

IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 426 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Appellants:

Prof. Dr. Amir Bux Channa & Another,
Through M/s. Khawaja Shamsul Islam &
Imtiaz Ali Shah, Advocates.

Respondent No. 1:

Isra Islamic Foundation (Guarantee)
Limited & Others, Through M/s. Hussain
Ali Almani, Rashid Anwar, Sameen Hayat
& Sami-ur-Rehman Khan, Advocates.

Respondent No. 2:

Ghulam Qadir Kazi,
Through M/s Abid S. Zuberi & Ayan
Mustafa Memon, Advocates.

For Direction.

*For orders on office objection No.1 as flagged "A" a/w reply as flagged "B"
regarding maintainability of this Appeal (if office objection is overruled or
differed then fix for other purpose.*

Date of hearing:

21.12.2022.

Date of Order:

21.12.2022.

ORDER

Muhammad Junaid Ghaffar, J: The Appellants through this High Court Appeal filed in terms of Section 3 of the Law Reforms Ordinance, 1972 (XII of 1972) have impugned Judgment dated 09.12.2022 in Judicial Company Miscellaneous No. 29 of 2020, passed by Company Bench of this Court constituted in terms of Section 5(4) of the Companies Act, 2017, ("2017, Act") whereby, the JCM filed by the Appellants has been allowed and disposed of with certain directions. Matter has been fixed before us in respect of an Office objection that how this Appeal against Judgment passed in Judicial Companies Misc. [JCM] is maintainable in view of Section 6(14) of the 2017, Act, which provides that any person aggrieved by any judgment or final order of the Court passed in its original jurisdiction under this Act may file a petition for leave to appeal in the Supreme Court of Pakistan.

2. Learned Counsel for the Appellants in response to the office objection regarding maintainability of this High Court Appeal submits that the Appeal is very much maintainable in view of the dicta laid down by a larger bench of the Hon'ble Supreme Court in the case reported as **Brother**

Steel Mills Ltd. and Others Vs. Mian Ilyas Miraj and 14 Others (PLD 1996 SC 543), as according to him the order passed by the Company Judge is an order of a Civil Court exercising original civil jurisdiction; hence, appealable under Section 3 of the Law Reforms Ordinance, 1972. According to him, the provisions of section 10 of the then Companies Ordinance, 1984, (Repealed Ordinance, 1984) are *pari materia* to the present law i.e. section 6(14) of the 2017, Act; hence, the dicta laid down in the case of Brother Steel Mills Ltd., (Supra) is squarely applicable to the present case, and therefore, this Appeal is competent before this Court. He has also placed reliance on the judgments reported as **Muhammad Din and Sons Pvt. Ltd. Vs. Allied Bank of Pakistan and others (1993 SCMR 80)**, **Agha Fakhruddin Khan Vs. Messrs Ruby Rice and General Mills Limited and others (2001 YLR 1797)**, **Hasnain Raza and another Vs. Lahore High Court, Lahore and others (PLD 2022 SC 7)**, **Mst. Samrana Nawaz and others Vs. M.C.B. Bank Ltd. And others (PLD 2021 SC 581)**.

3. On the other hand, Respondents Counsel have entered appearance pursuant to notice under Order 43 Rule 3 CPC and besides supporting the office objection one of the learned Counsel¹ submits that Section 4 of the 2017, Act, 2017 has a Non-obstante clause, and therefore, the provisions of the said Act shall override the provisions of any other law.

4. We have heard the Appellants Counsel and perused the record. Time and again, the Appellants Counsel was confronted as to the relevancy of the case law being relied upon by him as above, including the case of **Brother Steel Mills Ltd. (supra)** inasmuch as the issue at the relevant time was in relation to section 10 of the repealed Ordinance, 1984 and to this, his response was that the provisions of Section 10 ibid and Section 6(14) of the 2017, Act, are *pari materia* and therefore, per settled law, the ratio of the said judgment still holds field and is equally applicable to the 2017, Act. With respect we have not been able to persuade ourselves to agree with this submission. It would be advantageous to refer to Section 10 of the repealed Ordinance, 1984 and Section 6(14) of the 2017, Act, which deals with filing of appeals against orders passed by a Company Judge. The same reads as under: -

“Section 10 of the repealed Ordinance, 1984.

10. Appeals against Court orders (1) Notwithstanding anything contained in any other law, an appeal against any order, decision or judgment of the Court under this Ordinance shall lie to the Supreme Court where the company ordered to be wound up has a paid-up share

¹ Mr. Ayan Memon appearing for Respondent No. 2

capital of not less than one million rupees; and, where the company ordered to be wound up has a paid-up capital of less than one million rupees, or has no share capital, such appeal shall lie only if the Supreme Court grants leave to appeal.

(2) Save as provided in sub-section (1), an appeal from any order made or decision given by the Court shall lie in the same manner in which and subject to the same conditions under which appeals lie from any order or decision of the Court.

(3) An appeal preferred under sub-section (2) shall be finally disposed of by the Court hearing the appeal within ninety days of the submission of the appeal.”

“Section 6(14) of the Companies Act, 2017.

6. Procedure of the Court and appeal. (1) Notwithstanding anything contained in any other law for the time.....

- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)
- (13)

(14) Any person aggrieved by any judgment or final order of the Court passed in its original jurisdiction under this Act may, within sixty days, file a petition for leave to appeal in the Supreme Court of Pakistan.”

5. It may be seen from the above that insofar as Section 10 of the repealed Ordinance 1984, is concerned, an appeal against any order, decision or judgment of the Court under this Ordinance shall lie to the Supreme Court where the company ordered to be wound up has a paid-up share capital of not less than one million rupees; and, where the company ordered to be wound up has a paid-up capital of less than one million rupees, or has no share capital, such appeal shall lie only if the Supreme Court grants leave to appeal. Similarly, under subsection (2) of Section 10 ibid save as provided in sub-section (1), an appeal from any order made or decision given by the Court shall lie in the same manner in which and subject to the same conditions under which appeals lie from any order or decision of the Court. On the other hand, Section 6(14) of the 2017 Act, provides that any person aggrieved by any judgment or final order of the Court passed in its original jurisdiction under this Act may, within sixty days, file a petition for leave to appeal in the Supreme Court of Pakistan; provided that no appeal or petition shall lie against any interlocutory order of the Court. Now when both the above provisions are read in juxtaposition; on the face of it, it appears that they are entirely different and are not, in any

manner, *pari materia* as argued by the Appellants Counsel. There appears to be no iota of any similarity between these two provisions; not at least being “*in pari materia*”. It may be of relevance to observe that in Section 10 of the repealed Ordinance 1984, there were two different orders of a Company Judge against which an aggrieved person could take recourse to the appellate forum and due to divergent view(s) of different benches of the Hon’ble Supreme Court as to the competency and the forum of appeal in such matters, as recent as in 2019, in the case reported as ***Shoaib ullah Cheema and Others Vs. Additional Registrar of Companies, SECP and Others (2019 SCMR 306)***, the Hon’ble Supreme Court once again constituted a larger bench of five members and reconciled the issue by way of an authoritative judgments and once again interpreted Section 10 of the repealed Ordinance, 1984. To that, perhaps there cannot be any cavil, as it is a binding precedent. In fact, the view taken in the case of *Brother Steel Mills Ltd. (supra)* on which the entire case of the Appellants Counsel is premised, is the same as has been arrived at once again by the Hon’ble Supreme Court in the case of *Shoaib ullah Cheema* (Supra). At the same time, one must not lose sight of the fact that Section 6(14) of the 2017, Act, with which the present objections relates, is worded entirely in a different manner as compared to Section 10 *ibid*, and therefore, the dicta laid down by the Hon’ble Supreme Court in the referred cases would not apply *stricto sensu*. Section 6(14) of the 2017, Act, is clear and specific and appears to be an attempt by the legislature to do away with any confusion which may have existed under Section 10 of the repealed Ordinance, 1984. Now, as is relevant, any person aggrieved by *any judgment* or *final order* of the Court passed under its original jurisdiction under this Act has to file a Petition for leave to appeal before the Hon’ble Supreme Court of Pakistan, whereas, admittedly, the present order is an order which is final in nature as it has decided the JCM of the Appellants filed under Section 286 of the 2017, Act. The argument that the impugned order is not a winding up order; hence, following the judgment in the case of *Brother Steel Mills Ltd. (supra)* this appeal is competent before a Division Bench of this Court, is in the given facts and circumstances misconceived as the distinction between two different types of orders referred to in Section 10 of the repealed Ordinance, 1984 has now been done away with in Section 6(14) of the 2017, Act.

6. Per settled law decisions rendered with reference to construction of one Act cannot be applied with reference to the provisions of another Act, when the two Acts are not in *pari materia*. It is further settled that when there is no ambiguity in the statute, it may not be permissible to refer to, for

purposes of its construction, any previous decisions rendered thereto. It has been a consistent view of the superior courts both in Pakistan and India, that it is not safe to pronounce judgment on the provision of one Act with reference to decisions dealing with the other Acts which are not *pari materia*². It is a matter of admitted position that the legislature, while enacting the 2017 Act, has, by clear intention, despite adopting various provisions from the repealed Ordinance, 1984, has for the present purposes, intentionally and with a clear and conscious application of mind, worded the provisions relating to filing of an appeal against orders and judgments by a Company Judge appointed in terms of Section 5(4) of the 2017, Act, by providing only one forum of appeal i.e. the Hon'ble Supreme Court as against the repealed Ordinance, wherein, there were two different forums of appeal for two different types of orders of the same Company Judge.

7. After being unable to convince ourselves as to the submissions of the learned Counsel for the Appellant, we had offered the Appellants Counsel not to press this Appeal failing which cost(s) may be imposed, as precious time of the Court is being wasted for an academic exercise, but this was not accepted, and therefore, by means of a short order on 21.12.2022, this Appeal was dismissed as incompetent and not maintainable in the following terms and these are the reasons thereof: -

“Office has raised an objection regarding maintainability of this Appeal on the ground that in view of Section 6(14) of the Companies Act, 2017, the remedy lies before the Hon'ble Supreme Court by way of a petition for leave to appeal, and after hearing the learned Counsel, in our considered view, the objection ought to be sustained; however, before passing any order, we have offered the Appellants Counsel not to press this Appeal failing which cost(s) may be imposed. To this learned Counsel has not agreed.

Heard. For reasons to be recorded later on, this Appeal is dismissed in *limine* as being incompetent and not maintainable with cost of Rs. 100,000/- to be deposited by the Appellants within four weeks from today in the account of Sindh High Court Clinic.”

J U D G E

J U D G E

Arshad/

² Ghulam Mustafa Jatoi v Additional District & Session Judge (1994 SCMR 1299); Hari Khemu Gawali v The Deputy Commissioner of Police [PLD 1957 SC (India) 90]; Justice Qazi Faez Isa v The President of Pakistan (PLD 2021 SC 1)