

**IN THE HIGH COURT OF SINDH AT KARACHI****Suit No. 1300 of 1996****Agha Rafiq Ahmed** .... **Plaintiff**

Versus

**Muslim Commercial Bank Ltd.,  
And another** .... **Defendants**Mr. Ehsan Malik Advocate for Plaintiff  
Mr. Zahid Ali Sahito, Advocate for DefendantDate of hearing : 17<sup>th</sup> October 2024Date of Order : 1<sup>st</sup> November 2024**ORDER**

**OMAR SIAL, J.**: This suit is seeking damages of Rupees one million, filed by Mr. Agha Rafiq Ahmed on 05.11.1996. It has taken twenty-eight years to reach this stage of final arguments. At the very outset, I asked the learned counsels to explain how this Suit fell within the pecuniary jurisdiction of this Court. Both the learned counsels conceded that the Suit did not fall within the pecuniary jurisdiction when it was filed. Mr. Sahito, learned counsel for the MCB Bank (then known as Muslim Commercial Bank), submitted that the Suit should be transferred to the court that has jurisdiction. In contrast, Mr. Malik believed this Court could decide the case considering the Order dated 12.12.2002.

2. I have heard the learned counsels. My observations and findings are as follows.

3. As stated above, the Suit was filed on 05.11.1996. When it was filed, the High Court had the pecuniary jurisdiction to entertain it. On 10.09.2002, the Sindh Government amended the Sindh Civil Courts Ordinance, 1962, by passing the Sindh Civil Courts (Amendment) Ordinance, 2002. Suits valued up to Rupees three million in the High Court at that stage were to be transferred to the District Courts. I understand from counsel that this Suit, too, was transferred pursuant to the Amended Ordinance.

4. Mr. Sahito, who argued that the case should be transferred to the District Court, agreed that the Order dated 12.12.2002 was acceded to by the Bank and that at no stage in the previous 22 years did the Bank challenge the Order. He, however, argued that jurisdiction could not be bestowed upon by consent of the parties. I agree with Mr. Sahito's argument. Reference may also be made to the case of *Munawar Hussain vs. Sultan Ahmed* reported at 2005 SCMR 1388, in which the Supreme Court held that: *"For the point in question, this Court has given a clear distinction, in case of Muhammad Hussain v. Muhammad Shafi 2004 SCMR 1947. We have already held that when a Court suffers from want of inherent jurisdiction, no amount of consent or acquiescence in the proceedings can invest such a Court with such jurisdiction. No question of waiver or estoppel is attracted in such circumstances."*

5. While I appreciate Mr. Sahito's arguments, I am inclined to agree with Mr. Malik's submissions. The Order dated 12.12.2002 is reproduced below to facilitate reference.

*“Suit No. 1300/96 was filed by applicant No.2 claiming damages of rupees one million. After enhancement of the pecuniary jurisdiction of the civil courts, the matter stood transferred to the court of the concerned District Judge for disposal according to law.*

*This application has been moved jointly by applicant No.1, who is defendant No.1 in the aforesaid suit and applicant No.2, who is plaintiff therein, praying that the suit be transferred and re-called to this Court on the grounds; firstly, that complicated and important questions of law are involved therein, decision whereof will have a far reaching effect on the validity of electronic transaction (transactions relating to Credit Cards; secondly, that the plaintiff being a District and Sessions Judge, it will be embarrassing for him to have his case before a Judicial Officer of equal status or a lower status; and thirdly, that the matter had been partly heard in this Court. Apart from the fact that the grounds raised do merit consideration, the fact is that both the parties want the transfer of the case and it will be appropriate that the suit be re-called and ordered to proceed in this Court.*

*Accordingly, this application is allowed by consent of the parties and their counsel and it is ordered that suit No. 1300/96 be re-called to this Court from the court of District Judge, Karachi (South) for proceedings according to law.*

*Sd/- Chief Justice “*

6. In my opinion, Mr. Malik has rightly argued that the Order dated 12.12.2002 was passed on a Transfer Application, and thus, section 24 of the Code of Civil Procedure will be attracted. Section 24 gives the High Court the power to withdraw any suit, appeal, or other proceeding pending in any Court subordinate to it and (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn. The Suit was transferred to the District Court after the Amended Ordinance, but it was brought back to the High Court under its powers under section 24 of the Code for the reasons given in the Order. The issue of consent to oust jurisdiction, therefore, is not material.

7. Given the above, this Court has jurisdiction to hear the case. Let it be re-listed for further arguments on 06.11.2024.

**JUDGE**