

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit No.247 of 2008**

**Messrs. Land Mark Associates-----Plaintiff**

**Versus**

**Sindh Industrial Trading Estate  
& another-----Defendants**

**Date of hearing: 24.10.2017**

**Date of Order: 09.01.2018**

**Plaintiff: Through Mr. Khawaja Shamsul Islam,  
Advocate.**

**Defendants: Mr. Suneel Kumar Talreja, AAG.**

**Intervenor: Mr. Muhammad Najeeb Jamali,  
Advocate.**

**ORDER**

**Muhammad Junaid Ghaffar, J.** The matter has been listed for orders as to maintainability of this Suit in view of the Order passed on 13.04.2017, which reads as under:-

1. Counsel for the plaintiff undertakes to file counter affidavit to this application during course of the day with advance copy to the learned counsel for the interveners. Rejoinder, if any, shall be filed before the next date with advance copy to the other side.

2 to 4. Counsel for the plaintiff is once again directed to satisfy the Court on the next date about maintainability of this Suit before this Court at Karachi.

By consent, adjourned to 27.4.2017, when the matter shall be listed for orders as to maintainability.

2. It appears that in this matter when this Suit was filed the Office had also raised a similar objection regarding the maintainability of this Suit in view of the fact that the property in

dispute is situated in District Jamshoro and therefore the Suit is to be filed before the Court of Senior Civil Judge, Jamshoro at Kotri.

3. Learned Counsel for the Plaintiff has contended that in view of the Office objection the matter was placed before the Court and the Office Objection No.(ii) regarding territorial jurisdiction of this Court was overruled, and therefore, a subsequent objection on 13.4.2017 so raised by another Hon'ble Judge was unwarranted. He has further submitted that once a judicial order has been made the same cannot be reviewed suo muto in this manner, whereas, the Defendants have also failed to raise any such objection. Per learned Counsel proprietary demands that an order passed by a Judge having jurisdiction, should not be disturbed and should always be kept intact. Learned Counsel has further submitted that Defendants No.1 & 2 were debarred in this matter on 04.12.2008 and the matter was listed for final disposal, whereas, affidavit in evidence for ex-parte proof has already been filed, but suddenly an intervener's application has been filed bearing CMA No.5253/17 on 30.03.2017, which is delayed by more than 14 years, and apparently on the pointation of the learned Counsel for the Intervener, the Court has once again raised the above objection. Learned Counsel has submitted that this Court being a Court having original civil jurisdiction for the entire province can take and assume jurisdiction in this matter, notwithstanding the fact that the property is situated in District Jamshoro. Per learned Counsel there is a series of Judgments, whereby, it has been observed that this Court has jurisdiction in such matters. He has further contended that by virtue of Section 120 CPC, the provisions of Sections 16, 17 and 20 CPC are not applicable and

therefore, the question of any territorial jurisdiction does not create any obstacle in exercising jurisdiction in respect of properties situated outside Karachi. In support of his contention learned Counsel has relied upon various judgments of this Court and has made his submissions that insofar as the case reported as **PLD 2010 Karachi 261** (*Muhammad Naveed Aslam and 3 others v. Mst. Aisha Siddiqui and 2 others*) up held by Division Bench and reported as **2011 CLC 1176** (*Muhammad Naved Aslam and 3 others v. Mst. Aisha Siddiqui and 14 others*) are concerned are not a good law, whereas, the matter is now pending before the Honorable Supreme Court, wherein, leave has been granted. He has finally submitted that in view of such position, the matter be referred to the Hon'ble Chief Justice for constitution of larger bench, so as to resolve the controversy. He has specifically relied upon **2016 CLC NOTE 132 [SINDH]** (*Muhammad Naved Aslam and others v. E.D.O Revenue Jamshoro and others*), **2012 CLC 507** (*Haji Riaz Ahmed through Attorney v. Messrs Habib Bank Limited through President and 2 others*), **PLD 1997 Karachi 579** (*Samir Oosman and 2 others v. Rex Talkies (Pvt.) Ltd.*), **1988 CLC 59** (*Messrs Agricides (Pvt.) Ltd. v. Messrs Ali Agro Supply Corporation Ltd.*), **PLD 1964 (W.P) Karachi 11** (*West Pakistan Industrial Development Corporation v. Messrs.' Fateh Textile Mills Ltd.*), **1991 CLC 684** (*Messrs.' Sh. Muhammad Amin & Co. v. The Provincial Industrial Development Corporation*), **1982 CLC 110** (*Abdul Kadir v. Mir Ashraf Ali Khan and 2 others*) and **1985 CLC 2799** (*Fauji Foundation and others v. Yousuf*).

4. On the other hand, learned AAG has contended that the objection regarding territorial jurisdiction must be sustained as the

property is situated outside Karachi and in support he has relied upon an Order dated 15.12.2016 passed in Suit No.421/1987. He has also relied upon the cases reported as **2016 YLR 157** (*Muhammad Waseem Ghori & another v. Altaf Hussain Tunio & others*), **2015 YLR 2277** (*Mrs. Shamshad Begum & another v. Syed Iftikhar Hussain Jafri & others*) as well as **2011 CLC 1176** (*Muhammad Naveed & others v. Mst. Aisha Siddiqui & others*) and **PLD 2008 Karachi 536** (*Ghulam Fareed v. Shahid-ud-din Tughlaq*). The Counsel for the Intervener has also made an attempt to assist the Court, however, since the intervener is not yet a party to this Suit, whereas, the objection has been raised by the Court itself, I have not permitted the learned Counsel to assist the Court as it is not appropriate at this stage of proceedings.

5. I have heard learned Counsel for the Plaintiff as well as learned AAG and perused the record. Insofar as the objection of the learned Counsel for the plaintiff regarding the order, whereby, the office objection was overruled and subsequently it has again been raised is concerned, I may observe that the question of maintainability specially in case of jurisdiction is a question, which is always alive and it is immaterial that whether the office has raised any objection to that effect or the objection was so raised has been overruled. The Court is fully competent to take notice of its jurisdiction and to see as to whether the Court has jurisdiction or not. This is always a preliminary issue which must be decided by the Court at the very first instance. Notwithstanding the above even otherwise on perusal of the record it reflects that though through Order dated 11.02.2008, the office objection was overruled; but it appears that the same was done without

assigning any reasons. There is nothing in the order which could reflect that as to why the office objection was not sustained and overruled. It would be advantageous to reproduce the said order dated 11.02.2008, which reads as under:-

1. Learned counsel for the plaintiff, regarding office objection No.(1) submits that the plaintiff is a registered partnership firm and he will produce such certificate within one week. For the time being this objection is deferred.

Regarding office objection No.(ii), the learned counsel submits that section 16, 17 and 20 of the Code of Civil Procedure is not applicable to the High Court in view of section 120, CPC. He relied on the case of Wajjid Hussain Faruqui v. Shahida Shahnawaz and another (2007 CLC 394).

As regards the other office objections learned counsel submits that the same have been complied with.

In view of the above, this office objection is over ruled and the office is directed to register the suit.

2. Learned counsel for the plaintiff submits that the defendant No.1 is trying to encroach upon the land of the plaintiff's leased land. He further submits that the land of the plaintiff has been properly demarcated by way of fixing of poles around it. He prays that the defendant No.1 may be restrained from creating any third party interest in the suit property or to enter upon the land of the plaintiff.

It appears that there is some dispute with regard to the proper demarcation of the land of the plaintiff. Mr Moinuddin Ahmed. Deputy Registrar (Judicial) is appointed commissioner to inspect the site of the plaintiff as well as that of the defendant and to properly demarcate the same with the help of the Survey Department after notice to the parties. Fee of the commissioner is fixed at Rs.10,000/- to be paid by the plaintiff. The plaintiff shall also be liable to pay any other expenses which may be incurred in taking assistance from the Superintendent Survey Department and for making maps/sketches.

Notice to the defendants. In the meanwhile the defendants are restrained from creating any third party interest in the suit land or to enter upon the same.

6. Bare perusal of the aforesaid order does not reflect any reason to overrule the office objection and therefore, I am of the view that the Court has correctly taken up the issue of

maintainability vide Order dated 13.04.2017 and the learned Counsel for the plaintiff has been put on notice to satisfy as to maintainability of the Suit, on which the learned Counsel has assisted the Court. In the circumstances, the objection of the Counsel for the plaintiff in this regard is overruled.

7. Insofar as the question of maintainability of a Suit in respect of exercising original civil jurisdiction in respect of a property situated outside Karachi is concerned the same has been settled by a learned Single Judge of this Court in the case reported as **PLD 2010 Karachi 261 (Naveed Aslam-A)**, wherein, the learned Single Judge of this Court after tracing out the relevant history regarding conferment of jurisdiction on this Court has been pleased to hold that this Court does have any jurisdiction in respect of a property which is situated outside the territorial jurisdiction of Karachi District(s). The relevant finding is contained in Para Nos.10 to 15 and 22 which reads as under:-

10. Thus since 1906 the Highest Court of this Province has been exercising powers of original civil jurisdiction by functioning as the principal Civil Court for the district of Karachi (presently covering all districts of Karachi) where suits and proceedings of civil nature relating to any territorial limit of Karachi are entertained subject always to the pecuniary limit that is prescribed for such cases from time to time. To function as principal Civil Court for Karachi, Original Side was created in this Court at its principal seat where civil suits and proceedings are filed, heard and decided.

11. The laws which conferred original civil jurisdiction on this High Court clearly show that civil suits and proceedings of certain pecuniary value, which otherwise could only be filed in the District Courts of Karachi, became entertainable on the Original Side of this High Court. These laws in effect fixed the pecuniary jurisdiction of the Civil Courts of Karachi and beyond such pecuniary limit the jurisdiction was conferred to the Original Side of this Court. Except for the territorial limits of Karachi, no other area of Sindh was ever brought under the ambit of the original civil jurisdiction. It is for this reason that the Civil Courts falling beyond the districts of Karachi continue to exercise original civil jurisdiction of unlimited jurisdiction whereas the Civil Courts in the districts of Karachi exercise jurisdiction only to the extent which is lesser in value than that conferred on the Original Side of this High Court. Thus, it is quite evident that conferment of original civil jurisdiction on this

Court throughout its history was confined to the territorial limits of Karachi provided always that the cause was of a prescribed amount and value.

12. The history of exercising original civil jurisdiction by certain High Courts of the sub-continent is much prior to the conferment of this jurisdiction on the Court of Judicial Commissioner in 1906 under section 2 of Bombay Act, 1906. The High Courts of Calcutta, Bombay and Madras were conferred with this jurisdiction much prior to conferment of this jurisdiction to this Court. The Bombay High Court was conferred original civil jurisdiction way back in 1863. The laws which confer original civil jurisdiction on the High Courts and the provisions of sections 16, 17 and 20 of Civil Procedure Code were bound to overlap each other, as the former calls for a suit to be filed on the Original Side of a High Court whereas sections 16 to 20 determine the Civil Court where suit is to be entertained. Keeping this in mind, section 120 of Civil Procedure Code was enacted. Section 120 of C.P.C. reads as follows:--

120. Provisions not applicable to High Court in original civil jurisdiction.--(1) The following provisions shall not apply to High Court in the exercise of its original civil jurisdiction, namely sections 16, ' 17 and 20.

13. A bare reading of Section 120 of Civil Procedure Code show that firstly it makes sections 16,,17 and 20 of Civil Procedure Code inapplicable for the High Court in exercise of its original civil jurisdiction. The need to make sections 16, 17 and 20 of CPC inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20 CPC and the original civil jurisdiction of the High Courts under the then Letters Patent determine separate places where a civil suit and proceedings could be filed. Section 120 of C.P.C. was enacted to settle the conflict of sections 16, 17 and 20 of C.P.C. with the laws that conferred original civil jurisdiction on the High Courts and to obviate any confusion as regards place of suing. This can be understood through an example. Ordinarily a suit relating to a dispute of immovable property situated in Saddar, Karachi is to be brought in the Civil Court, which under the provisions of sections 16 and 17 of Civil Procedure Code has jurisdiction to try such suit. As the area of Saddar in Karachi falls within the limits of Police Station, Saddar which is in District East, Karachi, therefore the Civil Court which can try suits of area falling in Police Station Saddar becomes the place where such a suit is to be filed when sections 16 and 17 of the Civil Procedure Code are applied. However, if the same suit is of a value, which is more than three million rupees then by virtue of section 7 of Sindh Civil Courts Ordinance, 1962 the place of suing shifts to the Original Side of this High Court. In order to overcome this overlapping of jurisdictions, provisions of sections 16 and 17 of C.P.C. were made inapplicable under section 120 of C.P.C. so that these provisions may not come in the way of filing a civil suit or proceedings on the Original Side of this Court. Therefore, while entertaining a suit relating to immovable property emanating from the area of Saddar in Karachi having a value of more than three million rupees, the place of suing as determined under sections 16 and 17 of the C.P.C. becomes immaterial and is not to be considered as under section 7 of the Sindh Civil Court Ordinance 1962, the Original Side of this High Court becomes the place of suing. Section 120 of C.P.C. can be interpreted only in this manner and not in a manner that any suit of more than three million rupees in value, coming from any part of the territorial jurisdiction of this Court viz. the entire Province of Sindh can be entertained on the Original Side of this Court. ' If the interpretation as given to section 120 of C.P.C. by the learned counsel for

the plaintiff is accepted then every suit of a value above three million rupees relating to any part of Sindh has to be entertained on the Original Side of this Court. Such an interpretation would defeat the very purpose that created original civil jurisdiction in this High Court for the Districts of Karachi. While interpreting section 120 of C.P.C., the meaning of the words "in the exercise of its original civil jurisdiction appearing in that section should not be lost sight of which clearly mean that place of suing is not to be determined by sections 16, 17 and 20 but by the provision which confer original civil jurisdiction on this High Court. Now original civil jurisdiction is conferred on this Court under section 7 of the Civil Courts Ordinance, 1962 which is limited only for the territorial limits of Karachi. No other territory of this High Court comes within the ambit of the original civil jurisdiction prescribed under section 7 of the 1962 Ordinance. Therefore, if a suit does not fall within the ambit of original civil jurisdiction of this High Court then certainly the place of suing for such a suit is to be determined under sections 16 to 20 of Civil Procedure Code. What is actually meant by inapplicability of sections 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. On the other hand, if a suit is filed in this Court which does not fall within the original civil jurisdiction of this Court i.e. it does not pertain to a dispute relating to any of the four Districts of Karachi or in not of a prescribed value then certainly the provisions of sections 16, 17 and 20 shall be attracted and the plaint shall be returned for its presentation to a Court of appropriate jurisdiction. Section 120 of Civil Procedure Code therefore only renders ineffective provisions of sections 16, 17 and 20 of C.P.C. to suits that can be entertained by this High Court in exercise of its original civil jurisdiction which is confined to civil suits and proceedings pertaining to the Districts of Karachi only and not for any other area falling within the jurisdiction of this High Court.

14. While discussing the real meaning and intent of section 120 of the Civil Procedure Code, it could occur in one's mind as to why only sections 16, 17 and 20 of Civil Procedure Code have been made inapplicable when the place of suing is also determined by sections 18 and 19 of the Civil Procedure Code. The reasons are these. Taking up section 18 of C.P.C. first, it provides that where there is uncertainty as to the local limits of two or more Courts and a suit is filed in anyone of them then upon its disposal, the decree would be regarded as if it was passed by a Court of competent jurisdiction. The object of enacting section 18 of Civil Procedure Code is to treat a decree passed by a Court to be legally valid even though there was confusion as to Courts' local limits and subsequently the uncertainty of limits is resolved and the area is found not be within the jurisdiction of the Court which passed the decree. In order not to disturb this legal position as envisaged by section 18 of Civil Procedure Code and not to render such decree a nullity, the provisions of section 18 of Civil Procedure Code were not made inapplicable under section 120 of Civil Procedure Code. Thus a suit valued at more than three million rupees even if it is filed on the Original Side of this Court on account of uncertainty of local limits and this Court decrees the suit then the decree would still be treated as valid and passed by a Court of competent jurisdiction though subsequently the uncertainty is resolved and the area to which the suit related is found to be part of Thatta. Thus, to keep such decree valid, Section 18 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Court under section 120 of Civil Procedure Code.



15. Section 19 of C.P.C. on the other hand gives an option to the plaintiff to sue for his claim for compensation for wrong done to him or to his movable property at the place where the wrong was done as well as at the place where defendant resides as provided in the illustrations to section 19 of Civil procedure Code. Now section 19 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Courts under section 120 of Civil Procedure Code for the reason that legislature intended that options for the place of suing provided therein should not be taken away and remain available with the plaintiff. However, if one of the two options provided in section 19, C.P.C. is exercised in a manner that suit of a category falling under section 19, C.P.C., i.e. claim for compensation for wrong done to him or to his movable property is to be filed in Karachi then such a suit can be competently filed on the original side of the Court provided only if the amount or value of subject-matter of dispute is of prescribed value. Therefore, for these reasons i.e. to keep the options as to place of suing open for the plaintiff in suits relating to his claim for compensation for wrong done to person or to movable property, the provisions of section 19, C.P.C. have not been made inapplicable to the Original Civil jurisdiction of this Court under section 120 of Civil Procedure Code.

22. From the above discussion, the only conclusion that can be drawn is that whenever any suit is filed in this High Court and is found that it does not relate to any of the Districts of Karachi then irrespective of the fact that it is valued at more than three million rupees the same has to be returned back to the plaintiff for its presentation before a Court of appropriate jurisdiction under Order VII, rule 10 of Civil Procedure Code. It is not section 120 of the Civil Procedure Code but section 7 of the Civil Courts Ordinance, 1962 which confers original civil jurisdiction on this High Court and this jurisdiction being a special jurisdiction conferred under section 7 of the Sindh Civil Courts, 1962 Ordinance is limited for the matters that emanate from the territorial limits of the Districts of Karachi. Except for the Districts of Karachi no other territory falls under the original civil jurisdiction of this High Court.

8. This judgment was appealed before a Division Bench of this Court and the same has been upheld in the case reported as **2011 CLC 1176 (Naveed Aslam-B)**. The relevant findings of the learned Division Bench are so stated in Para Nos.31 & 32 which reads as under;

31. According to our understanding of law, the provisions of Order VII, Rule 10 are mandatory in nature and adjudication by a court without jurisdiction is Coram non judice and when any court lacks pecuniary or territorial jurisdiction, the proper course is to return the plaint for presentation to the proper court and such court cannot pass any judicial order except that of returning the plaint. The powers conferred under Rule 10 can only be exercised where the suit is pending before the Court and it may be exercised at any stage of the suit even in appeal and or revision. The bare look of the plaint in this case undisputedly shows that the plaintiff instituted the suit for the determination of the right to or interest in the immovable property and for compensation for wrong to immovable property and the recovery

of movable property. The relief claimed in the suit and its nature falls within the purview of section 16 of C.P.C. which provides that such kind of suits shall be instituted in the court within the limits of whose jurisdiction the property is situated. Though section 120, C.P.C. provides that sections 16, 17 and 20 shall not apply to High Court in exercise of its original civil jurisdiction but it does not mean that by virtue of this section the jurisdiction of original side of this court extended to all territories of Province of Sindh no matter the property in question is situated at Karachi or not. The jurisdiction of this Court at original side is only limited and confined to the districts of Karachi and if the arguments of the learned counsel for the appellants are accepted to be true, it will tantamount to the extension of original side jurisdiction of this Court to the entire Province of Sindh subject to its pecuniary limits of jurisdiction. Merely for the reason that respondent No.13 on the application of respondent No.1 instead of hearing the case at Hyderabad, heard the Case No.SROA.122 of 2000 at Karachi and passed the order dated 14-2-2008 at Karachi does not confer the territorial jurisdiction to this court on original side.

32. The non-applicability of sections 16, 17 and 20 read with Order XLIX, Rule 3 is only applicable and limited to the original side jurisdiction for the district of Karachi and when it is found that the property is situated outside the territorial jurisdiction of Karachi then sections 16 and 17 will automatically come into operation. The initial guiding principles for institution of various suits is provided under sections 16 to 19, C.P.C. whereafter section 20 has been provided for other suits to be instituted where the defendant resides or cause of action arises. In the present matter section 16 is applicable therefore, the suit should have instituted in Thana Bola Khan where the property is situated and since the claim of damages is not an independent relief but arising from the alleged wrong done committed by the defendants in the suit, therefore, this relief can also be easily claimed in the same suit at Thana Bola Khan along with other reliefs including the declaration as to the ownership, permanent and mandatory injunction. The honourable Full Bench of this court in case "Rimpa Sunbeam Co-operative Housing Society Ltd. v. Karachi Metropolitan Corporation" reported PLD 2006 Karachi 444 already held that Jurisdiction of Sindh 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, the jurisdiction of Sindh High Court to try Civil suits is confined to matters where the pecuniary value of the subject-matter exceeds Rs.30,00,000. All other suits are liable to be tried by the District Courts. In another judgment reported in 2005 MLD 1506 in the case of (Murlidhar P. Gangwani v. Engineer Aftab Islam Agh), the learned Division Bench held that territorial jurisdiction of the Court could not be extended or curtailed on compassionate grounds or looking to the financial position of a party and the expenses which he might have to incur in pursuing the litigation before the proper Court having jurisdiction in the matter. Further, the question of maintainability of a suit with reference to the territorial jurisdiction, vis-à-vis cause of action accrued to a party for institution of such suit, is to be judged on the basis of averments made in the plaint.

9. Though in view of the aforesaid pronouncements in **(Naveed Aslam-A & B)**, especially when a Division Bench Judgment is in field which is binding on this Court, there could not have been any

further reason for having any assistance from the learned Counsel for the plaintiff to hear and decide the objection of maintainability once again, but the Counsel has contended that both these judgments in cases of **(Naveed Aslam (A) & (B))** are per in-curiam inasmuch as they have not dealt with the dicta already laid down in various other Division Bench Judgments and so also the fact that Section 120 CPC as well as Order 49 Rule 3(1) CPC does not apply to a High Court and therefore by declaring both these judgments as per incuriam, the matter be referred to the Honorable Chief Justice for constitution of a Larger Bench in view of the observations of the Honorable Supreme Court in the case of **Multi Line Associates v Ardeshir Cowasjee (1995 SCMR 362)**.

10. Though the learned Counsel for the plaintiff has made an effort to treat and regard both the judgments in the cases of **(Naveed Aslam (A) & (B))** as per incuriam on the basis of his above submissions, however, in fact and law, the argument appears to be wholly misconceived. In fact all the judgments so relied upon before this Court barring the judgments reported as **Samir Osman and 2 others v Rex Talkies (Pvt Limited (PLD 1997 Karachi 579))** and **Abdul Kadir v Mir Ashraf Ali Khan and 2 others (1982 CLC 110)** were also cited before the learned Single Judge in **(Naveed Aslam-A)** and before the Division Bench in **(Naveed Aslam-B)**, whereas, admittedly the same learned Counsel had appeared in both these cases, who is also a Counsel before this Court. The learned Counsel has also relied upon Section 20 and Order 49 rule 3(1) CPC to make his submission that these barring provisions do not apply to the High Court, however, in both these judgments the same objection was raised and has been taken care of and answered in a very apt and proper manner. I do not see any reason

so as to come to a view that both these judgments are per incuriam, on the ground that they have not taken care of the earlier precedent as well as the law properly. Insofar as the two judgments, which have now been cited before me in the cases reported as **Samir Osman (Supra) and Abdul Kadir (Supra)** are concerned they were not cited before the Court in **(Naveed Aslam (A) & (B))**. Therefore in order to respond to such objection I would briefly discuss both these judgments. Insofar as the case of **Samir Oosman (supra)** is concerned, it appears that the said judgment has not dealt with the question of territorial jurisdiction of this Court in matters, wherein, the Court is exercising original civil jurisdiction. In fact the controversy before the learned Single Judge in that case was in respect of certain amendments carried out in Civil Procedure Code under Order 39 Rules 2(A) and 2(B), whereby, some embargo was placed in relation to interim order passed by a Civil Court and learned Single Judge came to the conclusion that it is only confined to Courts other than the High Court. The learned Single Judge further went on to dilate upon certain Sections of CPC as well as the Original Side Rules of this Court and in my view the facts were totally different in the case of **Samir Oosman Supra**, hence ratio of that judgment has no nexus with the facts of the present case. Again the case of **Abdul Qadir (supra)** is also based on entirely different facts, whereas, even otherwise no law has been settled in that judgment and it is only a passing remark, wherein, some observation has been given in respect of applicability of Section 16 CPC and in my view this judgment is also of no help to the case of the plaintiff.

11. It may also be observed that the original civil jurisdiction being exercised by this Court currently is on the basis of Civil Courts Ordinance, 1962, wherein Section 7 reads as under:-

**“7. Original Jurisdiction of the 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.”

12. Perusal of the aforesaid Section reflects that subject to the Ordinance, 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. This law provides very clearly that insofar as the original jurisdiction in civil suits and proceedings is concerned, the same vests in a District Judge. Such jurisdiction is conferred upon a District Judge without any pecuniary limit, except in the Karachi Districts, where the jurisdiction in Civil Suits exceeding 15 Million Rupees, shall be exercised by the High Court. The aforesaid provision very clearly reflects that insofar as the jurisdiction being exercised by the High Court in Civil Suits is concerned, the same is neither the *original civil jurisdiction* nor the *extraordinary civil jurisdiction* as referred to in Section 120 and Order 49 Rule 3(1) CPC. If the contention of the learned Counsel for the Plaintiff is accepted for a moment, then perhaps any Suit could be filed at the Principal Seat of this Court in respect of any property, which is situated in the

entire Province of Sindh. Whereas, by virtue of Section 120 and Order 49 Rule 3(1) CPC, the Court would not even be in a position, either to return the plaint or reject the same. This argument at the very outset appears to be absurd and totally impractical. This could never have been the intention of the Legislature as contended on behalf of the plaintiff.

13. The objection raised by the Learned Counsel for the Plaintiff in respect of non-applicability of Sections 16, 17 & 20 CPC by virtue of the exclusion under Section 120 CPC and the implication of Order 49 Rule 3 (1) CPC can only be understood in an appropriate manner once it is traced out as to how this Court is exercising the civil jurisdiction by entertaining civil suits. The learned Counsel has vehemently argued that since by application of the aforesaid provisions the question of deciding the territorial jurisdiction of this Court or for that matter rejection and return of plaint is concerned, would not apply to the High Court, and therefore, such objection of maintainability cannot be taken care of. For this it is necessary to trace out the history even for the sake of repetition. In the earlier days it appears that original civil jurisdiction was first conferred to this Court or rather the predecessor Court under Section 2 of the Bombay Act 1 of 1906 when the Court of Judicial Commissioner of Sindh was established. Thereafter, the Court of Judicial Commissioner became Chief Court of Sindh under Section 8 of the Sindh Courts Act, 1926, which became effective from 15.4. 1940 and till the abolishment of the Sindh Chief Courts; this civil original jurisdiction was exercised. The repealed Section 8 of the Sindh Courts Act, 1926, whereby, such jurisdiction was conferred reads as under:-

“The Chief Court shall be highest Civil court of Appeal and Revision and the highest Court of Commissioner Appeal and Revision for Sindh and the principal Court of *original jurisdiction* for the Civil Districts of Karachi and shall be the Court of Sessions and shall exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi.”

14. Thereafter an enactment namely *The High Court of West Pakistan (Establishment) Order* was passed on 9.10.1955, whereby, a consolidated Court in the Province of West Pakistan was established. By virtue of this enactment, the entire Courts in the Province of West Pakistan were integrated and the jurisdiction, which was earlier exercised in terms of Sindh Courts Act, 1926 as Chief Court of Sindh by this Court was provided under Article 5 of the said High Court of West Pakistan (Establishment) Order, which reads as under:-

**“Article 5. Original civil and criminal jurisdiction of the Bench at Karachi.** Notwithstanding anything in this Order or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same *original civil jurisdiction* for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Session for the Sessions Division of Karachi, as were exercisable immediately before the commencement of this Order, by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926 (Sind Act VII of 1926);

Provided that the Governor-General may by notifications in the Official Gazette direct that, as from a specified date such jurisdiction and powers as are mentioned therein shall cease to be exercisable by that Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers.”

15. Thereafter in the year 1970, the High Court of West Pakistan (Establishment) Order, 1970 was promulgated through President’s Order No.08/1970 on 16.6.1970, wherein, under Section 3, separate High courts were established in the entire country. The said Section reads as under:-

**“ 3. Establishment of High Courts for new provinces.** (1) as from the 1st day of July, 1970, hereinafter referred to as the appointed day, there shall be established the following new High Courts, namely ;

(a) A High Court for the North-West Frontier Province to be called the Peshawar High Court with its principal seat at Peshawar ;

(b) a High Court for the Province of the Punjab and the Islamabad Capital territory to be called the Lahore High Court with its principal seat at Lahore ; and

(c) a High Court for the Provinces of Baluchistan and Sind to be called the Sindh and Baluchistan High Court with its principal seat at Karachi.

(2) Each new High Court shall be a Court of Record and shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories for which it is established as the High Court of West Pakistan, immediately before the appointed day, had in respect of the territories in relation to which it exercised appellate jurisdiction.

(3) Each new High Court and Judges and Divisional Courts thereof shall sit at its principal seat but may hold Circuit Courts at places within its territorial jurisdiction other than its principal seat consisting of such of the Judges of the High Court as the Chief Justice may from time to time nominate.”

16. Again through this order the jurisdiction, which was conferred upon this Court under the High Court of West Pakistan Order remained intact. Subsequently, in the year 1976 through President’s Order No.06/1976, the Baluchistan and Sindh (High Court Order) 1976 was promulgated on 29.11.1976 and a separate High Court for each Province namely Baluchistan and Sindh was created. The jurisdiction was conferred through Section 4, which reads as under:-

**“4. Jurisdiction of new High Courts and transfer of cases.—**(1) Each new High Court shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories of the Province for which it is established as the High Court of Sind and Baluchistan, immediately before the appointed day, had in respect of the territories in relation to which it exercised appellate jurisdiction.

(2) Each new High Court shall have exclusive jurisdiction as such in respect of all cases in which the court of origin lies within the territories of the Province for which such High Court is established, and every such case pending in the High Court of Sind and Baluchistan immediately before the appointed day shall stand transferred to the High Court first-mentioned.

(3) In respect of cases which are matters of original jurisdiction in a High Court, the jurisdiction shall be that of the High Court of the Province in which the cause of action in whole or in part has arisen, or the whole or any part of the property or other subject-matter involved in the case is situated, or the respondent resides or works for gain, and every such case pending in the High Court of Sind and Baluchistan immediately before the appointed day shall stand transferred to the high Court first-mentioned.



(4) In respect of petitions which have been brought under Article 199 of the Constitution, the jurisdiction shall be that of the High Court of the Province in which—

(a) the action in question has been threatened or omitted to be taken, or

(b) the act of proceeding impugned has actually been done or taken, or

(c) a person is actually held in custody, or

(d) the respondent is actually held in custody, or

(e) enforcement of any of the Fundamental Rights conferred by Chapter I of Part II of the Constitution is sought,

and all such cases pending in the High Court of Sind and Baluchistan immediately before the appointed day shall stand transferred to the High Court first-mentioned.

(5) Any reference in this Article to a High Court shall be construed as including a reference to a Judge or division thereof; and for the purpose of this Article proceedings shall be deemed to be pending in a particular court until that court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings."

17. During this period though the Constitution and formation of the High Court of Sindh was dealt with as above, however, through promulgation of Sindh Civil Courts Ordinance, 1962, the Sindh Courts Act, 1926 was repealed as applicable to the District of Karachi except Section 8 as above. Perusal of the aforesaid provisions of law, whereby, time to time civil jurisdiction was conferred upon this Court as well as it is predecessor Courts, reflects that such jurisdiction has always been restricted to the District of Karachi and secondly it has not been conferred with express words such as "**original civil jurisdiction**" or for that matter "**extraordinary civil jurisdiction**". The case in hand has to be looked into by applying this very enactment as this is an instrument, which confers upon this Court, such civil jurisdiction in cases where the value exceeds Rs.15 Million. Now when the aforesaid provisions are read in juxtaposition with the provisions of Section 120 CPC and so also Order 49 Rule 3(1) CPC, it appears to be that both these provisions were never intended to be applied in a manner so as to curtail any jurisdiction of this Court. The

purpose and intent of Section 120 and Order 49 Rule 3(1) CPC can only be understood if the original enactment of establishment of the Courts is kept in mind. It may also be observed that these provisions of CPC were not enacted only by keeping in mind the special jurisdiction conferred upon this Court but as a whole and to apply it on various other Courts including the High Courts in the entire united India (which included the areas now in Pakistan) in the pre-partition days. Certain Courts were established under Letters Patent and others were established according to independent enactments and perhaps for this reason the provisions of Section 120 and Order 49 Rule 3(1) CPC were relevant. Though they may not have been amended specially keeping in mind the jurisdiction now being exercised by this Court, but one thing is clear, that this Court has always been exercising the civil jurisdiction in trying civil suits under special statutory enactments and the same has never been exercised as a jurisdiction independently as a High Court jurisdiction. It has always been conferred through Provincial Legislation but not limited to Sindh Courts Act 1926, the West Pakistan (Establishment) Order 1955 and currently the Civil Courts Ordinance, 1962. In fact it is in this context that one has to understand the restriction prescribed or the exclusion mentioned in Section 120 and order 49 Rule 3(1) CPC.

18. It may also be observed that a full Bench of this Court in the case reported as **PLD 2006 Karachi 444** (*Rimpa Sunbeam Co-operative Housing Society Ltd. through Managing Director v. Karachi Metropolitan Corporation through Administrator*) had the occasion to dilate upon the original civil jurisdiction and the extraordinary original civil jurisdiction being exercised by this Court

in a somewhat similar manner and the learned Full bench came to the following conclusion.

18. Mr. Iqbal Kazi, however, placed reliance upon the pronouncements of the Hon'ble Supreme Court in *Ahmed Khan vs. The Chief Justice and Judges of the High Court*, (PLD 1968 SC 171) and a Full Bench of this Court in *Asad Ali vs. Settlement Commissioner*, (PLD 1974 Karachi 345) in support of his point of view. In both these cases, their lordships have dilated upon the jurisdiction of the Presidency High Courts of Bombay, Calcutta and Madras to entertain suits conferred by the respective letters patent establishing such courts. Indeed, there could be force in learned counsel's contentions if such jurisdictions were conferred upon this court through letters patent, which might have force of an Act of Parliament. Nevertheless, admittedly, Letters Patent of the Bombay High Court were never extended to the Chief Court of Sindh and those of the Lahore High Court whose jurisdiction was extended to the Bench at Karachi under the Establishment of West Pakistan Act, did not confer any jurisdiction to entertain suits. It is, therefore, evident that such jurisdiction being conferred by a provincial law, no question of any repugnancy arises.

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.

19. It may also be noted that the question of exercising *original civil jurisdiction* or for that matter *extraordinary civil jurisdiction* by this Court came for discussion firstly before Wahiduddin. J, as his lordship then was in the case of ***Firdous Trading Corporation*** (*Supra*). Though the issue in this case was in respect of payment of Court Fee on an Appeal arising out of an order passed by a Single Judge on the original side of this Court in a Civil Suit, which was decreed, but the precise question was identical and that is; what is the nature of original jurisdiction exercised by the Karachi Bench of West Pakistan High Court in Civil Suits in the civil district of Karachi. Is it the ordinary civil jurisdiction of the High Court or

some other jurisdiction? This was answered by the learned Single Judge after considering the provisions and interpretation of Para.5 of the Establishment of West Pakistan High Court Order, 1955. The learned Single Judge came to the conclusion that this Court while exercising the powers of original civil jurisdiction is in fact exercising the powers and jurisdiction that is exercisable by the Civil Courts of original jurisdiction for the Districts of Karachi only under a special statute. The relevant finding in that case is contained at pages 574, 575-577 and 580 and reads as under;

Pg: 574:

It is therefore perfectly clear that this jurisdiction is of a special nature and is not the ordinary civil jurisdiction of the West Pakistan High Court, otherwise there was no necessity of saying that the Karachi Bench of the High Court of West Pakistan shall have the same original civil jurisdiction for the civil district of Karachi as was exercisable by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926. It will be further observed that original civil jurisdiction in respect of civil suit in Karachi was not conferred on the High Court as a whole as in the case of Calcutta, Madras and Bombay under their Letters Patent, but only to the Bench at Karachi. The nature of this jurisdiction is further clarified under Para. 7 of the amendments in Part A of the Schedule of President's Order No. 2 of 1956. In sub-clause (4) of para. 7, which replaces the original section 45 of the Sind Courts Act, 1926, it is provided that all decrees and orders in suits and proceedings wherein the subject-matter in amount or value does not exceed twenty-five thousand rupees, or such sum as the Central Government may by order under the proviso to subsection (2) of section 22 prescribe, passed before the appointed day, by the Bench of the High Court of West Pakistan at Karachi functioning or exercising the powers and performing the duties as the principal Civil Court of original jurisdiction shall be deemed for the purpose of execution to have been passed by the District Court of Karachi. It is quite plain that the Karachi Bench of West Pakistan High Court is functioning or exercising the powers and performing the duties as the principal Civil Court of original jurisdiction in the civil district of Karachi and not ordinary civil jurisdiction of the High Court understood under the Letters Patent of some High Courts in this sub-continent.

Pg: 575-576:

**.....The Scheme of the Establishment of West Pakistan High Act, 1955, clearly shows that as a special measure Karachi Bench was allowed to continue to perform the duties of the principal civil Court of original jurisdiction in Karachi, which is a special jurisdiction and by no stretch of argument can be considered as the ordinary original civil jurisdiction of the West Pakistan High Court as is generally known.** The history of the establishment of the High Courts in the sub-continent shows that there were only three Courts which were conferred

ordinary original civil jurisdiction within certain limits under their Letters Patent. No other High Court established under the High Court Act of 1861 or under the Government of India Act, 1915 or under the Government of India Act, 1935 was invested with powers of ordinary civil jurisdiction. The Chief Court of Sindh was no doubt a High Court within the meaning of section 219 of the Government India Act, but the jurisdiction which it exercised in the civil district of Karachi was not that of an ordinary original civil jurisdiction of the High Court but it was only performing the duties of the principal Civil Court of original jurisdiction within the district of Karachi under a special statute viz. section 8 of Sindh Court Act, 1926.....

Pg:577:

**....."I have not the slightest doubt on the language of section 8 of Sindh Act, 1926 and the definition of `District in section 2(4) of the Civil Procedure Code, that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court. In my opinion the mere fact that the Sindh Chief Court later on was included with the definition of High Court under Section 219 of the Government of India Act, did not change the nature of this jurisdiction.** I am fortified in this view by another circumstance. Formerly in Sindh there used to be a Court of the Judicial Commissioner. It was exercising jurisdiction in civil matters within the district of Karachi under section 2 of Bombay Act No.1 of 1906. It reads as under:--

"There shall be for the Province a Court of the Judicial Commissioner of Sindh (hereinafter called the Court of the Judicial Commissioner) which shall be the highest Court of Appeal in civil and criminal matters in the said Province and which shall be the District Court and Court of Session of Karachi."

This position continued till 1937 although in the Government of India Act, Judicial Commissioner's Court in Sindh was deemed as a High Court. But in spite of this in civil matters it continued as District Court. In 1926 the Sindh Courts Act was passed by the Bombay Legislature; which came into force in 1940. But in this enactment, instead of treating the Chief Court of Sindh as District Court, it was designated as the principal Court of original civil jurisdiction. Thus the same position was maintained and it was not enacted that it will have ordinary original civil jurisdiction within the limits of Karachi and also did not change the nature of the jurisdiction in civil matters"

Pg: 580:

**....."It seems to me that the jurisdiction exercised in such matters is a District Court jurisdiction and since it is exercised by the High Court it may be called as special original civil jurisdiction or extraordinary original civil jurisdiction, but certainly cannot be described as ordinary civil jurisdiction of the High Court."** (Underlining is mine)

20. Subsequently a learned Division Bench of this Court had the occasion to examine the same issue in another set of references put up by the office in High Court Appeals again regarding levy of

Court Fee in appeals against judgment and decrees of single judges of this Court in civil suits which is reported as ***Haji Razzaq v Usman & 9 others*** (PLD 1975 Karachi 944). The learned Division Bench did not agree with the findings of the learned Single Judge in the case of ***Firdous Trading Corporation*** (Supra), which was cited before it, and was accordingly overruled. The learned Division Bench was of the view that word “*original*” in expression “*ordinary original civil jurisdiction*” refers to jurisdiction of Court to decide matter as a Court of first instance and the word “*original*” can only refer to the jurisdiction of a Court to decide a matter as a Court of first instance, and therefore this means that a Suit decided by the High Court is decided in the exercise of its original civil jurisdiction just as a Constitutional petition is decided in the exercise of its original jurisdiction. However, the judgment in the case of ***Haji Razzaq*** (Supra) was impugned before the Hon’ble Supreme Court by the Province of Sindh and the judgment of the learned Division Bench was set aside by a 5 Member Bench and the view taken in the case of ***Firdous Trading Corporation*** (Supra) was affirmed. The short order of the Hon’ble Supreme Court is reported as ***Province of Sindh v Haji Razzaq*** (1991 SCMR 920) and reads as under;

For the reason,, recorded separately these appeals are allowed, and the separately these appeals are allowed, and the impugned judgment of the High Court is set aside and it is declared that view taken in the case of *Firdous Trading Corporation v. Japan Cotton and General Trading Co. Ltd.* (P L D 1961 Kar. 565) as to the payment of court-fee under the Court Fees Act on suits filed in the original side of the former High Court of West Pakistan (Karachi Bench), now Sindh High Court, and on appeals against the judgments and orders passed on the original side of that High Court states the correct position of law

21. The reasons of this case as decided by the Hon’ble Supreme Court unfortunately have not been reported. However, on perusal of the unreported reasons it very clearly transpires that the view taken in the case of ***Firdous Trading Corporation*** (Supra) has been

materially approved and followed by the Hon'ble Supreme Court i.e. the original side jurisdiction of this Court is neither the "original civil jurisdiction" nor "extraordinary original civil jurisdiction" as contended on behalf of the plaintiff in this matter. Again at the cost of repetition it may be observed, that the controversy in this matter was also in respect of levy of Court Fee that as to whether upon proper interpretation of Sections 3 and 4 of the Court Fee Act, 1870, any court fee is payable on the suits filed on the original side and on the appeals filed against judgments and orders passed on the original side of the then Sind & Baluchistan High Court, now the High Court of Sindh. But the said controversy was resolved by deciding the question that what in fact is the civil jurisdiction being exercised by this Court in pith and substance, i.e. is it the *original civil jurisdiction* or *extraordinary civil jurisdiction*. And for this reason the ratio of this judgment fully applies to the case in hand. The Hon'ble Supreme Court after discussing as well as reproducing the observations of two eminent judges namely Wahiduddin. J, in the case of **Firdous Trading Corporation** (Supra) and Dorab Patel. J, in the case of **Haji Razzaq** (Supra) came to the conclusion that the view taken in the case of **Firdous Trading Corporation** (Supra) was the correct view in the following manner:

**Pg: 24 onwards**

It would be seen from above that with the establishment of High Court of the West Pakistan under High Court of West Pakistan (Establishment) Order, 1955, the original civil jurisdiction was conferred upon the Karachi Bench of that Court under Paragraph 5 which reads as under:-

"5. **Original civil and criminal jurisdiction of the Bench at Karachi:-** Notwithstanding anything in this Order or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original civil jurisdiction for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Sessions for the Sessions Divisions of Karachi, as were exercisable, immediately

before the commencement of this Order, by the Chief Court of Sindh under Section 8 of the Sindh Court Act, 1926 (Sindh Act VII of 1926):

Provided that the Governor-General may by notification in the official Gazette direct that, as from a specified date such jurisdiction and powers as are mentioned therein shall cease to be exercisable by that Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers.”

Wahiduddin Ahmed, J., in **Firdous Trading Corporation Vs. Japan Cotton and General Trading Co. Ltd** (PLD1961 Karachi 565) was very right when he observed that “it is therefore perfectly clear that this jurisdiction is of a special nature and is not the ordinary civil jurisdiction of the West Pakistan High Court, otherwise there was no necessity of saying that the Karachi Bench of the High Court of West Pakistan shall have the same original civil jurisdiction for the civil district of Karachi as was exercisable by the Chief Court of Sindh under Section 8 of the Sindh Courts Act, 1926”. The aforesaid jurisdiction was not conferred on the High Court as a whole as in the case of Calcutta, Madras and Bombay under their Letters Patents. It was as a special measure that Karachi Bench was allowed to continue to perform the duties of the principal civil court of original civil jurisdiction in Karachi – it was therefore not the original civil jurisdiction of the West Pakistan High Court as is generally known. Wahiduddin Ahmad, J., was also correct in taking the view that although the Chief Court of Sindh was no doubt a High Court within the meaning of Section 219 of the Government of India Act, but the jurisdiction which it exercised in the civil district of Karachi was not that of an ordinary original civil jurisdiction of the High Court but it was only performing the duties of the principal civil court of original civil jurisdiction within the district of Karachi under a special statute i.e., Section 8 of the Sindh Courts Act, 1926. Sindh Chief Court itself in **Elias Dadla Khan V. Mahfooz Shah** (A.I.R. 1946 Sindh 86), had taken the view that “there is a civil district of Karachi considering of the city and taluka of Karachi, and that for the purpose of the ordinary civil jurisdiction of the Chief Court, the chief court of Sindh can be called a District Court, but it does not follow that a Judge of the Chief Court becomes a District Judge of that Civil District Court”.

The Federal Court of Pakistan in **Ghulam Mohi-ud-Din V. The Crown** (PLD 1953 F.C.1) had the occasion of interpreting Section 8 of the Sindh Courts Act with respect to the exercise of powers by the Chief Court of Sindh as the Court of Sessions and the exercise of the powers and performance of the duties of a Sessions Judge in the Sessions Division of Karachi. After survey of historical background of the judicial system of the Courts in the Province of Sindh before the Sindh Courts Act, 1926 came into force, the Federal Court referred to the Provisions of Section 8 of the Sindh Courts Act, 1926, as under:-

“As mentioned already the Sindh Courts Act 1926 came into force in the year 1940. Section 8 of this Act lays down that the Chief Courts shall be the highest Civil Court of Appeal and Revision, and the highest Court of Criminal Appeal and Revision for Sindh,



and the principal Civil Court of original jurisdiction for the civil district of Karachi, and shall be the Court of Sessions, and shall exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi. Section 10 of the Act lays down that, notwithstanding anything in the Code of Criminal Procedure, magistrate exercising jurisdiction in the Sessions Division of Karachi, when committing accused persons for trial, shall commit them to the Chief Court.”

The argument on behalf of the appellant in that Court was that as the Chief Court of Sind was declared to be the Court of Session for the Session Division of Karachi, and as that Court was to exercise the powers and perform the duties of a Sessions Judge, the procedure applicable to such a Court was the procedure laid down in the Cr.P.C. for regulating jury trials by Sessions Judges. If the Chief Court of Sindh has to be regarded as a Court of Sessions and has to exercise the powers and perform the duties of a Sessions Judge, it is clear that it must be regarded as a Sessions Court for all purposes under the Cr.P.C. It cannot be regarded as Court of Session for the exercise of its powers and performance of its duties, and be given at the same time the status of a High Court in procedural matters.

On the other hand, it was canvassed on behalf of the Crown that though the Chief Court is to exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi, the commitment by the Magistrate under clause (a) of Section 10 of the Act is not to the Court of Session for Karachi, but to the Chief Court, being the highest Court of Criminal jurisdiction in the Province of Sind must be regarded as a High Court and the procedure that must be followed by the Chief Court is that which applies to High Courts in the exercise of their original criminal jurisdiction.”

The Federal Court dealt with these arguments and held as under:

“The Sindh Chief Court, according to the Code, is a Court constituted under a law other than the Code of Criminal Procedure for the time being in force. It is, therefore, a “Special Court”. It happens that the words “Court of Sessions” are used in Section 8 of the Sindh Courts Act for the Sindh Chief Court when it exercises the power and performs the duties of a Sessions Judge. Nevertheless, it is not a Court of Session under the Cr.P.C., but a Court under a “Special Law”. It is unfortunate that the nomenclature is such that this “Special Court” has been confused with the Court of Session constituted under the provisions of the Cr.P.C. When exercising its original criminal jurisdiction the Chief Court of Sind functions as a “Special Court” though it has been styled a Court of Session for the Sessions Division of Karachi. Section 5 of the Code of Criminal Procedure lays down that ‘all offences under the I.P.C, shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained’. An offence under section 302 is an offence under the I.P.C. Therefore, this “Special Court” has to try this offence in accordance with the provisions of the Cr.P.C. As this “Special Court” is a High Court, by virtue of the provisions of section 266 of the Cr.P.C., read with section 219 of the Government of India Act, the procedure applicable to this “Special Court” is the procedure that applies to trials by jury before a High Court.”

It would thus be seen that the Chief Court of Sind when exercising its criminal jurisdiction under section 8 of the Sind Courts Act, 1926 was treated as a "Special Court", although it was a High Court by virtue of the provisions of Section 266 of the Code of Criminal Procedure read with Section 219 of the Government of India Act.

It was precisely this nature of jurisdiction, both on civil and criminal sides, that was conferred on the Karachi bench of West Pakistan High Court under section 5 of the Establishment of High Court of West Pakistan (Establishment) Order, 1955 and was continued to be exercised by the Sind and Baluchistan High Court established under High Courts (Establishment) Order, 1970 and now by the High Court of Sind under Baluchistan and Sind (High Courts) Order, 1976. It appears that this point of view was not properly highlighted before the Judges of the Division Bench of the High Court who decided the case of **Razak Vs. Usman** (PLD 1975 Karachi 944) under these appeals, for, otherwise, the learned Judges would not have taken a different view than the one that prevailed with Wahiduddin Ahmed, J., in **Firdous Trading Corporation Vs. Japan Cotton and General Co. Ltd.**

In the light of the historical background or the original civil jurisdiction vested in the High Court of Sindh, my opinion is identical to the one expressed by Wahiduddin Ahmad, J., in these words:

"I have not the slightest doubt on the language of section 8 of Sindh Act, 1926 and the definition of "District" in section 2(4) of the Civil Procedure Code, that it was exercising District Court jurisdiction in contradistinction of the High Court. In my opinion the mere fact that the Sind Chief Court later on was included within the definition of High Court under section 219 of the Government of India Act, did not change the nature of this jurisdiction."

For these reasons, these appeals are allowed, the impugned judgment of the High Court of Sindh and Baluchistan dated 2<sup>nd</sup> July, 1975 is set aside and it is declared that the view taken by Wahiduddin Ahmad, J., in **Firdous Trading Corporation Vs. Japan Cotton and General Trading Co. Ltd** (PLD 1961 Karachi 565) is the correct statement of law on the questions involved in these appeals.

In the circumstances, the parties are left to bear their own costs.

22. A similar objection regarding applicability of the provisions of Order 49 Rule 3(1) CPC, was also raised in the case reported as **Mirza Abdul Rahim Baig and another V. Abdul Haq Lashari and 3 others** (P L D 1994 Karachi 388). A learned Single Judge of this Court has dealt with this question in the following manner

and has repelled such contention. The relevant finding is as under:-

“It would thus seem that in relation to Order 49, Rule 3, C.P.C. the legislative intendment was to exclude the operation of the various provisions mentioned therein, including Order 7, rule 10, only from the exercise of “Ordinary or extraordinary original civil jurisdiction of a High Court” and not, generally, from the broader ambit of its original civil jurisdiction as such which in contradistinction, as stated, was the subject of section 120 of the Code. Needless to recount that the original civil jurisdiction of this Court, exercisable at the main seat in Karachi, is not “ordinary original civil jurisdiction”, as covered by Order 49, Rule 3, C.P.C. but a special or statutory civil jurisdiction of an original nature. In consequence, it can be plausible found that, for the purpose in hand, a plaint filed on the original side at Karachi in this Court can, if the required conditions are satisfied, be returned for presentation to the proper Court under Order 7, Rule 10, C.P.C. because that provision, in relation to the peculiar original civil jurisdiction exercisable by the Court at Karachi, does not stand excluded per Order 49, Rule 3, C.P.C. Yet, when a suit has been removed to be tried and determined by this Court, in the exercise of its extraordinary original civil jurisdiction, which also vest as in it, the plaint therein cannot be sought to be returned under Order 7, Rule 10, C.P.C. because Order 49, Rule 3, C.P.C. has shut out the last-mentioned provision from recourse in this Court for the purpose of the Court’s referred extraordinary civil jurisdiction of original character.

Assuming, however, that Order 7, Rule 10 C.P.C. did not apply also to the statutory original civil jurisdiction of this Court then too, at the discretion of the Court, alternatively the suit can be ordered to be sent to the appropriate Court if the exigencies of the situation so demand. The principle has been recognized in *Azam Ali v. Akhtar*, 33 IC 808, *Harnam Das v. Salamat Ali*, AIR 1952 Pepsu 105, *National Bank of Pakistan v. Humayoon Sultan Mufti*, 1984 CLC 1401 and *Shafiq Hanif (Pvt.) Ltd. v. Bank of Credit*, PLD 1993 Kar. 107.”

23. A learned Division Bench of this Court has given a complete answer to this issue in the case reported as ***Murlidhar P. Gangwani (Engineer) V. Engineer Aftab Islam Agha and others (2005 M L D 1506)*** and the relevant findings is at paragraphs 12 & 13 which reads as under:-

“12. The submission of *Mr. Khawaja Shamsul Islam* with reference to non-applicability of sections 16, 17 and 20, C.P.C. to the High Court in exercise of its original jurisdiction, by virtue of section 120, C.P.C., is without force and of no help to the appellant, as this legal aspect has been dilated in a prudent manner in the case of *M/s. Muslim Commercial Bank Limited v. M/s. Nisar Rice Mills and another* (1993 CLC 1627) (some relevant portion also reproduced in the impugned order) which furnishes complete answer of such submission. The other submission of the learned counsel with reference to rule 3 of Order XLIX, C.P.C. which excludes the applicability of certain provisions of C.P.C., including Order VII rules 10 and 11 (b) and (c) C.P.C., to the ordinary or extraordinary original civil jurisdiction of the High Court, is also equally without force, as non-applicability of such provisions of C.P.C. do not deny or curtail the power of High Court either to reject or

return the plaint in appropriate cases. If any case is needed to fortify this view, reference can be made to the case of Mirza Abdur Rahim Baig (supra).

13. As to the last submission of *Mr. Kh. Shamsul Islam* that due to the passing of impugned order by the learned Single Judge resulting in the return of plaint, the appellant will be put to heavy expenditure pursue all his litigation against respondents at Lahore and the doors of this Court have been closed for him forever, suffice it to observe that the territorial jurisdiction of the Court cannot be extended or curtailed on compassionate grounds or looking to the financial position of a party and the expenses which he might have to incur in pursuing the litigation before the proper Court, having jurisdiction in the matter. Further, the question of maintainability of a suit with reference to the territorial jurisdiction, vis-a-vis cause of action accrued to a party for institution of such suit, is to be judged on the basis of averments made in the plaint of C each suit and no perpetual order could be passed against a party that since plaint in one suit earlier instituted by him was returned for want of cause of action then for all future times to come no other suit instituted, though having cause of action accrued within the territorial jurisdiction of this Court could be entertained, or the findings on the point of jurisdiction recorded in the earlier suit will operate as res judicata, irrespective of distinguishable facts."

24. From appraisal of law which conferred jurisdiction in civil cases on this Court it appears that firstly it was under section 8 of the Sindh Courts Act, 1926, and thereafter, under Article 5 of High Court of West Pakistan Establishment Order, 1955. This came for scrutiny before Wahiduddin.J, in ***Firdous Trading Corporation*** (Supra), and view taken therein stands approved by the Hon'ble Supreme Court in ***Haji Razzaq*** (Supra). The enactments as above clearly provided that Bench of the High Court at Karachi shall have original civil jurisdiction for the civil district of Karachi, and it has been interpreted and held that such jurisdiction was never an original civil jurisdiction but a jurisdiction of District Court being exercised by the High Court. As against this the present jurisdiction being exercised by this Court on the original side is derived from Section 7 of the Civil Courts Ordinance, 1962, which in fact restricts or lowers such jurisdiction in plain words to that of a District Court jurisdiction without any

further ambiguity (if there was any, under the earlier enactments i.e. 1926 Act, and High Court of West Pakistan Establishment Order, 1955), in respect of cases having value exceeding Rs. 15 Million. In no manner this can now, at least, be construed as “*original civil jurisdiction*” or “*extraordinary civil jurisdiction*” as referred to either in Section 120 CPC or Order 49 Rule 3(1) CPC; or for that matter under the letters patent or any other independent enactments as was the case in the Sub-Continent in pre-partition days.

Therefore in view of the discussion hereinabove, I have come to a conclusion that; firstly this is not a case which could be referred to the Hon’ble Chief Justice for constitution of a larger bench as contended on behalf of the plaintiff, as according to me the judgments reported as ***Naveed Aslam A & B***, are not per incuriam as vehemently contested; secondly, per settled law this Court has no territorial jurisdiction in this matter as the property is situated outside the territorial jurisdiction of this Court; and thirdly, the provisions of section 120 and Order 49 Rule 3(1) do not in any manner curtail or restrict the jurisdiction and powers of this Court. Accordingly the plaint in this matter is hereby ordered to be returned to the plaintiff for its presentation before the Court having jurisdiction after retaining copies for record.

25. Plaint is ordered to be returned.

Dated: 09.01.2018

**J U D G E**