khan and others **(2009 MLD 948)**;

13. Learned counsel for the respondent from the case of National Bank of Pakistan has relied on the observations of the Court that where a suit has been filed in the Court of higher grade the rule of return of plaint is subjected to the exception that it is discretionary with the Court of higher grade to return the plaint. The exact portion of judgment relied upon by the learned counsel for respondent is reproduced below:-

*“This rule, however, is to be read subject to the “exception” that when a suit instituted in a*

*Court of higher grade it is discretionary with that Court to return the plaint to the plaintiff as the rule requiring institution of suits in the Court of lowest grade competent to try the suit is a rule of convenience and procedure designed primarily to avoid overcrowding of superior Courts but their jurisdiction to try and dispose of the suit which should have been instituted in the Court of lower grade is not affected". (Emphasis provided).*

However, the learned counsel for the respondent seems to have avoided the concluding remarks of the Hon'ble Division Bench in continuation of the above observations on the same page No.1405 side note D continuing with the word "However" and it is worth to reproduce it as under to understand the dictum laid down by the Division Bench:-

*"However, the **discretion** vested in the Court of higher grade to return plaint is to be exercised keeping in view the settled legal principles laid down by the superior Courts in this regard after considering the facts and circumstances of each case, **where for instance the objection is raised before a Court of higher grade that the suit should have been filed before a Court of lower grade at the stage when the Court has already gone into evidence and concluded then instead of returning the plaint the proper course will be to decide the same.**" (Emphasis provided).*

It is not disputed by the respondent that the appellant has filed the application with the prayer for return of the plaint on the first opportunity before any progress in the proceedings of the suit.

14. In the case of Malik Jehangir this Court was seized of an application under **Section 24** read with **Section 151** CPC of Civil Procedure Code for transfer of suit to the High Court from Banking Court No.1 since another suit between the same parties on the same subject matter was pending in Banking Court No.1 and therefore, on facts of the case in hand the observation of the Hon'ble single judge of this Court while dealing with an application for transfer of suit from a Court of lesser pecuniary jurisdiction to this Court is not



relevant. The suit filed in the Court of lesser pecuniary value is lawfully instituted suit and the transfer of such suit to the Court of higher grade to avoid a conflicting judgment since a similar suit is already pending in the Court of higher grade is not a case of entertaining a suit of lesser pecuniary value by the Court of higher grade. In fact it is merger of two suits in which a suit of lesser value merges in the suit of higher value and therefore, exercise of civil jurisdiction in such a situation by a Court of higher grade is neither in line with **Section 15 CPC** nor violation of **Section 7** of the Sindh Civil Courts Ordinance, 1962. In the case in hand the suit of lesser pecuniary value has been instituted directly in this Court and thereby the Court of lesser value i.e Civil District Court was deprived of its jurisdiction and it was also in contravention of relevant provision of Sindh Civil Courts Ordinance, 1962.

15. In the case of National Logistic Cell the Hon'ble division bench in High Court Appeal has categorically observed that **Section 15 CPC** is a rule of procedure and not of jurisdiction and in the given facts of the said appeal the Court was already seized of the matter when the pecuniary jurisdiction of this Court had been enhanced through the Sindh Civil Court (Amendment) Ordinance, 2002 and the suits were subsequently decreed. The decrees were challenged before the Division Bench on the ground that pecuniary jurisdiction of this Court was ousted by amendment during the trial and the Division Bench repelled the said objection on the ground that on the day when the suits were instituted the Court had pecuniary jurisdiction and *"the appellant at no point of time raised any objection about the pecuniary jurisdiction of Court."* In fact without referring to **Section 21 CPC**, the Division Bench maintained the impugned orders in High Court Appeal before it. Section 21 CPC reads as follows:-

**21. Objection to jurisdiction.** *No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such **objection was taken in the Court of first instance at the earliest possible opportunity** and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.” Emphasis provided).*

In the case in hand the appellant has taken the objection to the jurisdiction of this Court “at the earliest possible opportunity”.

16. All the judgments relied upon by the learned counsel to insist that **Section 15 of CPC** was enough to protect the institution of the suit in the Court of higher grade were not relevant. In all these cases **Section 15 CPC** has been considered as a “rule of convenience or procedure” and not a rule conferring jurisdiction on civil Courts. The provisions of the Civil Procedure Code, 1908 are about the exercise of jurisdiction by Civil Courts when the Court is seized of a suit triable by it. The Civil Procedure Code does not confer jurisdiction on Courts. The rules to regulate proceeding in civil Court for exercising jurisdiction begin with the mandatory embargo provided in **Section 16 CPC** that “**subject to the pecuniary or other limitation prescribed by any law**”. This embargo in exercise of jurisdiction is sufficient to appreciate that jurisdiction to entertain a suit cannot be conferred on civil Courts by referring to the provisions of **Section 15 CPC**. If the Courts of higher grade are allowed to directly entertain the suits of lesser pecuniary jurisdiction to be instituted in the Courts of lower grades then each and every provision of law which confers jurisdiction on the Courts of a Civil Judge and Senior Civil Judge as well as the Civil District and Sessions Judge would be in the hands of the plaintiffs and not in statute book. Then the law conferring jurisdiction on Courts will not be a binding law rather it would be the option of the plaintiff to file a suit of whatever pecuniary

value in whichever Court he/she likes. It would lead to chaos in the hierarchy of civil judiciary and even a third class civil suit can be filed in the Court of Senior Civil Judge or even before the High Court merely because the Court of Senior Civil Judge or High Court are the Courts of higher grade. It would also definitely be in conflict with the constitutional embargo on the Courts “to exercise any jurisdiction.....“*untill and unless such jurisdiction is conferred upon it by the Constitution itself or under any law*” as held by the Hon’ble Supreme Court in the case of S.M Waseem Ashraf (supra).

17. The other contention of learned counsel for the respondent that the order of transfer of the suit in exercise of power under **Section 24 CPC** has not prejudiced the respondents and in view of **Order XLIX Rule 3 CPC** the provisions of **Order VII Rule 10 CPC** were not applicable to pass an order for return of plaint are misconceived. Regarding the propriety of order of transfer of a suit by a Court when it was not competent to try it, the learned counsel for the appellant has relied upon the case of Rahmatullah vs. Ikramullah reported in **1984 CLC 886**. It is a case of an identical situation. Civil Judge 1<sup>st</sup> Class Ghotki in view of the fact that he had no jurisdiction to try the suit, sent the plaint to the District Judge for transfer to the Court of competent jurisdiction and it was accordingly transferred by the District Judge to the Court of Civil Judge II Class, Rohri. The learned Judge of this Court in second appeal while relying on the judgments reported in **PLD 1957 Lahore 689** and **PLD 1971 Supreme Court 247** held that “*before a valid order of transfer can be passed suit must have been pending in a Court competent to try it*”. In rebuttal of the arguments of learned counsel for the respondent that this Court in view of **Section 120 CPC** and **Order XLIX Rule 3 CPC** cannot pass an order of return of the plaint, the appellant has relied upon the two

judgments of this Court viz *Shafi-ur-Rehman and 2 others vs. Fateh Muhammad* and *Muhammad Naveed Aslam and 3 others vs. Mst. Aisha Siddiqui and 2 others* reported in **PLD 2002 Karachi 511** and **PLD 2010 Karachi 261** respectively. The relevant portions from the two judgments are reproduced below:-

**PLD 2002 Karachi 511**

*“In terms of section 15 C.P.C, every suit is to be instituted in Court of lowest grade competent to try it. (see PLD 1974 Karachi 408). No doubt under section 15, C.P.C there is no embargo on Court of higher grade/jurisdiction to entertain suit of lesser valuation, **but such jurisdiction is normally exercised where the lower Court is not in existence. Here it is not the case, I do not see any reason why this matter may be entertained by the High Court, when subordinate Court of competent pecuniary jurisdiction is very much in existence.**”*

*Where the pecuniary jurisdiction lies with another Court then the plaint cannot be rejected under Order 7, rule 11, C.P.C, best course is to return the plaint to the plaintiff to be presented before the competent Court of pecuniary jurisdiction. Order accordingly. Application in terms of the above stand disposed of. Plaint in suit be returned to the plaintiff who may present the same before the Court of competent jurisdiction.”*

**PLD 2012 Karachi 261**

*“What is actually meant by inapplicability of section 16, 17 and 20 of C.P.C. to High Court under section 120 of C.P.C. is that High Court shall not apply these provisions to a suit if it comes under the ambit of section 7 of 1962 Ordinance i.e. sections 16, 17 and 20 of Civil Procedure Code shall not apply if a suit pertains to any part of the four Districts of Karachi **and is valued at more than three million rupees.**”*

18. The contentions of learned counsel for respondent that provision of Order XLIX Rule 3 CPC bars this Court to return the plaints is more fatal to the case of his client. The provision of Sub Rule 1 of Rule 3 of Order XLIX reads as follows:-

3. **Application of rules.**---The following rules shall not apply to any High Court in the exercise of its

ordinary or extraordinary original civil jurisdiction, namely:--

- (1) Rule 10 and Rule 11, clauses (b) and (c) of Order VII;

The learned counsel while appreciating that the Order VII Rule 10 CPC is not applicable by virtue of the above provision fails to appreciate that **clauses (a) & (d) of Rule 11 of Order VII CPC** are applicable which reads as follows:-

**11. Rejection of plaint.** *The plaint shall be rejected in the following cases:*

- (a) *Where it does not disclose a cause of action;*
- (b) .....
- (c) .....
- (d) *Where the suit appears from the statement in the plaint to be barred by any law.*

Well! the suit of respondent from the statement in para-24 appears to be barred by virtue of **Section 7** of the Sindh Civil Courts Ordinance, 1962 for want of pecuniary jurisdiction. In such an eventuality the Court was either supposed to reject the plaint for want of pecuniary jurisdiction or it was to be return it to the plaintiff as the rule of propriety demands that when there is a Court having jurisdiction to try the suit and the plaint has been wrongly filed in another Court which has “no jurisdiction” either on the ground of pecuniary value of the suit or territorial limits to be tried by the said Court instead of rejecting the plaint, the Court should return the plaint to the plaintiff for presentation before a Court having both the pecuniary and the territorial jurisdiction as if the suit has never been instituted. It is not a case of propriety alone, rather it is necessary to return the plaint because even the order of “rejection of plaint” would be a case of implied exercise of jurisdiction by the Court in a case where cognizance was expressly bar by **Section 7** of the Sindh Civil Courts Ordinance, 1962. Here we may also refer to **Section 9 of CPC** which

again by using the expression “*excepting suit of which this cognizance is either expressly or impliedly barred*” clearly lays down that the authority of Court to try civil suit is not unfettered. And the first duty of the Court before trying a suit is to ensure that the suit has been instituted by following the mandate of Sindh Civil Court Ordinance, 1962. The only statute that confers jurisdiction on Courts “to try civil suit”. Therefore, in a situation like the one in hand when the Court has “no pecuniary jurisdiction” on account of value of the relief sought, the Court has no jurisdiction to reject the plaint either. This is still not anomaly of law. The order to “return the plaint” is not an order by exercising jurisdiction in a case where the Court is not competent to try it. It is declaration to the effect that the suit is triable by some other Court which is in existence. It is, in other words, refusal to usurp the jurisdiction of a Court of lower/lesser grade by the Court of higher grade. The provision of Section **120 CPC** and **Order XLIX Rule 3 CPC** do not confer jurisdiction on High Court. These provisions could be effective in “exercise of its original civil jurisdiction” by the High Court when the High Court is competent to exercise its jurisdiction in a civil suit which is filed in accordance with the provisions of **Section 7** of the Sindh Civil Court Ordinance, 1962.

19. The crux of the above discussion is that the impugned order dated 08.9.2014 is set aside and the appeal is allowed. The plaint of Suit No.1011/2011 filed by the respondent may be returned to the plaintiff, who may present the same before the Court of competent jurisdiction.

**JUDGE**

**JUDGE**

Karachi  
Dated:31.07.2017.