

recovery of Rs.108,396,405.12. It is an established position of law that for the purposes of determining the valuation of the suit, only the allegations in the plaint are to be looked at and that the plaintiff has an absolute discretion to put his own valuation on the suit. It is also an equally established principle of law that question of jurisdiction is to be determined with reference to the amount claimed in the suit and not with reference to the decree that may be passed.

5. In the circumstances, this application to the extent of raising objection on the pecuniary jurisdiction of this Court is hereby dismissed with permission to the judgment debtors to agitate other objections after the filing of the draft proclamation of sale.

Accordingly, application of the judgment debtor for return of the execution petition on the basis of want of pecuniary jurisdiction was turned down which order has been assailed through filing Execution First Appeal No.248622/2018.

Similarly, in suit for recovery titled as MCB Bank Limited Vs. Al-Hameed Rice Mills, the claimed amount was Rs.108,414,634.84 whereas a final decree of Rs.62,527,590.56 was passed which decree was converted into Execution Application No.15133/2021 wherein learned Single Judge in Chamber conversely held vide order dated 08.06.2021 that the jurisdiction of the executing Court will be determined as per the amount mentioned in the decree and passed order for transfer of execution to the concerned Banking Court. The said order is reproduced as under:

In this case judgment and decree was passed for an amount of Rs.62,527,590/-. A learned Division Bench of this Court in EFA No.1059 of 2016 titled Zari Traqiati Bank Limited v. Faran Maiz Industries (Pvt.) Limited has held that the jurisdiction of the executing court shall be determined with reference to the amount of the decree.

2. In this view of the matter, the office is directed to transfer this case to concerned banking court for its further adjudication.

The above said order has been assailed through Execution First Appeal No.43805/2021. Both the above appeals (EFAs) were set down for hearing before different learned Division Benches wherein the matters were referred vide orders dated 18.12.2018

and 14.10.2021 respectively, to the Hon'ble Chief Justice for constitution of a Larger Bench. Hence, the above issue is fixed for final determination before this Bench to answer the following question:

“Whether a decree of lessor amount than the pecuniary jurisdiction of Judge Banking of this Court in a recovery suit valuing more than 100 Million rupees is executable by this Court or the same is liable to be returned for filing it before the proper forum?”

2. Arguments heard. Record perused.

3. In Section 2(b)(i) of the Financial Institutions (Recovery of Finances) Ordinance 2001, the value of the suit filed before the Banking Court is described as not more than rupees 100 million, whereas valuation of the suit beyond the above said limit, the jurisdiction is vested with High Court under Section 2(b) (ii) of the said Ordinance. For ready reference, aforesaid provision is reproduced as under:

“2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context—

(b) “Banking Court” means—

(i) in respect of a case in which the claim does not exceed hundred million rupees or for the trial of offences under this Ordinance, the Court established under section 5; and

(ii) in respect of any other case, the High Court.”

(emphasis supplied)

Further, in Chapter 3 of Volume I of the Rules and Orders of the Lahore High Court, Lahore the value of the suit for the purpose of court fee and jurisdiction is the value mentioned in the plaint by the plaintiff. As no specific valuation of the suit is mentioned in the Suits Valuation Act, 1887, thus, fixing appropriate value of the suit for the purpose of Court fee & jurisdiction is left at the

discretion of the plaintiff. Ordinarily on the basis of value mentioned in the plaint, the pecuniary jurisdiction of the Court is presumed to be the same, however, if the Court modifies the value of the suit then the changed value will be considered as value of the suit for the purpose of pecuniary jurisdiction of a court. Reliance in this regard is placed on cases cited as Zahid Zaman Khan and others Vs. Khan Afsar and others (PLD 2016 SC 409), Mst. Parveen (deceased) through LRs. Vs. Muhammad Pervaiz and others (2022 SCMR 64), Messrs Mardan Ways Sui Northern Gas Pipelines Limited Station Vs. General Manager SNGPL and others (2022 SCMR 584) and Mumtaz Hussain Vs. Haji Muhammad Bashir and others (PLD 2016 Lahore 97). Further, a plaintiff is competent to fix the value of the suit for recovery under the Ordinance ibid and if the Banking Court disagrees with the value fixed by the plaintiff, it should determine and fix the value of the suit as per provisions of the Suits Valuation Act, 1887 after holding appropriate inquiry and collecting material and after such determination of value the matter is liable to be adjudicated by the Court of competent jurisdiction. Reliance in this regard is placed on cases cited as Shafaqat Iqbal and others Vs. Ghulam Rasool and another (PLD 2001 Lahore 139) and Muhammad Saleem and 3 others Vs. Pak Brunei Investment Company Ltd. through Chief Manager/President (2022 CLD 84).

4. Furthermore, here the matter is somewhat different as after affixation of the value of the suit by the plaintiff and conclusion of civil trial a decree has been passed. Suffice it to say that after passing of a decree in a suit for recovery by the Banking Court under Section 19 of the Ordinance ibid, the decree is automatically converted into execution proceedings. For ready reference, Section 19 of the Ordinance ibid is reproduced as under:

“19. Execution of decree and sale with or without intervention of Banking Court.-

(1) Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree:

Provided that if the record of the suit is summoned at any stage by the High Court for purposes of hearing an appeal under section 22 or otherwise, copies of the decree and other property documents shall be retained by the Banking Court for purposes of continuing the execution proceedings.

(2) The decree of the Banking Court shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force or in such manner as the Banking Court may at the request of the decree-holder consider appropriate, including recovery as arrears of land revenue. ”

(emphasis supplied)

It is settled law that pecuniary jurisdiction should be ascertained from the value assessed by the plaintiff in the plaint and if the Court alters the said value in appeal etc., in that eventuality the pecuniary jurisdiction will remain same as mentioned in the plaint. Reliance is placed on a judgment titled as Dr. Pir Muhammad Khan Vs. Khuda Bukhsh and others (2015 SCMR 1243).

5. In the Ordinance *ibid* no clear provision is available for transfer of execution petition pending before this Court to any Banking Court below. The Court who has passed the decree in the Banking Suit for recovery, regardless of the fact that either the decree was passed for the amount lessor or higher than the value fixed in the plaint, that Court seized of the suit under Section 19 of the Ordinance *ibid* is competent to execute its decree. In a judgment titled as MCB Bank Limited through Duly Authorized

Attorney Vs. Eden Developers (Pvt.) Limited and others (2019 CLD 219) similar controversy has been resolved holding therein that the pecuniary jurisdiction of executing Court is the amount mentioned in the plaint before the Banking Court. This Court being Banking Court is under legal obligation to execute the decree and pecuniary value of jurisdiction would be the amount mentioned by the plaintiff in the plaint and the Banking Court is the only forum to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree. For ready reference, relevant portion of the judgment (*supra*) is reproduced as under:

“9. The entire reliance of the learned counsel for the applicant was on the judgment of a learned Single Judge of this Court reported as Habib Bank limited through Attorneys v. Messrs Rehmania Textile Mills (Pvt.) Ltd, Jhang Road Faisalabad and 30 others (2003 CLD 689). However, the facts in the cited precedent are distinguishable from the facts in the present case and, therefore, the said judgment cannot form a binding precedent for the purposes of the present case. In Messrs Rehmania Textile Mills the judgment and decree was passed by the Banking Tribunal, Faisalabad (as it then was under the Banking Tribunals Ordinance, 1984) for a sum of Rs.4,36,06,891/-. On appeal, the Division Bench of this Court allowed the appeal and modified the terms of the decree as a result of a compromise between the parties. The execution petition was filed by the decree holder for enforcement of the modified judgment and decree dated 18.3.1999. However, the fact remains that the claim filed by the plaintiff was for a higher sum and the consent decree was passed for lesser amount. The holding of the learned Single Judge was swayed by the definition of the term “Banking Court” given section 2 (b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. However as distinguished above, in the present case the consent decree was for an amount of Rs.125 Million which was within the pecuniary jurisdiction of this Court. Thereafter certain amounts were paid out of Court and as observed in the preceding paragraph, they were merely required to be certified by the decree holder or the judgment debtor as the case may be and an execution for the rest of the amount after deducting the certified amount is liable to be take

place. In my opinion, the present case does not turn on the definition of Banking court as relied upon in Messrs Rehmania Textile Mills. Moreover, the learned Single Judge did not advert his full attention to the concept envisaged by the Ordinance, 2001 whereby the decree passed by this Court is automatically converted into an execution petition. One may also visualize a situation where the amount of decree ultimately passed by this Court may be much less than the amount claimed in the suit by a plaintiff and which amount may fall below the threshold of pecuniary limit for the High Court to exercise its jurisdiction. Can it be said in that case that the execution of the decree be transmitted to the Banking Court for further proceedings? Clearly the answer to this question is in the negative and the proceedings will be held in the High Court which passed the decree in the first place.....

10. Thus, the Division Bench of this Court held that the Banking Court which initially assumed the jurisdiction on the basis of the value fixed by the decree holder in the plaint was the only forum which had the pecuniary jurisdiction to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree.”

(emphasis supplied)

In a case cited as *mashraq Bank Vs. Messrs Amtul Rehman Industries (Pvt.) Limited and others* (2002 CLD 336), this Court has also held that the forum of execution of the decree under Section 19 of the Ordinance *ibid* is the Court which has passed the decree in a suit even though amount decreed was less than its pecuniary jurisdiction. For ready reference, relevant portion of the judgment (*supra*) is reproduced as under:

“6. In view of the case-law cited by the learned counsel for both the parties I am of the considered view that the determining factor, for the purposes of jurisdiction, shall be the amount fixed by the plaintiff in the suit and on which amount the subject-matter of the suit has been valued. Once the plaintiff determines the value of the suit/ relief in the plaint that shall be conclusive for the purpose of determining the forum of appeal etc.

7. In view of the above conclusions and findings I am of the considered view that this Court can neither entertain this execution petition nor undertake the execution proceedings on account of lack of pecuniary jurisdiction. In this case the Banking Court, which initially assumed the jurisdiction on the basis of the value fixed by the decree-holder in the plaint itself, is the only Court which has the pecuniary jurisdiction to execute the decree, to decide the other matters relating to the execution, discharge and satisfaction of the decree and to deal with all the ancillary matters relating thereto. The net result is that the objection of the learned counsel of the judgment-debtors regarding the want of pecuniary jurisdiction prevails, thus, I am constrained to hold that this Court has no jurisdiction to try this execution petition and, therefore, the decree shall stand transferred to the Banking Court No.4, Lahore for its execution.”

Another reliance is placed on a judgment titled as MCB Bank Limited Vs. Messrs Mazco Industries Private Limited and others (2023 CLD 410).

6. As discussed above that this Court, as a Banking Court, has the jurisdiction to execute the judgment & decree passed by it irrespective of the quantum of amount so decreed as such the order dated 08.06.2021 (supra) passed in Exh.A.No.15133/2021 titled as MCB Bank Limited Vs. Al-Hameed Rice Mills by the learned Single Judge in Chamber is not sustainable and hereby set aside. Furthermore, the judgment dated 06.06.2018 passed by the learned Division Bench in E.F.A No.1059/2016 titled as Zarai Taraqiati Bank Limited Vs. Faran Maiz Industries (Pvt.) Limited [relied upon by the learned Single Judge in Chamber while passing order dated 08.06.2021], being passed in violation of Section 19 of the Ordinance ibid as well as the settled principle of law, is per incuriam. Reliance in this regard is placed on cases cited as Muhammad Jawad Hamid Vs Mian Muhammad Nawaz Sharif & Others (PLD 2018 Lahore 836), Qaiser & Another Vs The State (2022 SCMR 1641).

The final resolve of the above is that the decree passed by the learned Banking Judge of this Court is liable to be exclusively executed by the said Court itself.

6. The question referred to this Bench has been answered accordingly.

I agree with reasoning and conclusion
recorded by both my brother judges.

(Muzamil Akhtar Shabir)
Judge

(Ch. Muhammad Iqbal)
Judge

I have added a separate note.

(Asim Hafeez)
Judge

Approved for reporting.

Judge

Judge

Judge

Abdul Hafeez

Asim Hafeez, J. I have the privilege of reading the draft judgment handed down by my esteemed colleague, **Ch. Muhammad Iqbal, J.**, I agree with the outcome of the adjudication and conclusion(s) drawn with respect to the question(s) referred for determination; however, I prefer to state my own reasons and analyses to substantiate the outcome / conclusion(s) reached.

Putting into perspective, the controversy confronted is paraphrased hereunder:-

‘what essentially is the criterion-cum-benchmark for determining the pecuniary jurisdiction of the Court executing the decree, be it a money decree, decree for foreclosure or sale of mortgage property or redemption thereof; and if at all, that determination is warranted in the context of special jurisdiction / law, in terms whereof decree(s) are sought to be executed’.

2. Before discussing specifics, it is appropriate to give a rundown of the statutory framework, dealing with the execution-cum-transfer of decree(s), provided in Part-II of the Code of Civil Procedure, 1908 (the ‘**Code**’). It is appropriate to reproduce the text(s) of relevant provisions, i.e., sections 37, 38, 39 & 41 of the Code, to contextualize distinguishing features of special and general jurisdiction(s).

Section 37- Definition of Court which passed a decree.- The expression “Court which passed a decree” or words to that effect, shall in relation to the execution of decrees unless there is anything repugnant in the subject or context, be deemed to include, --

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and*
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.*

Section- 38. Courts by which decrees may be executed. --A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Section- 39. Transfer of decree -- (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court, --

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*
- (b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*

(c) *if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*

(d) *if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*

(2) *The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.*

Section- 41. “Result of execution proceedings to be certified. -- The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure”.

3. Section 37 describes the forum for the execution of decree in certain eventualities. Section 38 expands the footprint of the Court(s) for the purpose of execution of the decree – by introducing a transferee court. Sub-section (1) of Section 39 extends choice to the decree holder to seek transfer of decree, subject to the conditions provided in clauses (a) to (c) thereof. And sub-section (2) of section 39 envisages transfer by the Court on its own initiative. Section 41 obligates transferee court to certify result to the transferor Court.

Context changes everything. It is significant to emphasize that matter at hand arose out of the proceedings, initiated and are continuing, under the special jurisdiction, extended in terms of the Financial Institution (Recovery of Finances) Ordinance, 2001 (the ‘Ordinance, 2001’). Unlike, the mechanism provided in the Code for initiation of proceedings for the execution of the decree, sub-section (1) of section 19 of the Ordinance, 2001 provides a conduit between the suit proceedings and execution proceedings, whereby character of the former proceedings converts into latter, upon pronouncement of the Judgment and decree. In essence, under the special jurisdiction, one set of proceedings changes shade, *ipso-facto* through the operation of law / involuntarily – from pre-decretal proceedings to post-decretal proceedings – in contrast to the mechanism available under the Code. It is elaborated that pre-decretal proceedings envisage process where a case/suit/action is brought before the Court of competent jurisdiction for adjudication of a specified claim [which is an ‘unadjudicated claim’]. And upon adjudication, such claims, unless dismissed; either accepted partly or

fully through a judicial pronouncement, assume the status of an ‘adjudicated claim / decreed claim’. Choice exercised and assumption of jurisdiction by the Court of competent jurisdiction, is dependent upon addressing various jurisdictional qualifying standards, statutorily defined – which have no proximity to the controversy. Pecuniary jurisdiction, other than the territorial, subject matter and status-based jurisdiction, is relevant for the purposes of present controversy. Significance and benchmark criterion for determination of pecuniary jurisdiction of a particular court is determinable at the time of presentation of the plaint or entertaining an action or a suit. There is no uncertainty or ambiguity that pecuniary jurisdiction of the court, entertaining an action / suit, is determined on the basis of the value of the relief claimed, nevertheless subject to correction by the Court in case of alleged manipulation through under-valuation or over-valuation. Under the Ordinance, 2001 pecuniary limits are prescribed in terms of section 2 (b) of the Ordinance, 2001, which provides the forum(s) of the Banking Court, established under section 5 of the Ordinance, 2001, or the High Court, as the case may be – pecuniary limits defined in clauses (i) and (ii) of sub-section (b) of section 2 of the Ordinance, 2001 are reproduced, – after enhancement in consequence of the Financial Institution (Recovery of Finances) Amendment Act, 2016 (Amendment Act, 2016). Section 2 (b) reads as,

2(b) “*Banking Court*” means—

- (i) *in respect of a case in which the claim does not exceed hundred million rupees or for the trial of offences under this Ordinance, the Court established under Section 5: and*
- (ii) *in respect of any other case, the High Court”.*

4. There is no dispute regarding mechanism for determination of the pecuniary jurisdiction of competent forum for entertaining the case / suit. An obvious question that stirs curiosity is; if at all it is imperative that adjudicated claim / decreed amount must also fall within the pecuniary limits of the forum, prescribed under section 2(b)(i) & (ii) of the Ordinance, 2001, tasked with the execution of the decree; **or** Whether pecuniary jurisdiction of the Court executing the decree needs to be re-visited to ensure that quantum

of adjudicated claim / decreed amount must come within the pecuniary limits of the Court, before giving effect to the decree.

Apparently, no such re-determination of pecuniary limits is required under special jurisdiction, since one form of proceedings stood involuntarily converted into the other form of proceedings, under the mandate of sub-section (1) of section 19 of the Ordinance, 2001. Uncertainty in fact intensified in wake of the decision, dated 06.06.2018, in the case of Zarai Taraqiati Bank Limited v. Faran Maiz Industries (Pvt) Ltd. (“EFA No.1059/2016”), wherein learned Division Bench of this Court had affirmed the decision of transfer of decree from the High Court, which passed the decree, to the Banking Court, established under section 5 of the Ordinance, 2001, for the purpose of execution, on the premise that quantum of adjudicated claim / decreed amount of Rs.75.425 Million, fell below the revised pecuniary jurisdiction of the High Court – enhanced to deal with claims over Rs.100.000 Million. Learned Division Bench of this Court arrived at this conclusion upon interpreting the expression ‘claim’, while holding that claim of the financial institution – [Appellant of EFA No.1059/2016] - raised in the suit / case was adjudicated and stood embodied in the decree, which claim had to be executed by the Banking Court and not the High Court, since adjudicated claim was below the prescribed pecuniary limit of the High Court, notwithstanding the fact that decree was passed by the High Court. Learned Division Bench in fact treated the decretal amount (adjudicated claim) as benchmark for determining the pecuniary jurisdiction of the Executing Court – conspicuously drawing distinction between an unadjudicated claim, before pronouncement of decree, and an adjudicated claim, upon the pronouncement of judgment and decree. Decision in the case of Faran Maiz Industries (Pvt) Ltd. (supra) reiterated the line of reasoning explicated in the case of HABIB BANK LIMITED through Attorneys v. Messrs REHMANIA TEXTILE MILLS (PVT.) LTD., JHANG ROAD FAISALBAD and 30 others’ (2003 CLD 689), though no reference was made to an earlier decision.

5. This conspicuous segregation between an unadjudicated claim and an adjudicated claim, for the purposes of determining the pecuniary jurisdiction of the Court executing the decree, is the sticking point. And an ancillary

question, but equally significant, is that if at all such segregation is essentially warranted under special jurisdiction – Ordinance, 2001. Before analyzing the rationality and legality of apparent segregation in the case of Faran Maiz Industries (Pvt) Ltd. (supra), it is appropriate to briefly touch upon background facts and context of the orders assailed through appeals, respectively filed by a financial institution [decree holder] and customer [judgment debtor]. In the order impugned through appeal bearing EFA No.248622/2018, [which arose out of Ex.A. No.221429 of 2018], High Court, which passed the decree and was executing it, after conversion of suit proceedings upon pronouncement of judgment, had dismissed the objections by the Judgment Debtor therein, who pleaded absence of pecuniary jurisdiction on the premise that adjudicated claim [decreed amount] fell below the defined pecuniary limit of the High Court, which was enhanced as consequence of the Amendment Act 2016. It was held that notwithstanding change in the pecuniary jurisdiction, decree would be executed by the Court, which had passed it, and the reasoning put forward was that pecuniary jurisdiction of the Executing Court would be determined on the basis of original valuation of the suit, and not with reference to decreed amount or adjudicated claim. Later, in another case, which is Ex. A. No.15133/2021, while passing order dated 08.06.2021, which is subject matter of EFA No.43805/2021, High Court directed transfer of the decree, in contrast to an earlier decision, while placing reliance on the decision of learned Division Bench in the case of Faran Maiz Industries (Pvt) Ltd. (supra). Hence, in real terms it is the ratio of the decision in the case of Faran Maiz Industries (Pvt) Ltd. (supra) that needs judicial scrutiny by this Full Bench, constituted pursuant to expression of diverging observations recorded in order of 18.12.2018, passed in EFA No.248622/2018.

6. Controversy narrated, for the sake of further simplification, is dissected into two broader legal propositions; firstly, whether the Ordinance, 2001 permits re-visiting / re-determining of the pecuniary jurisdiction of Court of first instance upon conversion of character of the proceedings, from proceedings of the suit to proceedings for execution of the decree, and in the context of the claim, from an unadjudicated to an adjudicated claim (*‘first proposition’*).

And secondly, would it materially affect the jurisdiction of the High Court, executing an adjudicated claim, when such adjudicated claim / decreed amount fell below the pecuniary limit threshold of the Court, which passed the decree due to change in the pecuniary jurisdiction or otherwise, notwithstanding the fact that at the time of filing of the suit an unadjudicated claim, for the purpose of valuation of the suit, was within the pecuniary limits of the Court of first instance. (*‘second proposition’*).

7. Unlike procedural requirements available and required to be followed while seeking execution of the decree under the Code, continuity, by operation of law, was extended to suit proceedings upon pronouncement of judgment and decree by the Banking Court, which expression is interchangeably employed to identify the Court of competent jurisdiction, in the context of pecuniary limits defined under section 2(b) of the Ordinance, 2001. This self-executing mechanism, triggered and effected spontaneously upon pronouncement of judgment, unequivocally absolve the decree holder of the requirements of filing separate application and necessity of issuance of fresh notice. Section 19 of the Ordinance, 2001 is reproduced for ease of reference,

“Section 19(1).- Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree:

Provided that if the record of the suit is summoned at any stage by the High Court for purposes of hearing an appeal under Section 22 or otherwise, copies of the decree and other property documents shall be retained by the Banking Court for purpose of continuing the execution proceedings.

(2) The decree of the Banking Court shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force or in such manner as the Banking Court may at the request of the decree-holder consider appropriate, including recovery as arrears of land revenue”.

8. Claim of re-evaluation or re-determination of pecuniary jurisdiction of the Court, which assumed jurisdiction to execute the decree under the mandate of the law, tantamount to defeat the very purpose and objective of dispensing with the necessity of any overt act on the part of the decree

holder. Mere use of the expression '*Banking Court*' cannot be erroneously construed to mean Banking Court, exclusively established under section 5 of the Ordinance, 2001 but certainly includes the High Court, depending upon the quantum or value of an unascertained claim or otherwise. The expression '*Banking Court*' employed throughout the Ordinance, 2001 has to be construed and interpreted with reference to the context and relevance thereto. This aspect of the matter was not deliberated in the case of *Faran Maiz Industries (Pvt) Ltd.* (supra), and *Messrs REHMANIA TEXTILE MILLS (PVT.) LTD., JHANG ROAD FAISALBAD and 30 others* (supra) - former decision was passed after promulgation of Amendment Act 2016, which altered the pecuniary limits of the Courts [which in the context of subject matter controversy means Banking Court, established under section 5 of the Ordinance, 2001 and High Court, enjoying Special jurisdiction under the Ordinance, 2001].

Question that whether change in the pecuniary jurisdiction of the Court, after the passing of decree and for the purposes of execution of the decree, would suggest or imply that the court of first instance has ceased to exist or ceased to have jurisdiction to execute it – contingency(ies) provided in terms of clause (b) of section 37 of the Code -, may not be relevant for the purpose of deciding the matter at hand, in wake of explicitly clear legislative mandate contained in sub-section (1) of section 19 of the Ordinance, 2001. Aforesaid question is left untouched and to be adjudicated in some other case, where interpretation of clause (b) of section 37 of the Code is sought, in isolation. There is another minor issue but worth an explanation. Is the decree passed executable under the provisions of the Ordinance, 2001 or the Code. Section 4 of the Ordinance, 2001 gives an overriding effect to the Ordinance. Clause (a) of sub-section (1) of section 7 of the Ordinance, 2001 provides that *subject to the provisions of this Ordinance, a Banking Court shall in the exercise of its civil jurisdiction have all the powers vested in a civil court under the Code of Civil Procedure, 1908.* Sub-section (2) of Section 19 envisages that decree shall be executed in accordance with the provisions of the Code or any other law for the time being in force or in such manner the Banking Court at the request of decree-holder consider(s) it appropriate. There appears conspicuous digression in the procedure for

initiation and commencement of proceedings for seeking execution of the decree under the Code and the Ordinance, 2001 and special law / jurisdiction claims preference, in terms of the jurisprudence evolved over the years and followed, consistently. Effect of automatic conversion of suit into execution was amply illustrated in the case of MCB Bank Limited through duly authorized attorney V. EDEN Developers (Pvt.) Limited and others (2019 CLD 219). Question that whether quantum of adjudicated claim / decreed amount is one of the factors for determinability of pecuniary jurisdiction of the court executing the decree came up for adjudication in the cases of Messrs United Bank Ltd. V. Mst. Rehana Raza (PLD 1983 Karachi 467) and National Bank of Pakistan V. Bawany Industries Ltd. (PLD 1983 Karachi 300), and were decided in the context of sub-section 6 (4) of the Banking Companies (Recovery of Loans) Ordinance, 1979 (XIX of 1979), which provision of law is reproduced hereunder for ease of reference and understanding,

Section 6. Powers of Special Court. - (1) A Special Court shall

(a)

(b)

(c)

(2)

(3)

*(4) No Court other than a Special Court shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of Special Court extends under this Ordinance, including a decision to the existence or otherwise of a loan and the execution of a decree passed by a Special Court; **and all proceedings, including proceedings following the filing of an arbitration award and proceedings for the execution of a decree within the jurisdiction of a Special Court, by whatever Court passed, which may be pending in any Court immediately before the commencing day shall stand transferred to the Special Court.***

[Emphasis supplied]

There is a marked difference between the legislative command manifested through section 6(4) of the Ordinance, 1979 and mechanism of conversion of proceedings provided under section 19(1) of the Ordinance, 2001 – hence decisions in the cases of Mst. Rehana Raza (supra) and Bawany Industries Ltd. (supra) are not relevant.

9. In view of the aforesaid discussion I conclude that, under the Ordinance, 2001, suit proceedings would stand converted into execution by the operation of law, upon pronouncement of the judgment and decree, and the Court which had pronounced the judgment is obligated to act and exercise jurisdiction to execute the decree, without the necessity of re-visiting or re-determining its own pecuniary jurisdiction in the context of quantum of an adjudicated claim / decreed amount. Judgments referred including decisions of the Courts from our eastern neighbour, largely discuss issues of pecuniary jurisdiction in the context of section 6 of the Code and issues encountered by the court of first instance at the time of presentation of the plaint(s), which decisions may have had relevance to facts involved therein but all such decisions are evidently distinguishable in the context of sub-section (1) of section 19 of the Ordinance, 2001. Effect of *ratio* of decisions in the cases of Faran Maiz Industries (Pvt) Ltd. (supra), or Messrs REHMANIA TEXTILE MILLS (PVT.) LTD., JHANG ROAD FAISALBAD and 30 others (supra) are already discussed in detail.

10. First proposition is answered in negative.

11. I am of the opinion that while addressing first legal proposition, second proposition is addressed substantially but still it requires brief discussion for the reason that specific question was raised while drafting order of 18.12.2019, which necessitated formation of instant Full Bench. Part of the order, to the extent of having relevancy to second proposition, is reproduced hereunder,

“2. According to the view point of this Bench, the basis for determining the pecuniary jurisdiction of the executing court under the Financial Institutions (Recovery of Finances) Ordinance, 2001, would be the amount that was fixed by the plaintiff in the suit on which the subject-matter of the suit was valued. Once the plaintiff has determined the value of the suit/relief in the plaint that would be conclusive for the purposes of determining the forum of execution. Therefore, the issue before this Bench is whether the Court which initially assumed the jurisdiction on the basis of the value fixed by the Decree Holder in the plaint itself, would be the only Court which has the pecuniary jurisdiction to execute the decree and to decide other matters relating to the execution, discharge and satisfaction of the decree.

3. As in this particular case it has also been argued by the respondent/decreed holder that even its claim in execution is for an amount of more than Rs.100 million, with Rs.9,06,39,457.34 being the principal and mark-up granted under the decree, and Rs.1,77,32,057.78 being the

cost of funds already accrued in terms of the decree at the time of filing of execution, thus, another issue for determination before this Court is whether the sum of cost of funds that had accrued to the Decree holder till the date of the decree will be considered as a component of the decretal amount in order to reach the exact sum of the decretal amount in case it is finally declared by this Bench that the decretal amount would be the basis to determine the pecuniary jurisdiction of the executing court.”

12. At the cost of repetition, it is stated that in the case of Faran Maiz Industries (Pvt) Ltd. (supra), execution proceedings were transferred on the premise that adjudicated claim / decreed amount fell below the pecuniary limits of the High Court that had passed the decree. Learned Division Bench of this Court had erroneously benchmarked the quantum of an adjudicated claim as the basis of ascertaining pecuniary jurisdiction of the court executing the decree – consequence of non-consideration of the effect of section 19(1) of the Ordinance, 2001 while rendering judgment in the case of Faran Maiz Industries (Pvt) Ltd. (supra) was discussed earlier. Now I highlight the fact that why such interpretation of the provisions of Ordinance, 2001 in general and section 2(b) thereof, in particular, was otherwise impractical, irrational and unenforceable. Learned Division Bench had not considered the effect and consequences of provision of *Interim Decree*. One must not overlook the option of ‘*Interim Decree*’ in an appropriate case, which is *per se* executable under section 11 of the Ordinance 2001. Now, if the quantum of *Interim Decree* is below the pecuniary limit of the High Court, would decree be transferred for execution to the Banking Court, established under section 5 of the Ordinance, 2001. This would create an anomalous situation, where proceeding to execute *Interim Decree* would proceed before the Banking Court, – established under section 5 of the Ordinance, 2001, – and other part of the *lis* would be pending before the High Court. Whether the High Court would direct re-transfer of *Interim Decree*, at the time of passing of final judgment. This hypothetical prospect appears impractical and unwarranted.

Let the scenario of irrationality of ratio of precedent be explained through a simple illustration. A suit brought by the Financial Institution under section 9 of the FIO, 2001, wherein claim raised was Rs.95.000 Million (an ‘unadjudicated claim’), was triable by the High Court, before alteration in the limit of pecuniary jurisdiction through Amendment Act, 2016. An unadjudicated claim was adjudicated and decree of Rs.95.000

Million was passed, which inter alia included decree for the Cost of Funds, calculable from the date of the default. Presumably, after passing of the decree, the pecuniary jurisdiction of the High Court was raised from Rs.50.00 Million to Rs.100.00 Million. In terms of sub-section (1) of section 19 of the Ordinance, 2001, upon lapse of one month of the pronouncement of judgment, suit proceedings *per se* stood converted into execution proceedings. Now, the decree holder, while submitting details of the mortgaged / hypothecated property, submits summary of recoverable amount – inclusive of decreed amount or Rs.95.000 Million and Cost of Funds, till the date, accumulated to Rs.7.00 Million – and value thereof goes over Rs.100.000 Million. If we go by the ratio of decision in the precedent case, i.e., Faran Maiz Industries (Pvt.) Ltd. (supra) whether decree would be executed by the High Court [since upon adding component of cost of funds the adjudicated claim goes beyond pecuniary limit of Rs.100.000 Million] or decree was executable by the Banking Court established under Section 5 of the Ordinance, 2001, since the original decree was less than the limit of Rs.100.000 Million. Composite decree was for Rs.102.000 Million. Assuming the ratio of precedent case, Whether High Court, before executing the decree, would consider the amount originally decreed as benchmark for determining its pecuniary jurisdiction, or proceed to determine it based on the quantum of recoverable amount, inclusive of the Cost of Funds – this query is answered in following paragraph after explaining the scope of Cost of Funds.

Cost of Funds is deemed as part of the decree. It is expedient to reproduce section 3 of the Ordinance, 2001 – sub-section (3) thereof bears proximity to the illustration-,

“3. Duty of a Customer.--(1) *It shall be the duty of a customer to fulfil his obligation to the financial institution.*

(2) *Where the customer defaults in the discharge of his obligation, he shall be liable to pay, for the period from the date of his default till realization of the cost of funds of the financial institution as certified by the State Bank of Pakistan from time to time, apart from such other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force.*

(3) *For purposes of this section a judgment against a customer under this Ordinance, shall mean that he is in default of his duty under sub-*

section (1), and the ensuing decree shall provide for payment of the cost of funds as determined under sub-section (2) ”.

13. Since Cost of Funds forms part of the ensuing decree therefore, the High Court, irrespective of decreed amount of below pecuniary jurisdiction, would execute it in accordance with the mandate of sub-section (1) of section 19 of the Ordinance, 2001, since it had passed the decree. Even otherwise component of Cost of Funds increases with continuing default, which makes recoverable amount flexible, subject to increase with passing days. Such flexibility in the quantum of recoverable amount under the decree is contrary to the interpretation of Section 2(b) of the Ordinance, 2001 in the case of Faran Maiz Industries (Pvt.) Ltd. (supra). This scenario renders the necessity of re-visiting the pecuniary jurisdiction by the High Court while executing the decree unfeasible and irrational, besides being contrary to automatic conversion mechanism provided under Special jurisdiction. Evidently, legislature, in its wisdom, had rightly absolved the Court executing the decree to re-visit or re-determine its pecuniary jurisdiction while giving effect to the decree under the Ordinance, 2001.

14. There is another aspect touching the question of transfer of decree by the Banking Court to another court, notwithstanding it had passed the decree. Ordinance, 2001 envisages possibility of transfer of decree. Sub-section (2) of section 19 of the Ordinance, 2001 provides an option to the decree holder to seek execution of the decree in any manner considers appropriate, which indicates that subject to the Ordinance, 2001, decree holder may seek transfer of decree by Banking Court on the grounds provided in sub-section (1) of section 39 of the Code. Since order of 08.06.2021, subject matter of EFA No.43805/2021, whereby, while following the ratio of decision in precedent case, Faran Maiz Industries (Pvt) Ltd. (supra), execution proceedings were transferred in the wake of altered pecuniary limits, therefore clause (d) of section 39 of the Code and sub-section (2) of section 39 of the Code – *suo-moto* jurisdiction of the Court – need no discussion in the context of the facts raised in appeals and scope of the question referred to this Full Bench. In wake of facts alleged, it was not the case of voluntary transfer of decree.

15. Hence, jurisdiction of the High Court to execute the decree, upon conversion, would not be affected notwithstanding the fact that adjudicated claim / decreed amount fell below the pecuniary limits of the High Court, that passed the decree.

16. Second proposition is also answered in negative.

17. In view of the question(s) answered, order dated 16.10.2018, subject matter of EFA No.248622/2018 is affirmed and appeal is dismissed. And order of 08.06.2021, impugned through EFA No.43805/2021, is set-aside in consequence of declaring the decision in the case of Faran Maiz Industries (Pvt) Ltd. (supra) contrary to the law, hence, *per-incuriam*. Consequently, EFA No.43805/2021 is allowed.

18. Reference is decided in aforesaid terms.

(ASIM HAFEEZ)
JUDGE

Imran/*