Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 108 of 2011

Before
Mr. Justice Nadeem Akhtar
Justice Mrs. Kausar Sultana Hussain

Appellant : Pakistan Steel Mills Corporation (Pvt.) Limited, through Mr. Abdul Razzaq Advocate.

Respondents 1-430 : Jan Muhammad and 429 others, through Mr. Adnan Memon Advocate.

Respondent No.431: Deputy Commissioner (Malir) Karachi East, through Mr. Ziauddin Junejo, AAG Sindh.

Dates of hearing : 26.10.2018, 06.11.2018, 19.12.2018, 26.04.2019, 03.05.2019 and 02.03.2020.

J U D G M E N T

NADEEM AKHTAR, J. – Through this appeal, the appellant has impugned order dated 27.05.2011 passed by a learned single Judge of this Court in Civil Reference No.03/1978 filed by the private respondents, whereby the appellant has been directed to deposit the entire amount of additional compensation and interest claimed by the private respondents under Sections 28-A and 34, respectively, of the Land Acquisition Act, 1894 **('the Act')**, through a miscellaneous application under Section 152 CPC after eighteen (18) years of the final disposal of their above Reference on the ground that that additional compensation and interest under the above Sections were not awarded to them by the learned single Judge due to **"***accidental slip and error***"** in the judgment.

2. This case has a checkered history, relevant facts whereof are that lands belonging to respondents 1 to 430 in Deh Pipri, Deh Bakran, Deh Joreji, Deh Koterire and Deh Sanhiro, Taluka and District Karachi, were acquired for the plant, township and colony of the appellant Pakistan Steel Mills, and consequently notifications of their acquisition were issued under Section 4 of the Act. The claims filed by the respondents in respect of their above lands were disposed of by the Deputy Collector and Land Acquisition Officer Karachi through four separate Awards by granting compensation to them in the following terms :

I. Award dated 07.09.1974 in respect of notification dated 27.06.1973 for lands acquired in Deh Pipri and Deh Bakran for establishment of the Steel Mill Plant – Flat rate of Rs.5,000.00 per acre and 25% statutory allowance as admissible under the Act. Interest was not allowed as possession of the land had not been taken over ;

II. Award dated 06.08.1975 in respect of notification dated 03.07.1974 for lands acquired in Deh Pipri and Deh Bakran for establishment of the Steel Mill Plant – Flat rate of Rs.5,000.00 per acre and 25% statutory allowance as admissible under the Act ; and, notification dated 26.04.1975 for Survey No.241 in Deh Joreji acquired for Steel Mill Township – Rs.6,000.00 per acre and 25% statutory allowance as admissible under the Act ;

III. Award dated 06.12.1974 in respect of notification dated 10.06.1974 for lands acquired in Deh Joreji, Deh Koterire and Deh Sanhiro for establishment of the Steel Mill Township and Colony – Rs.6,000.00 per acre for the land acquired in Deh Joreji and Rs.5,000.00 per acre for the lands acquired in Deh Koterire and Deh Sanhiro, and 25% statutory allowance as admissible under the Act. Interest was not allowed as possession of the land had not been taken over ; and,

IV. Award dated 31.05.1975 in respect of notification dated 22.03.1975 for lands acquired in Deh Joreji for establishment of the Steel Mill Township / Colony – Rs.6,000.00 per acre and 95% statutory allowance.

3. The above Awards of the Land Acquisition Officer were challenged by the respondents by filing applications under Section 18 of the Act on the ground that the compensation awarded to them in lieu of acquisition of their lands was **"***very low.***"** The said applications were referred by the Collector / Deputy Commissioner concerned (respondent No.2) to this Court for determination and the same were registered as Civil References No. 02/1977, 04/1977, 44/1977, 01/1978, 02/1978 and 03/1978. All the above Civil References were disposed of / answered by a learned single Judge of this Court vide judgment dated 27.11.1985 reported as PLD 1986 Karachi 164 **('the judgment')** by modifying the Awards in the following manner :

"*The awards dated 7.9.1974, 6.12.1974, 31.5.1974 and 6.8.1975 of the Land Acquisition Officer are modified as follows :-*

(i) For lands acquired in Deh Bakran and Deh Pipri pursuant to Notification dated 27-6-1973, the market value for purposes of assessment of compensation is determined at Rs.2.20 per square yard ;

(ii) For lands acquired pursuant to notification dated 10-6-1974 in Deh Joreji the market value is determined at Rs.6 per square yard and in Deh Koteriro and Sanhiro @ Rs.5 per square yard ;

(iii) For lands acquired in Deh Joreji pursuant to notifications dated 22-3-1974 and 26-4-1975, the market value is determined @ Rs.7 per square yard ; and

(iv) For lands acquired in Deh Bakran and Deh Pipri pursuant to notification dated 3-7-1974, the market value is determined @ Rs.6 per square yard.

Compensation payable to the claimants in those references under section 18 of the Land Acquisition Act, 1894, shall be calculated at the above rates and in addition 25% statutory allowance shall also be payable to claimants on the market value determined at the above rates.

Interest @ 6% per annum will also be paid on the compensation amount from the date possession was taken over from the claimants till payment.

*The claimants shall also be entitled to costs of these references.***"**

4. The respondents did not prefer any appeal under Section 54 of the Act to challenge the judgment whereby their applications under Section 18 of the Act were finally disposed of by a learned single Judge of this Court. In compliance of the judgment, the appellant deposited an amount of Rs.93,198,620.00 and further amounts with the Nazir of this Court. On 08.12.2003, i.e. after eighteen (18) years of the judgment delivered on 27.11.1985, the respondents filed an application bearing CMA No. 6889 of 2003 under Section 152 CPC **('the application')** in their above mentioned disposed of Civil Reference No.3/1978 praying that the judgment be **"***corrected***"** by allowing them additional compensation of 15% per annum on the amount of compensation plus interest at the rate of 6% per annum on such additional compensation from the date of publication of the notification till payment. No such application was filed by the claimants in other References. In the application, it was the case of the respondents that due to an **"***accidental slip and error***"** in the judgment, the benefits of Sections 28-A and 34 of the Act were not extended to them due to which they had suffered a huge loss. The application was disposed of by the learned single Judge vide order dated 24.04.2006 by holding that an accidental slip / omission had occurred in the judgment as the provisions of Section 28-A of the Act were not brought to the notice of the learned single Judge at the time of pronouncement of the judgment due to which additional compensation provided under the said Section could not be awarded to the respondents.

5. The aforesaid order dated 24.04.2006 was challenged by the present appellant in High Court Appeal No.445/2006 which was disposed of by a learned Division Bench of this Court vide order dated 28.05.2008 by setting aside the said order of the learned single Judge and by ordering that **"***Civil Reference No.3/1978 shall be deemed to be pending for rehearing and decision***"**. It is significant to note that the above order was passed in an appeal filed by the appellant against the grant of the respondents' application under Section 152 CPC filed by them in their disposed of Reference, and not against the judgment whereby their main Reference was disposed of on 27.11.1985. The effect of the above order and the question whether such an order could be passed in the above circumstances, will be dealt with in the latter part of this judgment.

6. Thereafter, the application was heard again and was disposed of by the learned single Judge vide order dated 24.12.2009 by ordering that the appellant and Government of Sindh may file objections before the Nazir in reply to the statement filed by the respondents regarding the additional compensation and interest payable to them under Sections 28-A and 34 of the Act, respectively ;

the Nazir will be at liberty to engage a chartered accountant of his choice at the expense of the appellant for determining the actual amount payable by the appellant to the respondents ; and, the entire exercise should be completed within ninety days. On 12.04.2010, the learned single Judge directed the appellant to file final report regarding the respondents' claim with the Nazir within fifteen days. As the final report was not filed within the stipulated period, the appellant was directed by the learned single Judge vide order dated 02.06.2010 to deposit the entire amount in Court till the matter is resolved by the Nazir and chartered accountant. The said order dated 02.06.2010 was modified by a learned Division Bench of this Court vide order dated 05.07.2010 passed in High Court Appeal No.121/2010 filed by the appellant, by allowing the appellant to file objections to the respondents' claim within fifteen days and by observing that if objections were not filed within the said period, the Nazir may engage a chartered accountant of his choice at the expense of the appellant who will pay compensation to the respondents in accordance with the Act and submit his report as to what amount is payable by the appellant as compensation to the respondents ; and, the learned single Judge was directed to decide the matter in the light of the report of the chartered accountant and after hearing the parties. In compliance of the aforesaid order, the appellant filed a statement with calculation of all the amounts payable to the respondents as compensation. Thereafter, the chartered accountant submitted his report to which objections were filed by the appellant, which came up for orders before the learned single Judge on 27.05.2011 when the impugned order was passed directing the appellant to deposit the entire amount of additional compensation and interest claimed by the private respondents under Sections 28-A and 34 of the Act, respectively.

7. It was submitted by Mr. Abdul Razzak, learned counsel for the appellant, that the impugned order is not sustainable in law or on facts due to the following reasons :

I. Reference No.3/1978 was finally disposed of by a learned single Judge of this Court through the judgment on merits and after hearing the parties, which was admittedly not challenged by any of the respondents by filing appeal provided under Section 54 of the Act. Thus, the compensation awarded to the respondents through the judgment attained finality long ago and it could not be reopened or re-agitated after a long period of eighteen (18) years in the year 2003 when the respondents filed the application seeking modification / addition in their claim by claiming additional compensation and interest under Sections 28-A and 34 of the Act under the garb of Section 152 CPC. In view of the above, all proceedings in respect of the application and all orders passed thereon, including the impugned order, are void.

II. Under Section 152 CPC the learned single Judge could not review the judgment, especially when the judgment, having not been challenged by the respondents, had attained finality long ago.

III. In the judgment, the learned single Judge had granted interest to the respondents. After finally disposing of the Reference and when the judgment therein had attained finality, the learned single Judge had very limited jurisdiction only to the extent of calculation of the compulsory interest payable under Section 34 of the Act.

IV. Section 28-A of the Act, under which additional compensation was claimed in the application by the respondents, was not in the field when the Awards were made in the years 1974 and 1975. The said Section was inserted in the Act in the year 1984 by the Sindh Amendment Ordinance XXIII of 1984, but was omitted with retrospective effect vide Sindh Act XVI of 2010 in the following words **"***In the said Act, Section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted.***"** After omission of Section 28-A in the above manner, additional compensation thereunder could not be calculated and or granted to the respondents.

V. As the provisions of the Act, being a special law, have a limited scope, only the objection(s) to the Award could be decided in the Reference, and since all the objections raised by the respondents were finally decided in the judgment which was never challenged by them, the application claiming additional compensation and all proceedings in relation thereto were illegal and beyond the scope of the Act.

VI. In the impugned order, the learned single Judge had simply relied upon the report of the chartered accountant and it was observed that objections filed by the appellant were nothing but repetition of the objections filed by them earlier before the Nazir. There was no application of mind by the learned single Judge as reasons for accepting the purported report of chartered accountant have not been assigned in the impugned order. The impugned order shows that the power, if any, to grant additional compensation under Section 28-A was actually exercised by the chartered accountant and the Nazir, which is not permissible under the law.

VII. The purported report of the chartered accountant ought to have been rejected as it was stated therein that the Deputy Commissioner Malir did not produce the relevant record and he relied upon the documents filed by the counsel for the claimants / respondents, and also that due to non-availability of the original record, the question of payment could not be determined / verified.

VIII. The only amount to which the respondents may have been entitled under the law was the interest under Section 34 of the Act, only in case of delay in

payment of compensation ordered in the judgment from the date of taking over of possession of their lands till payment.

8. In support of his above submissions, learned counsel for the appellant placed reliance upon *Ch. Ahmed Nawaz V/S Province of Punjab through Land Acquisition Collector, Jhelum and others*, ***2015 SCMR 823***, *Dilawar Hussain and others V/S Province of Sindh and others*, ***PLD 2016 SC 514***, *Sarup Singh V/S Union of India*, ***AIR 2011 SC 514***, and *Messrs Rabia Rana and Company through Managing Partner V/S Province of Sindh through Chief Secretary and 4 others*, ***2016 YLR 2286***.

9. On the other hand, it was contended by Mr. Adnan Memon, learned counsel for the respondents, that Section 28-A was in the field when the judgment was delivered as it was inserted in the Act on 30.09.1984 and was repealed in the year 2010 much after pronouncement of the judgment ; therefore, the respondents were entitled to additional compensation in terms of Section 28-A ; since such relief was not granted to the respondents, they were entitled to file the application seeking amendment in the judgment ; as full compensation in terms of the judgment had not been deposited by the appellant and the matter with regard to its calculation and determination was pending before the learned single Judge, the Reference was also pending and it could not be deemed to have been disposed of until receipt of the entire amount of compensation by the respondents ; due to this reason, the application was maintainable and the impugned order is fully justified ; the provisions of The Limitation Act, 1908, do not apply to the proceedings under the Act ; the appellant was required to deposit the full amount in Court and due to failure on its part to do so, interest will keep on accruing till the entire amount is deposited ; claim filed by the respondents under Section 28-A of the Act was only in respect of the unpaid amount and not the entire amount payable by the appellant ; in the proceedings before the learned single Judge and the learned Division Bench, the appellant did not object to the grant of additional compensation and interest under Sections 28-A and 34 of the Act, respectively, and the only objection raised by the appellant on all occasions was with regard to the method of calculation of the same ; and, this appeal, arising out of a money decree, is not maintainable as it has been filed without depositing the decretal amount.

10. In support of his above submissions, learned counsel for the respondents placed reliance upon *Ghulam Muhammad V/S Government of West Pakistan*, ***PLD 1967 SC 191***, *Syed Saadi Jafri Zainabi V/S Land Acquisition Collector and Assistant Commissioner*, ***PLD 1992 SC 472***, *Government of Sindh and 2 others V/S Syed Shakir Ali Jafri and 6 others*, ***1996 SCMR 1361*** and *Dilawar Hussain and 6 others V/S Province of Sindh through Secretary, Revenue Department, Karachi and 2 others*, ***PLD 2003 Karachi 174***.

In addition to the above, he also relied upon *Dilawar Hussain and others V/S Province of Sindh and others*, ***PLD 2016 SC 514***, cited and relied upon by learned counsel for the appellant.

11. We have heard learned counsel for the parties at length and with their able assistance have also examined the material available on record as well as the law cited by them at the bar. Much emphasis was laid by both the sides with regard to the respondents' entitlement to additional compensation and interest under Sections 28-A and 34 of the Act, respectively, or otherwise. After carefully examining their respective submissions and all the aspects and background of the case at hand, we are of the view that the question whether or not the respondents were entitled to additional compensation and interest under Sections 28-A and 34 of the Act, respectively, is not the main question involved in the present appeal. Rather, the main questions before us are when the judgment in the respondents' Reference had attained finality in the year 1985, whether relief under the above Sections could be claimed by and/or granted to the respondents through a miscellaneous application under Section 152 CPC seeking correction in the judgment and that too after a long period of eighteen (18) years ; and, whether the judgment could be corrected, modified or reviewed after eighteen years of attaining finality by granting the above relief to the respondents. In this context, the following important admitted position has emerged from the record which goes to the root of this case :

A. When Section 28-A was inserted in the Act in the year 1984 by the Sindh Amendment Ordinance XXIII of 1984, the Reference filed by the respondents, challenging the compensation awarded to them by the Land Acquisition Officer on the ground that it was **"***very low***"**, was pending. However, they did not file any application in their said Reference before the learned single Judge claiming additional compensation under the said Section.

B. After insertion of Section 28-A and during pendency of their Reference, the respondents also did not make any request before the learned single Judge for remanding the matter to the Land Acquisition Officer for deciding their claim of additional compensation under the said Section.

C. The Reference was answered / finally disposed of through the judgment by the learned single Judge by modifying / improving the Awards in favour of the respondents by enhancing the rate of compensation per square yard and also by ordering payment of 25% statutory allowance to them on the said enhanced rate as well as payment of interest to them at the rate of 6% per annum on the entire compensation amount from the date when possession was taken over from them till payment.

D. The judgment was accepted by the respondents as it was never challenged by them under Section 54 of the Act, and thus the judgment attained finality in the year 1985.

E. Additional compensation and interest under Sections 28-A and 34 of the Act, respectively, were claimed by the respondents for the first time on 08.12.2003, i.e. after eighteen (18) years of the judgment delivered on 27.11.1985, by filing the application under Section 152 CPC in their disposed of Reference, seeking correction in the judgment on the ground that due to an **"***accidental slip and error***"** in the judgment, the benefits of the above Sections were not extended to them. The application was allowed by the learned single Judge vide order dated 24.04.2006 by awarding additional compensation to the respondents under Section 28-A to the respondents.

F. The present appellant preferred High Court Appeal No.445/2006 only against the aforesaid order dated 24.04.2006, and the judgment dated 27.11.1985 in the respondents' Reference was neither the subject matter of the said appeal nor was it challenged therein. However, the above appeal was disposed of by a learned Division Bench of this Court vide order dated 28.05.2008 by setting aside the aforesaid order of the learned single Judge and by ordering that **"***Civil Reference No.3/1978 shall be deemed to be pending for rehearing and decision.***"**

G. Thus, the judgment, which had finality in the year 1985, was not only set aside in an appeal which was not filed against the judgment, but the Reference was also remanded to the learned single Judge **"***for rehearing and decision.***"**

H. Vide aforesaid order dated 28.05.2008, the learned Division Bench set aside the order dated 24.04.2006 of the learned single Judge whereby additional compensation was granted to the respondents under Section 28-A, but the said order of the learned Division Bench was not challenged by the respondents before the Hon'ble Supreme Court.

I. After the aforesaid order of remand dated 28.05.2008 passed by the learned Division Bench, several orders were passed by the learned single Judge and the learned Division Bench of this Court, including the order impugned in the present appeal.

12. In view of the above admitted position, we are of the view that fatal mistakes were committed by the respondents at least on three occasions by not availing the remedy available to them under the law at the proper stage of the proceedings. The first mistake was committed by them when Section 28-A was inserted in the Act in the year 1984 when their Reference was pending before

the learned single Judge, but they did not file any application before the learned single Judge claiming additional compensation under the said Section nor did they make any request for remanding the matter to the Land Acquisition Officer for deciding their claim of additional compensation under the said Section. Had the respondents taken any of the above steps immediately after insertion of Section 28-A and before the final disposal of their Reference, their claim under the said Section would have been decided at the initial stage in the same Reference through due process of law. After not exercising their above right, if the respondents were of the view that they were still entitled to additional compensation and interest under Sections 28-A and 34 of the Act, respectively, and the learned single Judge had erred in law by not granting the same to them in the judgment, they ought to have challenged the judgment by filing the statutory appeal provided under Section 54 of the Act. However, they did not file any appeal, accepted the judgment and allowed it to attain finality as far back as in the year 1985. This was the second mistake, rather a blunder, on their part. The third major mistake was committed by them when they did not challenge the order dated 28.05.2008 passed by the learned Division Bench in the present appellant's High Court Appeal No.445/2006 whereby the order passed on 24.04.2006 by the learned single Judge granting additional compensation to them under Section 28-A was set aside, and their Reference was remanded to the learned single Judge for decision afresh. As noted above, the jurisdiction of the learned Division Bench to pass such order of remand and the legality and effectiveness of the said order as well as all subsequent proceedings in pursuance thereof, including the order impugned herein, will be discussed in the later part of this judgment. Be that as it may, the fact remains that the order passed by the learned single Judge granting additional compensation to the respondents under Section 28-A was set aside in the above appeal, but they did not prefer any appeal against the said order.

13. The question now arises whether after committing the first two mistakes highlighted above, could the respondents claim additional compensation and interest under Sections 28-A and 34 of the Act, respectively, through a miscellaneous application under Section 152 CPC seeking correction in the judgment after a long period of eighteen (18) years. The scope of Section 152 CPC is very limited as only clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may be corrected by the Court either on its own motion or on the application by any of the parties. The law with regard to the applicability and interpretation of Section 152 CPC is well-established and there is a plethora of case law on this subject, including the following authorities of the Hon'ble Supreme Court :

A. In *Haji Ishtiaq Ahmed and 2 others V/S Bakhhaya and 7 others*, ***1976 SCMR 420***, the Hon'ble Supreme Court was pleased to hold, inter alia, that Section 152 CPC permits the correction of clerical or arithmetical

mistakes in judgments and decrees etc. or of errors arising from any accidental slip or omission, but does not authorize the Court to supplement its judgments, decrees or orders by directions which require application of mind, and have the effect of taking away rights that may have otherwise accrued to one party or the other.

B. In *Baqar V/S Muhammad Rafique and others*, ***2003 SCMR 1401***, it was held, inter alia, that there is a lot of difference between an arithmetic mistake or an error arising from accidental slip or omission on the one hand and an omission arising out of contentious nature of dispute between parties ; whenever the correction under Section 152 CPC is referable to a point which is contentious in nature between the parties, the provisions of Section 152 CPC cannot be invoked ; when a decision depends upon consideration of arguable questions of law, construction of documents or determination of rights in view of the record, such determination cannot be made by the Court exercising jurisdiction under Section 152 CPC ; an error apparent on the face of record or an accidental slip or omission should be an error apparent on the first sight and omission should be an accidental slip or omission made by the Court ; discovery of such an error should not depend on elaborate arguments or questions of facts or law ; every mistake made by a Court cannot be assumed to be on account of accidental slip ; may be it was an omission because the Court by positive application of mind intended to omit the same ; and, if this be the nature of omission or commission, it can never be dubbed as accidental or a mistake apparent on the face of record. The case of *Koka Adinarayana Rao Naidu V/S Koka Kothandaramayya Naidu and others*, ***AIR 1940 Madras 538***, also came under discussion in this authority wherein it was held that a Court cannot rectify a decree because it was wrong or unfair or that the parties did not realize their rights, and power to rectify decree was held limited to arithmetic mistakes or errors arising out of accidental slips or omissions.

14. Admittedly, it was not the case of the respondents that there was any clerical or arithmetical mistake in the judgment. Their sole ground was that due to an **"***accidental slip and error***"** in the judgment, the benefits of Sections 28-A and 34 of the Act were not extended to them. In view of the well-settled law and particularly the above authorities of the Hon'ble Supreme Court, we are convinced that the non-grant of the benefits under Sections 28-A and 34 of the Act to the respondents in the judgment by the learned single Judge did not fall within the scope of accidental slip and or omission contemplated in Section 152 CPC, nor could it be deemed as such under any circumstances or by any stretch of imagination. We are of the firm view that the scope and or nature of the relief once granted in any judgment, decree or order cannot be enlarged,

reduced, reversed, reviewed, changed, modified or altered subsequently by the Court under Section 152 CPC, nor can any such relief be granted by the Court under the said Section that was not prayed for ; any of the above can be achieved by the party concerned or aggrieved by availing the remedy(ies) of review, appeal or revision, as the case may be according to law ; and, only correction can be made in the judgment, decree or order strictly within the scope of Section 152 CPC and only to the extent of any clerical or arithmetical mistake or accidental slip and or omission therein. This being the legal position, the application filed by the respondents under Section 152 CPC claiming additional compensation and interest under Sections 28-A and 34 of the Act, respectively, was misconceived and not maintainable, and the same ought not to have been entertained or allowed. The cases cited and relied upon by learned counsel for the respondents, being clearly distinguishable, are of no help to him as the relief under Sections 28-A and/or 34 of the Act was not granted under Section 152 CPC in any of the said cases.

15. It may be observed that if the above well-settled principle of law is not strictly adhered to, the intention of the law makers and the very spirit of Section 152 CPC as well as the principle of finality of judgments, decrees or orders and the sanctity attached thereto, would be completely defeated, and there will be no logical conclusion of the proceedings. It was certainly not the intention of the law makers that instead of challenging a judgment, decree or order by availing the remedy provided by law within the prescribed period of limitation, the parties should be allowed at any stage, at their own will and convenience, to invoke Section 152 CPC to reopen a matter that had attained finality.

16. Having held above, we now move on to the other important aspect of the case relating to the events that took place after filing of the application. Despite the legal position discussed above, the application was allowed by the learned single Judge vide order 24.04.2006 by granting additional compensation to the respondents under Section 28-A, which order was challenged by the appellant in High Court Appeal No.445/2006. The said appeal was disposed of by a learned Division Bench of this Court vide order dated 28.05.2008 which had two parts ; in the first part, the aforesaid order dated 24.04.2006 of the learned single Judge granting additional compensation to the respondents under Section 28-A was set aside ; and in the second part, it was ordered that the respondents' Reference shall be deemed to be pending for rehearing and decision, meaning thereby that the judgment dated 27.11.1985, whereby the main Reference was finally disposed of, was reviewed and set aside. As noted earlier, the above appeal was filed only against the aforesaid order dated 24.04.2006 and admittedly the respondents' main Reference as well as the judgment dated 27.11.1985 regarding its final disposal were neither the subject matter of the above appeal nor the judgment was challenged therein. Therefore, the judgment, that had admittedly attained finality in the year 1985, could not be

reviewed or set aside in the above appeal nor could the disposed of Reference be remanded therein for decision afresh. Prima facie, it appears that the above order dated 28.05.2008 passed in High Court Appeal No.445/2006 was *coram non judice* and void to the extent of its second part, it is said so with all humility and respect, and due to this reason all subsequent proceedings in the Reference and orders passed therein in pursuance of the said void order, including the order impugned in the present appeal, were also void.

17. The cumulative effect of our above findings is that the application filed by the respondents under Section 152 CPC claiming additional compensation and interest under Sections 28-A and 34 of the Act, respectively, in their disposed of Reference was misconceived and not maintainable ; the first order dated 24.04.2006 of the learned single Judge granting additional compensation to the respondents under Section 28-A was set aside vide first part of order dated 28.05.2008 passed in High Court Appeal No.445/2006 which order was never challenged by them ; and, the second order, which has been impugned in the instant appeal, directing the appellant to deposit the entire amount of additional compensation and interest claimed by the respondents under Sections 28-A and 34, respectively, of the Act, is a void order as it was passed in pursuance of a void order i.e. the second part of the aforesaid order dated 28.05.2008 passed in High Court Appeal No.445/2006. For these reasons, the order impugned in the present appeal, being not sustainable in law or on facts, is hereby set aside.

18. We have already observed that the main controversy involved in the present appeal revolved around the maintainability of the application filed by the respondents under Section 152 CPC claiming additional compensation and interest under Sections 28-A and 34 of the Act, respectively, which controversy has been decided by us, and not whether they were entitled to such claim. However, it may be noted that even on merits the respondents were not justified or entitled in claiming 6% interest under Section 34 of the Act as the same was awarded to them by the learned single Judge vide judgment dated 27.11.1985 at the rate of 6% per annum on the compensation amount from the date when possession was taken over from them till payment, as noted in paragraph 3 supra. Regarding additional compensation under Sections 28-A of the Act, it may be observed that the said Section was inserted in the Act in view of the judgment delivered on 27.03.1984 by the learned Federal Shariat Court in its *suo motu* jurisdiction, which judgment was set aside by the Shariat Appellate Bench of the Hon'ble Supreme Court. Thereafter, the learned Federal Shariat Court took up the matter for reconsideration and vide its judgment dated 30.04.1992, specifically declared Section 28-A as repugnant to the Injunctions of Islam. In this backdrop, Section 28-A was repealed / omitted with retrospective effect vide Sindh Act XVI of 2010 in the following words **"***In the said Act, Section 28-A shall be omitted and shall be deemed to have been so*

omitted as if it had never been enacted." Thus, even on merits the claim of respondents under Sections 28-A and/or 34 of the Act was not maintainable before the learned single Judge in their disposed of Reference. However, if they still feel that they were/are entitled to the claim under any of the above Sections, they may avail their remedy, if any, before the executing Court in which case the executing Court shall examine and decide their claim strictly in accordance with law as expeditiously as possible.

19. Foregoing are the reasons of the short order announced by us on 02.03.2020 whereby the impugned order was set aside and this appeal was allowed with no order as to costs.

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