IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

First Appeal No.89 of 2023

M/s Farooqui Fisheries and others
Versus
Faysal Bank Limited and another

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Dates of hearing: 26.04.2024, 15.05.2024 and 24.05.2024.

Mr. Shahab Sarki, Advocate for Appellants along with Mr. Wahaj Ali Khan, Advocate.

Mr. Adil Khan Abbasi, Advocate for the Respondent No.1.

Mr. Ijaz Ahmed Zahid, Amicus Curiae.

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J U D G M E N T

Muhammad Shafi Siddiqui, J.- Faysal Bank Limited (FBL) filed a suit No.78/2012 before the Banking Court No.II, Karachi under Financial Institutions (Recovery of Finances) Ordinance, 2001 [FIO, 2001] for the recovery of the finances extended to the appellants.

2. The Banking Court granted unconditional leave on 05.09.2018 and framed five issues. The evidence was recorded and consequently the judgment was passed on 06.09.2023 followed by a decree which was drawn and prepared on 26.09.2023.

3. Aggrieved of it i.e., the judgment and decree, the appellants being borrowers and defendants in the suit, filed this First Appeal under Section-22 of the FIO, 2001 on 25.10.2023, seemingly within 30 days of date of decree. In this appeal notices were ordered on 22.11.2023 and reply to the memo was filed.

4. While hearing this appeal, primary objection taken by Mr. Adil Khan Abbasi, Respondent No.1's counsel (being Faysal Bank Ltd. FBL) was that this appeal is barred by time in view of the conclusion

drawn in the case of First Pakistan Security Limited[1] (hereinafter referred as FSL). Per learned counsel for the Respondent, the judgment provides the interpretation in respect of section 22 of FIO 2001 in such a way that it provides an appeal (in a suit) against the judgment and since the appellants have waited for a decree to be drawn, which was drawn on 26.09.2023, the appeal against the judgment only (not against decree) by that time became barred by limitation; hence the counsel has argued for dismissal of this appeal outrightly on this score, against the judgment however he addressed no arguments for appeal against decree.

5. Para-9 of the judgment in FSL, which is of a Division Bench, referred above and relied upon deals with the issue in hand. Side note "B" of the judgment, which is its finding on the issue, is as under:-

> *……We have minutely examined this aspect of the case. The text of section 22(1) is very clear, which requires that any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty (30) days of such judgment, decree, sentence or final order prefer an appeal to the High Court. In section 22(1), the conjunction 'OR' indicates that the appeal can be filed either against a judgment or a decree. Since, it is the provision of law that the appeal can be filed against any final order including judgment or decree, hence the period of limitation will start from the date of judgment and not from the decree……*

6. We have perused the scheme of FIO 2001, which is a comprehensive code for both civil and criminal jurisdiction and have attempted to reconcile the two jurisdictions being governed thereunder and found that it requires a detailed understanding of law then what was deliberated in the FSL.

7. While hearing this appeal, we have also appointed Mr. Ijaz Ahmed Zahid, learned Advocate Supreme Court as amicus curiae to assist us in this regard, who very eloquently and ably assisted us and demonstrated the history of the banking jurisdiction that was

[1] 2020 CLD 269 [First Pakistan Security Limited and others v. Bank Alfalah Limited].

exercised under different statutes right from 1979 up until the recent Ordinance of 2001.

8. We have heard learned counsel as well as amicus curiae and perused the material available on record.

9. Before we attempt to discuss the merits of the case, we would first take up the objection of the learned counsel for the Respondent that in the light of the recent pronouncement of this court in the case of First Pakistan Security Limited (*supra*), the appeal having been filed belatedly and presumably after a long await of drawing a decree, is liable to be dismissed being barred by time.

10. The proposed questions thus could be summarized as to whether the appeal must be filed against the judgment alone without waiting for the decree to be drawn?

OR

Whether Section-22(1) of the FIO, 2001 provides an independent right of appeal against the judgment in a suit or such right is against a decree in a suit filed under the FIO, 2001?

The consequential question, which find its articulation with the questions in hand, is that in waiting for such a decree to be drawn, whether the limitation for the appeal, if filed cumulatively, against the judgment/decree shall exclude the time consumed in issuance of a judgment as well as decree or obtaining a certified copy of such judgment and decree and/or when decree is filed later in time (after filing of appeal against judgment only) after it was drawn by office, would exclude the time for its preparation as per law?

11. Not exactly but a summarized form of above questions came for consideration of an earlier Bench of this Court in the case of First Pakistan Security Limited (*ibid*) which held that an appeal ought to be filed against the judgment in a suit (Banking Suit) under Section-

22 of the FIO, 2001 without waiting for a decree to be drawn and accordingly the period of limitation will start from the date of the judgment and not from the date of the decree, in terms of its conclusion. The observation of the Bench is summarized in para-9 placitum "B" which is available at page-272 and 273 of the reported judgment of First Pakistan Security Limited, reproduced above. However we did not find "OR" in Section 22(1) of FIO 2001, in between judgment and decree for such interpretation as attempted in the aforesaid reasoning; nonetheless the reasonings have been assigned, keeping in mind that the word "OR" disarticulate the two words i.e. 'judgment and decree'.

12. In view of the jurisprudence developed in the case of Multiline Associates[2], the judgment of a Division Bench is binding on this Bench.

13. The binding effect however can only be displaced by us (or subsequent bench) if the relied judgment is found to be either *per-incuriam* or *sub-silentio*. In the absence of such findings, i.e. holding First Pakistan Security Limited case as *per-incuriam* or *sub-silentio* by us, in case a different view is intended, then the matter will need to be placed before larger Bench as summarized in Multiline Associates case. We have made an attempt as a first measure to stand with the reasoning and conclusion drawn, however, we found that the scheme of law (FIO 2001) required interpretation differently.

14. In this regard the first exercise undertaken by us was to see whether the judgment rendered in the case of First Pakistan Security Limited is *per-incuriam* or *sub-silentio*. The brief of *per-incuriam*

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[2] 1995 SCMR 362 [Multiline Associates v. Ardeshir Cowasjee and others].
"18. In such circumstances, legal position which emerges is that the second Division Bench of the High Court should not have given finding contrary to the findings of the 1st Division Bench of the same Court on the same point and should have adopted the correct method by making a request for constitution of a larger Bench, if a contrary view had to be taken…."

and/or *sub-silentio* has also been summarized in the recent pronouncement of Hon'ble Supreme Court in the case of Chaudhary Pervez Elahi[3].

15. The doctrine of per incuriam refers to a judgment of a Court which has been decided without reference to, or in ignorance of a statute or an earlier judgment/precedent and/or overall dress up of the scheme of law, which could have been relevant and therefore such ignorance has affected the result of the case. Some of the factors to be considered while contending that a decision is not a binding precedent and should not be followed or be ignored on the above principles are now summarized hereunder but are not limited.

I) A decision where the point in issue is not argued or considered by the Court or decision rendered without an answer to the argument, without reference to the crucial words of the rules and without any citation of authority;

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[3] PLD 2023 SC 539 [Chaudhary Pervez Elahi v. Deputy Speaker, Provincial Assembly of Punjab, Lahore and others.

"36. ….This is because it would either be:

a. Per incuriam for being 'based upon ignorance of any provisions of the Constitution, and/or is founded on [serious] misinterpretation thereof [ref: Regarding Pensionary Benefits of the Judges of the Superior Courts (PLD 2013 SC 829) at para 4 of Justice Mian Saqib Nisar's opinion]; 'such decisions [per incuriam] are those which are given in ignorance of the terms of the Constitution or of a statute or of a rule having the force of a statute' [ref: Muhammad Rafique Goreja v. Islamic Republic of Pakistan (2006 SCMR 1317) at para 5]; or

b. It would be a decision in sub silentio because 'the particular point of law involved in the decision was not perceived by the Court or present to its mind. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent' [ref: Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879) at para 40 of Justice Ch. Ijaz Ahmed's (as he then was) opinion]. It would be likewise if the conclusion is 'delivered without argument, without reference to the crucial words of the rule, and without any citation of authority' [ref: Lancaster Motor Company v. Barclays Bank [1941] 1 KB 675, United Kingdom Court of Appeal].

The principles of per incuriam and sub silentio are exceptions to the doctrine of precedent and permit the Court to overrule the ratio decidendi of the incorrect decision (per incuriam) or to ignore the same (sub silentio). …."
[Underlining is as appears in the case report] (placita K and L, paragraph 36, pages 580 to 581).

II) A decision where a mere direction is issued without laying down any principle of law.

III) If a judgment is delivered in ignorance of the "scheme of law" to demonstrate the real intent of legislature will also be recited per incuriam.

16. Legislature's real intent should never be left behind or overshadowed by a judgment rendered per incuriam; jurisprudence evolves and unveils through a constant process the real intent of law. The situation is described by Ralph Waldo Emerson very artistically however we may retune the views that it is always wise to rethink prior believes not born out of legislature. He attempted differently by saying that today's jurisprudential approach could trump yesterday's conclusion.

17. The view in the First Pakistan Security Limited (Supra), does not take into account the consequence of filing of an appeal only against the judgment "and not the decree" (*emphasis applied*). Following the reasoning of FSL, if the judgment is impugned in the appeal, then the decree would obtain an ambiguous status, as judgment's effect could still or only be seen via decree. It is the decree alone which is executable by the executing court and not the judgment. The referred case of First Pakistan Security Limited also does not discuss the issue that if the view of the said case is accepted, then the word "decree" mentioned in Section-22(1) of the FIO, 2001 becomes redundant and redundancy cannot be attributed to the legislature.

18. A careful study of the entire scheme of law i.e. FIO 2001 would lead us to conclude that these questions have not been dealt with in the First Pakistan Security Limited and has become a case of either *sub-silentio* or *per-incuriam* or a blend of both. In any of the two events, the binding effect of the judgment is defeated and diluted, as the ratio in

consideration of entire scheme of law as raised before us is not settled in the earlier referred judgment.

19. In order to appreciate the scheme of FIO, 2001, it is inevitable to understand the usage of the term “judgment”, “decree” and “order” in FIO, 2001:-

(i) The following provisions of FIO 2001 use the phrase "judgment and decree":

(I) section 10(1) and 10(12) Leave to defend;

(II) section 19(1) Execution of decree and sale with or without intervention of Banking Court;

(III) section 22(3) makes furnishing of security a condition for admission of appeal and such security is to be based on the decretal amount:

(IV) section 23 - Restriction on transfer of assets & properties.

(ii) The following provisions use the phrase "judgment, decree, sentence or order:

(I) section 22(1)-Appeal:

(II) section 27-Finality of order.

(iii) The following provisions use the phrase "decree":

(I) section 3(3) Duty of a customer;

(II) section 7(4) Powers of Banking Courts;

(III) section 8(1)-Suit for recovery of written off finances etc.;

(IV) section 10(1) - Leave to defend;

(V) section 11(1) Interim decree;

(VI) section 12-Power to set aside decree;

(VII) section 13(1) Disposal of suit;

(VIII) section 14-Decree in suits relating to mortgages:

(IX) section 17-Final decree;

(X) section 20(1)(d) - Provisions relating to certain offences;

(XI) section 21(2)- Application of fines and cost;

(XII) sections 22(5) and 22(7) - Appeal

20. The scheme of the 2001 Ordinance therefore is such that in case of a suit the proceedings are concluded with the issuance of a decree. Particularly section 10(12) provides that the Banking Court shall pass a "judgment" and "decree" against the defendant in case of rejection of leave to defend or non- compliance with conditions for the grant of leave to defend. Further, section 13 which relates to final disposal of a suit provides that a Banking Court shall pass an interim or final decree for disposal. Moreover, a range of provisions of the 2001 Ordinance use the term "decree". Sub-section 5 of section 22 (Appeal) itself provides that an appeal may be preferred from an ex-parte decree.

21. That the interpretation of section 22 of the 2001 Ordinance also has to take into account the nature of the 2001 Ordinance. The 2001 Ordinance is a collective hybrid law providing both civil and criminal jurisdiction of a banking court. Section 7 of the 2001 Ordinance provides as follows:

> *"**7. Powers of Banking Courts.**-(1) Subject to the provisions of this Ordinance, a Banking Court shall-*
>
> *(a) in the exercise of its civil jurisdiction have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).*
>
> *(b) in the exercise of its criminal jurisdiction, try offences punishable under this Ordinance and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898).*
>
> *…"*
>
> *(2) A Banking Court shall in all matters with respect to which the procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), and the Code of Criminal Procedure, 1898 (Act V of 1898).*

22. Accordingly, subject to the provisions of the 2001 Ordinance, for and in exercise of civil jurisdiction, the Code of Civil Procedure, 1908 ("CPC") is applicable whereas for and in exercise of criminal jurisdiction, the Code of Criminal Procedure. 1898 ("Cr.PC") is applicable.

23. The terms "judgment", "decree" and "order" are not defined in the 2001 Ordinance. However, these terms are defined in the CPC as follows:

> *(i) section 2(2) of the CPC:*
>
> *"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties which regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint, the determination of any question within section 144 and an order under rule 60, 98, 99, 101, or 103 of Order XXI), but shall not include-*
>
> *(a) any adjudication from which an appeal lies as an appeal from an order, or*
>
> *(b) any order of dismissal for default.*
>
> *Explanation. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final".*
>
> *(ii) section 2(9) of the CPC:*
>
> *"judgment" means the statement given by the Judge of the grounds of a decree or order".*
>
> *(iii) section 2(14) of the CPC:*
>
> *"order" means the formal expression of any decision of a Civil Court which is not a decree".*

24. The Cr.P.C does not contain any definition of the term "judgment", however the terms order and judgment are used, inter alia, in the following provisions:

No.	***Provision***	***Term used***
(i)	*section 366-Mode of delivering judgment;*	*"judgment"*
(ii)	*section 367 Language of judgment Contents of judgment*	*"judgment"*
(iii)	*section 376 Power of High Court to confirm sentence or annul conviction*	*proviso uses the term order*
(iv)	*section 381-Execution of order passed under section 376*	*"order"*
(v)	*section 404-Unless otherwise provided, no appeal to lie*	*against "judgment or "order"*
(vi)	*section 405-Appeal from order rejecting application for restoration of attached property*	*"order"*
(vii)	*417-Appeal in case of acquittal*	*"order"*
(viii)	*423-Powers of Appellate Court in disposing of appeal*	*"order"*
(ix)	*439 High Court's powers of revision*	*"order"*

25. As submitted above, a banking court under the 2001 Ordinance exercises both civil and criminal jurisdiction, however, the section relating to appeal in relation to exercise of jurisdiction is the same i.e, section 22. On a perusal of the provisions of Cr.PC read with section 22 of the 2001 Ordinance one possible interpretation can be that the use of the term "judgment" relates to criminal matters alone.

26. The predecessor law to the 2001 Ordinance was the Banking Companies (Recovery of Loans, Advances. Credits and Finances) Act, 1997 ("Act, 1997"). Section 21 of the 1997 Act which is related to appeals provided as follows:-

> *21. Appeal-(1) Subject to subsection (2), any person aggrieved by a decree or an order refusing to set aside a decrees or any permitting or presenting the sale of property, or a sentence passed by a Banking Court established under section 4, may, within thirty days of such order, decree or sentence, prefer an appeal to the High Court....."*
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> *(emphasis added)*

27. A bare perusal of section 21 of the 1997 Act shows that under this law an appeal lay against a decree, order or sentence and the term judgment was not used.

28. The predecessor law to the 1997 Act was the Banking Companies (Recovery of Loans) Ordinance, 1979 (“1979 Ordinance"). Section 12 of the 1979 Ordinance which is related to appeals provided as follows:

> *"12. Appeals (1) Any person aggrieved by any order, judgment, decree or sentence of a Special Court may, within thirty days of such order, judgment, decree or sentence, prefer an appeal to the High Court within whose jurisdiction the order, judgment, decree or sentence is passed..."*
>
> *(emphasis added)*

29. The 1979 Ordinance uses the same language as that of 2001 Ordinance, that is, an appeal lay against any order, judgment, decree or sentence of the Special Court.

30. The Banking Tribunals Ordinance, 1984 (“Banking Tribunals Ordinance"), which was also a predecessor law to the 1997 Act, provided for recovery mechanism for banking companies under a system of financing which is not based on interest. Therefore the same was in force along with the 1979 Ordinance before the enactment of the 1997 Act. Section 9 which is related to appeals provided as follows:

> *"Appeal. (1) Any person aggrieved by any order of the Banking to the Tribunal passed under subsection (4) or subsection (5) of section 6 or a decree or sentence passed under this Ordinance may, within thirty days of such order, decree or sentence, prefer an appeal to the High Court..."*
>
> *(emphasis added)*

31. A perusal of the relevant section of the Banking Tribunals Ordinance shows that as with the 1997 Act, under this law an appeal lay against a decree, order or sentence and the term judgment was not used.

32. In view of the provisions of section 7 of the 2001 Ordinance (as reproduced above) for the interpretation of section 22(1) of the 2001 Ordinance, the definitions given in the CPC can be relied upon. If

these definitions are read in the 2001 Ordinance, then a suit filed under the 2001 Ordinance will be finally disposed by passing of the decree and not judgment alone.

33. A Division Bench of the Lahore High Court has adopted the meaning given to the term decree from the CPC in the case of Yousaf Garments[4]. This case is regarding the Banking Companies (Recovery of Loans) Ordinance, 1979 and section 2(2) of the Code of Civil Procedure, 1908, which is the definition of a "decree". The Bench held as under:-

> *"2. As no separate definition of decree has been given in the said Ordinance we have to fall back upon the General Law for finding the definition thereof because section 3 (ibid) provides that the provisions contained in the Ordinance are not in derogation of any other law. In the circumstances the definition of the decree contained in the Code of Civil Procedure, 1908, will have the same meaning in its application to the said Ordinance. The word "decree" is defined in clause (2) of section 2 of the Code of Civil Procedure and clearly provides that a decree may be either preliminary or final. The explanation given under the said clause (2) runs as follows:*
>
> > *"A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."*
>
> *It will be seen from the explanation that a decree is preliminary when some further proceedings have to be taken before the suit can completely be disposed of. This particularly was the situation when the preliminary decree was passed on 15-10-1983. Therefore, the definition given in clause (2) of section 2 of the C.P.C. is applicable to the provisions of law contained in the said Ordinance of 1979. Accordingly a preliminary decree can be passed and is appealable in the same manner as is the case of final decree under the said Ordinance,"*
>
> *(emphasis added)*
> *(paragraph 2, page 1217)*

34. This view is also supported from the fact that section 10(12) of 2001 Ordinance, whereunder a large majority of the suits are decided, provides for passing of judgment and decree.

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[4] 1988 CLC 1214 (Yousaf Garments and 3 others v. Grindlays Bank and another)

35. Another point that requires consideration is that a court becomes *functus officio* when proceedings before it are finally disposed off. However, the 2001 Ordinance envisages that a banking court will pass a decree which in all circumstances follows the judgment. It is therefore in suit proceedings the decree that constitutes the final disposal of the suit under 2001 Ordinance.

36. For the sake of completeness, it is important to mention that a division bench of this Hon'ble Court in the case of Bank of America[5] had held that definition of the term "order" cannot be adopted from the CPC for the purpose of interpreting Banking Companies (Recovery of Loans) Ordinance, 1979. The case was considering the Banking Companies (Recovery of Loans) Ordinance, 1979 ("Ordinance) and the CPC. The Court was of the view that the meaning of the word 'order' under S.2(14) CPC cannot be used for the phrase 'any order' in the Ordinance. Thus the court had to give ordinary meaning to such words.

> *"13. We are also of the view that the definition of the word "Order" given in clause (14) of subsection (2) of section 2, C. P. C. cannot be imported for the purpose of considering the words "any order" used in subsection (1) of section 12 of the Ordinance. In the absence of any definition of the above words in the Ordinance, the Court has to give ordinary meaning which these words carry. Even otherwise, as observed hereinabove are qualified by the proviso that no appeal shall lie from an interlocutory order, which does not dispose of the entire case before the Special Court.*
>
> *(emphasis added)*
> *(paragraph 13. Placitum D. Page 3399)*

37. In the context of the present case, the view taken by the Lahore High Court in the case of Yousaf Garments vs. Grindlays Bank (cited above) would be more relevant.

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[5] 1984 CLC 3393 [Bank of America vs. Alam & Bros and 6 others].

38. The language *"judgment, decree, sentence, or final order"* used in section 22 of the 2001 Ordinance is the same as the language used in Article 185(1) of the Constitution which provides as follows:

> *"185. (1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court."*

However, the appeals under Article 185 originate from a range of laws and kinds of pleadings. Only suits are concluded by way of a decree, while for example, a constitutional petition would be concluded by a judgment only. The matter of appeals under section 22 of the 2001 Ordinance should be considered in the context of the specific law. The view taken by the Hon'ble Supreme Court in respect of Article 185 is discussed in the later part of judgment in para-50 onwards.

39. The term judgment was also used in the Letters Patent of the High Court. In the case of *Sevak Jeranchod Bhogilal*[6] the Privy Council held that:

> *"The term judgment in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense."*

40. In the case of Letters Patent of the High Court, the term judgment was given a much wider meaning, however, a division bench of this Court in the case discussed below held that even where a decree was not made essential for filing an appeal, if the appellant waited for such decree, the time required for such decree was to be excluded, if aggrieved person waited for drawing of such decree.

41. In the case of H.H.S Feldman[7] the Court held that for the purpose of a Letters Patent Appeal, a decree prepared in pursuance of a judgment is of no relevance. However, it was held that limitation

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[6] Sevak Jeranchod Bhogilal and others vs. The Dakore Temple Committee and others (AIR 1925 Privy Council 155)
[7] PLD 1970 Karachi 295 (H. H. S Feldman vs. the Province of East Bengal)

would nevertheless run from the time when a copy of the decree is made available.

> *"9... The learned counsel contends that since under the provisions of this rule the memorandum of appeal need not be accompanied by a copy of the decree, order or judgment appealed from, the appellant should not have waited till a copy of the decree was ready on 23-12-1963, but he should have filed his appeal within 20 days after the certified copy of the judgment was available on 21-9-1963, i.e on or before 12-10-1963; but the appeal was presented for the first time on 9-1-1964. In support of this contention Mr. Ghani has relied on an unreported order of a Division Bench of this Court dismissing L. P. A. No. 122 of 1969 (Messrs Asiatic Industries Ltd. v. Zahid Ali) in limine, and in particular the following observations of Qadeeruddin Ahmed, J. (as he then was), wherein his Lordship referred to rule 4 quoted above and observed as follows:-*
>
> > *'If this rule is read with clause 10 of the Letters Patent of the High Court of Judicature at Lahore, it becomes clear that Letters Patent Appeals are preferred from judgments, and not from decree. The word 'judgment' which occurs in the clause, has been interpreted so liberally, that many orders which are made with no possibility of any decree being prepared under them, have been found to be appealable. The conclusion, therefore, is that, for the purpose of a Letters Patent Appeal, a decree prepared in pursuance of a judgment is of no relevance....*
> >
> > *We have no doubt that in a Letters Patent Appeal copies of decrees are not only not required by law to be produced, but ordinarily will not even be necessary to look at; therefore, to try to extend the period of limitation on the ground that a copy of a decree could not be obtained within 20 days, cannot be accepted as a good excuse."*
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> *In the same order a judgment of the Supreme Court reported as The Government of West Pakistan and others v. Niaz Muhammad (PLD 1967 S C 271) was distinguished.*
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> *The attention of their Lordships was, however, not invited to another judgment of the Supreme Court in the case of Tahir Ali and others v. Chief Judge, Karachi Small Causes Court (PLD 1963 S C 147) wherein it was contended that subsection (1) of section 15 of the Karachi Rent Restriction Act, 1953 did not require that the application should be accompanied by a copy of the judgment and order and therefore, the exclusion provided by section 12(2) of the Limitation Act did not apply. Their Lordships repelled this contention by the following observations:*

> *"A similar question arose in Jijibhoy N. Surti v. T. S. Chettyar and it was held that in reckoning the time for presenting an application, the time required for obtaining a copy of the decree and judgment must be excluded, even though by the rules of the Court it was not necessary to obtain such copies. For the reasons given in the above case we are also unable to uphold this contention of the respondents."*
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> *These weighty observations would apply to the facts of the present case. We, accordingly, hold that although it may not be necessary to file a copy of the decree or even a copy of the judgment with a Letters Patent Appeal, the period of limitation would nevertheless run from the date when the copy of the decree is made ready if the appellant has chosen to wait for the same.*
>
> *(emphasis added)*
> *(paragraph 9, pages 305 and 306)*

The discussion of a judgment in Asiatic Industries[8] is important for completeness since this is mentioned in PLD 1970 Karachi 295 (without the citation reference) but was not followed in the said judgment. PLD 1970 Karachi 295 was later in time but reported earlier. This case was decided on August 21, 1969 and the case reported as PLD 1970 Karachi 295 was decided on October 13, 1969.

The case was regarding the clause 10 of the Letters Patent

> *Held: "2……The period of limitation for the presentation of an appeal against the judgment of a Single Judge exercising the original jurisdiction is 20 days from the date of the judgment (Article 151 of the Schedule to the Indian Limitation Act, 1908:*
>
> > *'In an appeal under clause 10 of the Letters Patent, the memorandum of appeal need not be accompanied by a copy of the decree, order or judgment appealed from, but where a certificate is required under clause 10, the memorandum of appeal must contain a declaration to the effect that the Judge who passed the judgment has certified that the case is a fit one for appeal. The time spent in obtaining the certificate (including the date of application and the date of the order granting certificate) shall be excluded in computing the period of limitation.*
> >
> > *The periods of limitation prescribed in this rule, shall be computed in accordance with the provisions of section 12 of the Indian Limitation Act, 1908."*

[8] PLD 1972 Karachi 84 (DB) (The Asiatic Industries Ltd, Karachi vs. Zahid Ali)

> *It provides that the period of limitation for the presentation of appeal against the judgment of a Single Judge exercising original jurisdiction is 20 days from the date of the judgment. A reference is also made in the rule to Article 151 of the Indian Limitation Act.*
>
> *If this rule is read with clause 10 of the Letters Patent of the High Court of judicature at Lahore, it becomes clear that Letters Patent Appeals are preferred from judgments, and not from decrees. The word "judgment" which occurs in the clause, has been interpreted so liberally, that many orders which are made with no, possibility of any decree being prepared under them, have been found to be appealable. The conclusion, therefore, is that, for purpose of a Letters Potent Appeal, a decree prepared in pursuance of a judgment is of no relevance."*
>
> *(emphasis added)*
> *(paragraph 2. pages 85 and 86)*

42. In view of the aforesaid submissions, section 22 of the 2001 Ordinance can be read in two ways:

(i) section 22 is an enabling provision and therefore an appeal can be filed against judgment but the decree has to be brought on record later within the period of limitation commencing from the date of the preparation of the decree, as in normal course the exclusion of time under limitation law would apply; or

(ii) the use of the term "judgment" relates to criminal matters alone and in civil matters it is only a decree that can be challenged indeed along with judgment.

43. In case of following the First Security Limited case, the interpretation may render the use of the term "decree" as redundant. It is a settled principle of statutory interpretation that a provision or word used in the statute cannot be rendered redundant. For this purpose, the following case law can be relied upon:

44. In the case of Pakistan Television Corporation Limited[9] Supreme Court held that:

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[9] 2017 PTD 1372 (Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal), LTU Islamabad and others)

> *"11. ...The amendment cannot be regarded as inconsequential, rather it has to be given meaning. By inserting the phrase 'paid or' the legislature has essentially widened the scope of the word 'person' to cover not only withholding agents but the person liable to pay the tax (the person on whose behalf advance tax is being paid). If it is presumed that both the expressions 'paid' and 'deducted and paid' relate only to one person (withholding agents), the amendment would have no implication whatsoever on the scope of the statutory provision and render the phrase 'paid or' completely redundant. It is settled law that redundancy cannot be attributed to statutory provisions (or any part thereof). In this respect, the following judgments are relevant:- Collector of Sales Tax and Central Excise (Enforcement) and another u. Messrs Mega Tech (Pvt.) Ltd. (2005 SCMR 1166), Aftab Shahban Mirani and others v. Muhammad Ibrahim and others (PLD 2008 SC 779) and Messrs Master Foam (Pvt.) Ltd. and 7. others v. Government of Pakistan through Secretary, Ministry of Finance and others (2005 PTD 1537)...."*
>
> *(paragraph 11, page 1386)*

45. Similarly in the case of Micro Innovations and Technologies[10], the Bench of this Court held that:

> *"12. ... It is settled proposition of the law that no provision of the law is to be read either in isolation or such interpretation be made which would render the other provisions as redundant or nugatory."*
>
> *(paragraph 12, page 748)*

46. In the same way the case of Messrs Master Foam[11] summed up as under:-

> *"29. Close scrutiny of Entry 49 and other laws referred to above reveal that acceptance of appellants' argument that Entry 49 authorizes tax on import only when it is followed by sale or purchase in Pakistan, will render the words 'imported, exported, produced, manufactured or consumed redundant and also frustrate the whole purpose of substituting present entry for the original Entry 49. and the amendment inconsequential. If sale and purchase alone were taxable events, as argued by the learned counsel for the appellants, then there was no point in adding the words 'imported, exported, produced, manufactured or consumed'. Clearly, no redundancy can be attributed to the Legislature and on this ground the argument of the appellants is repelled...."*
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> (*placitum F, paragraph 29, page 392)*

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[10] Micro Innovations and Technologies (Pvt.) Ltd. v. Federation of Pakistan and 4 others (2023 PTD 742)

47. So is the conclusion in the case of Cooperative Insurance Society[12] where it has been held as under:-

> *"10. The criticism leveled against the judgment in appeal on behalf of Mr. Niazi that it is not the use of either one of the terms 'application' and suit" which should rule the lis but that it is the gravamen of the 'proceedings' brought before the Tribunal which is to be taken into consideration, is of little help to his clients in that redundancy cannot be imputed to the legislature. All the 4 applications filed by SLIC before the Tribunal securely answered the description of the word/term 'application' used in sub-Article (3) of Article 22 (ibid). If a choice is given to a litigant to commence his cause in accord with the letter as well as the spirit of words/terms 'application' and 'suit' and such choice is made accordingly, he can't be made to suffer on that account and that too to the advantage of his adversary. Put differently, the appellants have neither the law nor equity on their side in asking for treatment of 'applications' as 'suits' to attract the constraints provided in section 70 of 1925 Act. It has already been observed above that the intention of legislature can best be gathered from the words used in the piece of legislation itself. It is trite law that use of 2 terms/words separately in a provision of the concerned enactment cannot but be given full effect to for the simple reason that redundancy in that behalf cannot be presumed/countenanced see Mulla Dad Khan (supra)....."*
>
> *(placitum C, paragraph 10, page 2809)*

48. First Security judgment has relied upon the Supreme Court judgments in the case of Appollo Textile Mills Limited vs Soneri Bank Limited (PLD 2012 SC 268) and Imtiaz Ali vs. Atta Muhammad and another (PLD 2008 SC 462).

49. In the Appollo Textile case the issue related to the interpretation of section 22 of the 2001 Ordinance in the context of the requirement to file a decree along with the appeal, however, the Hon'ble Supreme Court left this issue open as noted in paragraph 35 of the judgment (page 291 of the report), which reads as follows:

> *"...We therefore, do not need to go into the question of maintainability or competence of the appeal which is left open to be decided in an appropriate case....".*

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[11] PLD 2005 Supreme Court 373 (Messrs Master Foam (Pvt.) Ltd. and 7 others vs. Government of Pakistan through Ministry of Finance and others)

[12] 1999 SCMR 2799 (Cooperative Insurance Society of Pakistan Limited, Karachi and others vs. State Life Insurance Corporation of Pakistan, Karachi and 12 others)

50. As regards the case of Imtiaz Ali vs Atta Muhammad and another (PLD 2008 SC 462) is concerned, the said judgment related to the interpretation of the Article 185 of the Constitution and Order XII Rule 2 of the Supreme Court Rules, 1980. It is also pertinent to mention the appeals under Article 185 lie from a wide range of laws and kinds of pleadings.

51. The Supreme Court was also pleased to note that the Order XLV Rule 1 of the CPC. ("Appeals to the Supreme Court"), which provides as follows:

> *"1. "Decree" defined.--- In this order, unless there is something repugnant in the subject or context, the expression "decree" shall include a judgment or a final order."*

52. The aforesaid Rule is a departure from the definitions of the expressions "decree", "judgment" and "order" as defined in section 2 of the CPC.

53. In view of the aforesaid, it is unsafe to equate the provisions of section 22 of the 2001 Ordinance with Article 185 of the Constitution and Order XII Rule 2 of the Supreme Court Rules, 1980.

54. In case of the view that the term "judgment" only refers to the judgments of a Banking Court in the exercise of criminal jurisdiction, and in case of civil jurisdiction the appeal is actually against a decree, the Court will neither be rendering any words of section 22(1) as redundant nor will it read any words or procedure into it. This reading will also be aligned with the definition of "judgment" or "decree" as given in the CPC.

55. In view of the above analysis, the judgment rendered in the case of First Pakistan Security (Supra), surfaced as a blend of both per incuriam and sub-silentio; the most appropriate interpretation of

Section 22 of 2001 Ordinance is that in the civil jurisdiction an appeal can be filed after passing of a judgment but the process is completed only after filing of decree within limitation and “only” (emphasis applied) on the basis of a judgment a Civil Appeal cannot be maintained under Ordinance 2001. If an appeal is preferred against the judgment only for any urgent cause (as at time it might take some time for Court to draw decree), it must be followed by a decree to be placed and time consumed to obtain decree be excluded as limitation would run from the date of drawing decree. The appeal, in view of above analysis is within time hence maintainable.

56. We now deal with the merit of the case.

57. The banking Court framed five issues i.e.

i) Whether the suit is maintainable under the law?
ii) Whether the defendant No.1 has availed and utilized Term Finance Facility for a sum of Rs.18.000 Million?
iii) Whether in the statement of account plaintiff has illegally and unlawfully charged markup on the Term Finance Facility which was never availed and utilized by the defendant No.1?
iv) Whether the statement of accounts annexures P/32 to P/35 to the plaint could be termed and called statements of account as recognized under the law and the said statement of account contains illegal and unlawful debit and credit entries?
v) What should the decree be?

58. The burden of first issue was upon the plaintiff that the suit was not maintainable. The record reveals that in the leave application the appellants did not deny availing of the finance facilities. There was also an admission in the cross-examination with regard to the facility of 12th April, 2006 (Ex.P/6) whereby the appellants avail two financial facilities; (i) Running Finance Facility and the other of (ii) Term Finance Facility. The Running Finance Facility sanctioned an amount of Rs.12 Million whereas the Term Finance Facility

sanctioned an amount of Rs.18 Million. The amount remained unpaid. The record further reflects that the borrower approached the bank for settlement of the aforesaid 30 Million in 24 monthly installments. The statement of accounts, as relied upon, fulfilled the condition of Section 2(8) of Bankers' Books Evidence Act, 1891.

59. Thus, as far as issues in hand are concerned, the borrowers have failed to prove that they have not utilized Term Finance Facility, identified above. The partial denial of availing the Term Finance Facility in terms of leave application/affidavit-in-evidence is immaterial when in cross-examination the witness admitted to have availed two finance facilities i.e. Running Finance Facilities and Term Finance Facilities which were sanctioned in their favour. Out of Term Finance Facility sanctioning 18 Million, a sum of Rs.4 Million was paid to UBL for the release of property documents. The property documents, after its release, were then mortgaged with the respondents for the outstanding amount. The outstanding amounts disclosed in the statement of account were not subjected to any challenge. More importantly the surrender of the respondents to settle the outstanding amount of Rs.30 Million by way of 24 monthly installments also supersedes the unreliable statement made in the leave to defend application as well as in the affidavit-in-evidence.

60. Insofar as issue of charging markup is concerned, in view of finance agreement admittedly the Term Finance Facility was granted per Facility Letter dated 12.04.2006 and as per terms and conditions it was granted for a period of five years at the rate of 12% markup per annum and the period presumably completed on 11.04.2011. The statement of account shows that for an additional two months the markup was charged at the same rate. The markup was granted up untill 11.04.2011 and not as claimed in the statement of account

that is up till 30.06.2011. No credit or debit entries in the statement of account were/are shown to have been inconsistent or unlawful which are certified in terms of Bankers' Books Evidence Act, 1891.

61. Appeal though filed in time but is dismissed as far as merit is concerned.

62. In the end we are thankful to Mr. Ijaz Ahmed Zahid, Advocate who was appointed as amicus for providing valuable assistance in the matter.

Dated: - 26.06.2024 JUDGE

JUDGE

Ayaz Gul