

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
IIInd Appeal No.124 of 2021

Dated: Order with signature of Judge(s)

For hearing of Main Case.

Date of Hearing : 29 May 2023.

Petitioner : Pakistan Reinsurance Company Limited
through Mr. Sikander Khan, Advocate.

Respondent: : Industrial Development Bank of Pakistan
Limited through Mr. Manzoor Arain and
Mr. Riaz Moin, Advocate

ORDER

MOHAMMAD ABDUR RAHMAN, J. This Appeal has been maintained by the Appellant under Section 100 of the Code of Civil Procedure, 1908 as against the Judgment and Decree dated 31 March 2021 passed by the IIIrd Additional District Judge Karachi South in First Appeal No. 158 of 2017 which partially overturned a Judgment and Decree dated 31 August 2017 passed by the VIIIth Senior Civil Judge Karachi (South) in Suit No. 149 of 2013.

2. The Appellant was the owner of 50,000 ordinary shares of a face value of Rs 100 each in Investment Corporation of Pakistan. Pursuant to a Scheme of Arrangement, the Investment Corporation of Pakistan amalgamated into the Respondent. Article 6.04 of the Scheme of Arrangement, cast an obligation on the Respondent to convert the net assets value of assets of the Investment Corporation of Pakistan and convert that amount into a credit balance payable by the Respondent to the shareholders of the Investment Corporation of Pakistan on the basis of the net assets value of the assets of the Investment Corporation of Pakistan as per its audited accounts and subject to various conditions which are really not relevant to this Appeal.

3. The Scheme of Arrangement was approved and pursuant to which the Respondent informed the Appellant that a sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) had in accordance with the Scheme of Arrangement been converted into a credit balance and was available for distribution.

4. The Appellant initially contested this amount by filing an application in Suit No. 1771 of 2008 before this Court but in which an order was passed directing that the Appellant should file a separate suit. The Appellant thereafter preferred Suit No. 149 of 2013 before the VIIIth Senior Civil Judge Karachi seeking the recovery of a sum of Rs. 4,565,000 (Rupees Four Million Five Hundred and Sixty Five Thousand) with "interest" at the rate 2.5% above the bank rate. The VIIIth Senior Civil Judge Karachi (South) was on 31 August 2017 pleased to pass a Judgment and Decree in Suit No. 149 of 2013 stating that the Appellant was entitled to an amount of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) as had been offered to the by the Respondent along with interest at the prevailing bank rate upto the date of realisation of the decretal amount by the Appellant.

5. The Respondent filed an Appeal under Section 96 of the Code of Civil Procedure, 1908 before the IIIrd Additional District Judge Karachi (South) being First Appeal No. 158 of 2017 and whereby it contested that as the Respondent had always been ready and willing to pay the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) the award of interest was unwarranted. The Appellant filed Execution Application No. 20 of 2017 before the VIIIth Senior Civil Judge Karachi (South) and wherein the Respondent deposited the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty). The IIIrd Additional District Judge

Karachi (South) by its the Judgment and Decree dated 31 March 2021 in First Appeal No. 158 of 2017 held that:

- (i) as the Respondent was always ready and willing to pay the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) to the Appellant and as the Appellant had itself refused to receive the amount, the payment of interest was not warranted.

6. The Appellant appeals the Judgment and Decree dated 31 March 2021 in First Appeal No. 158 of 2017. Mr. Sikander Khan entered appearance on behalf of the Appellants and contended that as he did not file an appeal as against the Judgment and Decree dated 31 August 2017 in Suit No. 149 of 2013, he could not contest the amount of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) that had been awarded by the Court. He stated that he simply maintained this Appeal as against Judgment and Decree dated 31 March 2021 passed by the Illrd Additional District Judge Karachi South in First Appeal No. 158 of 2017 whereby the Appellants claim to interest was disallowed. He stated that while he admitted that the Respondents were at all time ready and willing to pay the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) to the Appellant as the sum was retained by the Respondent, the Appellant was entitled to be awarded interest on the decretal amount. He did not rely on any case law in support of his contentions.

7. Mr. Manzoor Arain entered appearance on behalf of the Respondent and contended that at all times the Respondent had been ready and willing pay the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) to the Appellant. As the Appellant had itself refused to accept such an amount, the Appellant should

not be penalised on this account. He did not rely on any case law in support of his contentions.

8. I have heard the learned counsel for the Appellant and the counsel for the Respondent and perused the record. The Supreme Court of Pakistan in the decision reported as **Raja Muhammad Sadiq vs. WAPDA through Chairman WAPDA House Lahore and 3 others**¹ while interpreting Section 34 of the Code of Civil Procedure, 1908 regarding the payment of interest has held that:

“ ... the Examination of Section 34, C.P.C.; shows that interest can be awarded for the period firstly, from the date when the payment was due till the date of institution of suit, secondly from the date of institution of the suit till the date of decree and thirdly, from the date of decree till the realization of decretal amount. The award of interest under section 34, C.P.C., from the date of institution of the suit till the date of realization of amount is discretionary with the Court and cannot be claimed as of right. **The interest for the period prior to the institution of suit can only be claimed and awarded if it is permitted by the substantive law or it is specified in writing or in the demand notice but no such interest prior to the period of Suit under Section 34, C.P.C., can be granted in a decree passed in the suit for damages in absence of the substantive law or if it is not specified in writing in any form.** The learned counsel has not been able to show us any such law or document under which the appellants could claim the interest of the period prior to the filing of the suit. Under Section 34, C.P.C., the Court in its discretion can grant interest from the date of suit till the realization of the decree and if the discretion is exercised in favour of grant of interest in terms of section 34, C.P.C.; it shall be deemed from the date of suit and not from any previous date. The decree in the present case was passed in terms of Section 34 C.P.C., therefore, the appellants would be entitled to the interest from the date of suit.”

(Emphasis is added)

From the evidence adduced it has been shown that the sum of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) had been offered by the Respondent to the Appellant on 6 December 2009 but the Appellant had instead refused to take such an amount and instead had put forward a spurious demand for Rs. 4,565,000 (Rupees Four Million Five Hundred and Sixty Five Thousand) with “interest” at the rate 2.5% above the bank rate. Suit No. 149 of 2013 having been decreed on 31 August 2017 by the VIIIth Senior Civil Judge

¹ PLD 2003 SC 290

Karachi (South) for a sum of 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) and not for the amount claimed by the Appellant to my mind suggest that the claim that had been instituted by the Appellant was unjustified. If the Appellant had received the amount of Rs. 3,696,530 (Rupees Three Million Six Hundred and Ninety Six Thousand Five Hundred and Thirty) as had been correctly offered by the Respondent on that date it would have been able to invest the amount and earn on it. The demand having been made for a greater amount and not having been decreed by the Court, the loss incurred by the Appellant is to its own account and should not be borne by the Respondent. The Appellants claim for Rs. 4,565,000 (Rupees Four Million Five Hundred and Sixty Five Thousand) having failed its demand for interest must also fail.

9. For the foregoing reasons I am of the opinion that the Judgment and Decree dated 31 March 2021 passed by the IIIrd Additional District Judge Karachi South in First Appeal No. 158 of 2017 which partially overturned a Judgment and Decree dated 31 August 2017 passed by the VIIIth Senior Civil Judge Karachi (South) in Suit No. 149 of 2013 suffers from no infirmity or illegality. This appeal is therefore consequentially dismissed with no order as to costs.

JUDGE

Karachi dated 28 August 2023