

JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Civil Original Suit No.01 of 2022

MCB Bank Limited V/S Adeel Shahbaz Steel Mills and others

J U D G M E N T

Date of hearing	07.06.2023
Plaintiff(s) by	Barrister Sardar Umer Aslam, ASC assisted by Hassan Matiullah, Advocate.
Defendant(s) by	Mr. Umar Hanif Khichi, Advocate for the Defendants No.1&2. Agha Muhammad Ali Khan, ASC/Amicus Curiae assisted by Waqar Khalid Khawaja, Advocate.
	Mr. Rashid Mehmood, Research Officer, Lahore High Court, (Rawalpindi Bench).

JAWAD HASSAN, J. This judgment will decide the suit filed under Section 9 of the Financial Institution (Recovery of Finances) Ordinance, 2001 (the “***Ordinance***”) whereby an amount of Rs.103,007,781.63 along with cost of funds from the date of default till realization of debt is claimed by the MCB Bank Limited (the “***Plaintiff Bank***”) being a financial institution in terms of Section 2(a) of the “***Ordinance***” from Adeel Shahbaz Steel Mills (the “***Defendant Company***”) and its partners and guarantors, the Defendants No.2 to 4. The Defendants No.1 and 2 filed leave to defend (PLA No.01 of 2022) while leave to defend (PLA No.02 of 2022) was filed by the Defendants No.3 and 4 under Section 10 of the “***Ordinance***”.

A. BACKGROUND OF THE CASE

2. For swap of its business relationship, the “***Defendant Company***” vide request letter dated 27.11.2014 approached the “***Plaintiff Bank***” which extended following facilities:

- i. *Running Finance Facility (RF) of PKR.100 Million (Rs.75 Million Swapped from Bank of Khyber and Rs.25 Million fresh sanctioned by the “Plaintiff Bank”),*
- ii. *Bank Guarantee (BG) of Rs.25 Million.*
- iii. *LC sight of Rs.50.00 Million.*

3. The above said finance facilities were secured through execution of documents i.e. Promissory Note dated 08.01.2015, Finance Agreement dated 09.01.2015 and Personal Guarantee dated 09.01.2015. Vide request letter dated 23.04.2015, the “*Defendant Company*” again approached the “*Plaintiff Bank*” for enhancement of aforementioned facilities which were approved vide Facility Advising Letter dated 07.05.2015. On 16.09.2019, the “*Defendant Company*” made request to the “*Plaintiff Bank*” for restructuring/rescheduling of outstanding amount of Rs.124,973,072.73 which was accordingly acceded to vide Facility Advising Letter dated 23.09.2019. Due to non-fulfilling financial obligations and default in repayments under the renewed/restructured finance facilities, the “*Plaintiff Bank*” claimed to recover an amount of Rs.103,007,781.63 in respect of following finance facilities with breakup as follows:

Account Facility	Amount of Principal Payable	Markup Payable
DF-Restructured (DF)	Rs.85,689,260.05	Rs.9,389,465.23
Forced Demand Finance (FDF)	Rs.7,929,056.35	NIL
Total	93,618,316.40	Rs.9,389,465.23
Grand Total	Rs.103,007,781.63	

B. LEAVE TO DEFEND

4. To refute the claim of the “*Plaintiff Bank*”, the Defendants filed petition under Section 10 of the “*Ordinance*” for the grant of unconditional leave to defend the suit (“*PLA*”). The “*Defendants*” though denied the liabilities alleged by the “*Plaintiff Bank*” yet objected to maintainability of suit before this Court on the basis of territorial jurisdiction.

C. SUBMISSIONS OF LEARNED COUNSEL FOR THE PLAINTIFF

5. Barrister Umer Aslam, counsel for the “*Plaintiff Bank*” *inter alia* stated that the “*Defendant Company*” is a partnership concern having business of furnace and re-rolling steel while the Defendant No.2 is a partner having share ratio of 50%; the Defendant No.3&4 are also partners having share ratio of 25% each and they stood guarantors and furnished their personal guarantees for securing repayments against Restructured Demand Finance (“**RDF**”) and Forced Demand Finance (“**FED**”); that the “*Defendant Company*” vide Facility Advising Letter dated 16.09.2019 requested to the “*Plaintiff Bank*” for restructuring/rescheduling of outstanding amount of Rs.124,973,072.73 and same was approved vide letter dated 23.09.2019 and for this purpose, a finance restructuring and rescheduling agreement was executed on 07.10.2019 followed by Addendums for restructuring/rescheduling dated 20.07.2020 and 12.07.2021 respectively; that due to non-fulfilling financial obligations and default in repayments under the renewed/restructured finance facilities, the “*Plaintiff Bank*” claimed to recover an amount of Rs.103,007,781.63 in respect of finance facilities with breakup as mentioned in para 2 above.

D. SUBMISSIONS OF THE COUNSEL FOR DEFENDANTS NO.1&2

6. Mr. Umar Hanif Khichi, Advocate filed the “*PLA*” on behalf of the Defendants No.1&2 and *inter alia* submitted that the suit is not maintainable on score of territorial jurisdiction of this Court because the finance facilities, as alleged by the “*Plaintiff Bank*” were extended to the “*Defendant Company*” at Hattar Industrial Estate, Haripur, Khyber Pakhtunkhawa and the agreements pursuant thereto were also executed thereat, thus the plaint is liable to be returned to the Plaintiff to be presented before Banking Court at Haripur under

order VII Rule 10 CPC; that the suit is liable to be dismissed as the same does not comply with the mandatory requirements of Section 9 of the “*Ordinance*” more specifically sub sections (2) and (3) wherein obligations have been casted upon a financial institution to file with the plaint all the relevant documents as well as to give details regarding the finance alleged to have been disbursed, availed and repaid; that the Defendants No.1&2 have paid the availed amounts under aforementioned facilities but the “*Plaintiff Bank*” has alleged exaggerated amount, which, under the law, is not tenable; that it is settled law that any suit filed by a financial institution/bank must be supported by a properly verified statement of account on oath, whereas the statements of accounts filed by the “*Plaintiff Bank*” are not duly verified on oath and they failed to fulfill other requirements of the Bankers Books Evidence Act, 1981 as well, which is a mandatory requirements in terms of Section 9 of the “*Ordinance*”, thus no presumption of truth can be attached to the same, and in view of such glaring defect in the Statement of Account, the suit of the “*Plaintiff Bank*” is liable to be dismissed.

D. SUBMISSIONS OF DEFENDANTS No.3&4

7. Defendants No.3&4 filed the “*PLA*” alleging that they have no concern with the availed finance facilities because they resigned from the partnership after receiving their shares and shifting the liabilities to the new partners.

E. REPLY BY LEARNED COUNSEL FOR THE PLAINTIFF

8. While exercising the right of rebuttal, Barrister Sardar Umer Aslam, Advocate, reiterated the contents of plaint as well as replication to the “*PLA*” and has urged that the “*Defendants*” have admitted the execution of finance facilities and security documents as is evident from the Finance Restructuring Agreement dated 07.10.2019, Addendum to Finance Restructuring and Rescheduling

Agreement dated 20.07.2020 and 2nd Addendum to Finance Restructuring and Rescheduling Agreement dated 12.07.2021 and it is a well settled law that the admitted facts need not to be proved, therefore, upon admission of the execution of the finances and security documents, the “*PLA*” cannot be granted on this score alone and the same is liable to be dismissed. Learned counsel further stated that the claim of the “*Plaintiff Bank*” is genuine, supported by the documents executed by the “*Defendants*” and Statement of Accounts had been duly signed and certified by the competent persons; all the entries relating to availing of the finance facility and repayments had been duly reflected in the statement of accounts and outstanding balance has also been shown in the said statement. Next maintained that the “*Defendants*” have not complied with mandatory requirements of Section 10 of the “*Ordinance*”. With regard to objection qua territorial jurisdiction of this Court, Barrister Umer Aslam, Advocate argued that the registered office of the “*Defendant Company*” is within the territorial jurisdiction of this Court, office address thereto is that of Rawalpindi, partnership deed was also registered with Registrar of Firms at District Rawalpindi and loan documents executed between the parties also contained address of District Rawalpindi therefore, this Court has jurisdiction to decide the lis in hand.

F. ARGUMENTS OF AMICUS CURIAE

9. Agha Muhammad Ali Khan, ASC/Amicus Curiae argued that a Banking Court in terms of Section 7(2) of the “*Ordinance*” is empowered to adopt procedure laid down in the “*CPC*” and for the purpose of determining jurisdiction, Section 20 of the “*CPC*” confers territorial jurisdiction upon the Banking Court to decide the cases in which the defendant resides, carries on business or personally works for gain, or in which the cause of action arises wholly or partly within the local limits of such Court. He has referred to judgments cited in “BAHOO DYING INDUSTRIES (PRIVATE) LIMITED Versus SUI NORTHERN GAS PIPELINES LIMITED and others” (PLD 2021

Lahore 186), “Messrs HI LITE INDUSTRIES and 4 others Versus MUSLIM COMMERCIAL BANK LIMITED” (2004 CLD 1266) and “EMIRATES BANK LTD Versus M. IRFAN MONNO and another” (1993 CLC 2430).

10. I have heard the arguments of the learned counsel for the parties and perused the record.

G. DETERMINATION BY THE COURT ON THE TERRITORIAL JURISDICTION

(i) Maintainability of banking suit at initial stage.

11. When the suit was filed on 29.09.2022 and the Court while confronting the territorial jurisdiction, observed as under:

5. When further confronted how this Court can interfere into the matter as per Section 5 of the Ordinance read with the judgment passed by this Court in the case of “Bahoo Dying Industries (Private) Ltd. Versus Sui Northern Gas Pipelines Limited and others” (PLD 2021 Lahore 186), Barrister Umer Aslam, ASC contends that since the registered office of the Company is based at Rawalpindi and the properties are situated nearby, therefore, this Court is fully empowered to execute the decree obtained”.

12. Subject to maintainability of the suit, the Court issued notices to the Defendants to file the “PLA” which was filed on 14.12.2022 raising the preliminary objection qua territorial jurisdiction of this Court to entertain the suit. In response to the said objection, the counsel for the “Plaintiff Bank” filed replication under Section 10(8) of the “Ordinance” wherein it was stated as follows:

“The suit has been properly instituted before this Hon’ble Court, as Defendant No.1 has a registered office within the territorial jurisdiction of this Hon’ble Court. The partnership deed is registered with the Registrar of Firms, District Rawalpindi. The office address of the Defendant No.1 is that of Rawalpindi, as show in in the documents appended with suit. The partnership deed also describes the head office of the firm to be

*located at the address, so mentioned in the
plaint (Defendant No.1). The loan was
obtained on documents containing the address
of the Rawalpindi”.*

13. At the very outset it is observed here that the Supreme Court of Pakistan in its judgment reported as “ZAHID ZAMAN KHAN and others Vs. KHAN AFSAR and others” (PLD 2016 SC 409) has held that “the law enjoins a duty upon the Court to settle question about its jurisdiction first because subject to certain exceptions, any decision rendered by the court having no jurisdiction stands vitiated on that account alone”. In “GOVERNMENT OF SINDH through Secretary Education and Literacy Department and others Versus NIZAKAT ALI and others” (2011 SCMR 592) it has held that “every Court prior to taking cognizance and adjudicating upon an issue should first resort to the question of assumption of its jurisdiction and if it comes to the conclusion that jurisdiction can be assumed only then the issue can be adjudicated upon”. Esteemed guideline with regard to deciding question of jurisdiction at very outset of judicial proceedings is enumerated in case titled “IZHAR ALAM FAROOQI, Advocate Versus SHEIKH ABDUL SATTAR LASI and others” (2008 SCMR 240) reading that “notwithstanding the raising of such an objection by the parties, the forum taking cognizance of the matter must at the first instance decide the question of its jurisdiction. There can be no exception to the principle that an order passed or an act done by a Court or a tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the Court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings”.

14. Learned counsel for the “Plaintiff Bank” was confronted with the point of territorial jurisdiction before going into the merits of the case and he was asked to first cross the hurdle of maintainability of the suit in view of territorial jurisdiction of this Court. In response thereto, learned counsel for the “Plaintiff Bank” Barrister Umer Aslam, ASC has placed reliance on “BAHOO DYING INDUSTRIES

(PRIVATE) LIMITED Versus SUI NORTHERN GAS PIPELINES LIMITED and others” (2021 PLD Lahore 186), “NATIONAL BANK OF PAKISTAN Versus Messrs KOHINOOR SPINNING MILLS and others” (2021 CLD 1112), “MOHAMMAD AFSAR Versus Mst. NAZIR BEGUM” (2018 CLC 259), “HABIB BANK LIMITED Versus Haji RIAZ AHMED” (2017 CLC 1671), “Haji RIAZ AHMED Versus HABIB BANK LIMITED” (2012 CLD 491), “Messrs HI LITE INDUSTRIES Versus MUSLIM COMMERCIAL BANK LIMITED” (2004 CLD 1266) and “MUHAMMAD WASEEM GHORI Versus ALTAF HUSSAIN TUNIO” (2016 YLR 157) and contended that this Court has jurisdiction to decide the lis in hand in view of the referred judgments.

(ii) **Legal anatomy of jurisdiction of Banking Court under the Ordinance.**

15. The “Ordinance” was promulgated for the recovery of finances and the financial institutions as defined under Section 2(a) of the “Ordinance” which stipulates the transaction of banking business in Pakistan through its branches. The word branches mentioned therein means a branch from where the suit is to be filed before the Banking Court having jurisdiction to entertain it. In this case, the suit was filed by the “Plaintiff Bank” from the registered office at MCB House, 15-D, Main Gulberg, Lahore having one of its branch offices at Hattar Industrial Area and before this Court at Rawalpindi as is evident from paragraph No.1 of the suit. The “Plaintiff Bank” by complying with requirement of Section 9 of the “Ordinance” attached statement of account verified by the branch manager of MCB Hattar Industrial Estate Branch. Moreover, Section 9(1) of the “Ordinance” stipulates the word Branch Manager which if read with Section 2(a) of the “Ordinance” means that the suit is to be filed by the said branch manager in terms of Section 9(2) and 9(3) of the “Ordinance” which demonstrate the amount availed by the defendant, paid by the defendant to the financial institution and other amounts relating to finance payable by the defendant. If the wording of Section 9 is read

with Section 5 of the “*Ordinance*” it makes clear that the Banking Court established to exercise its jurisdiction under the “*Ordinance*”. Section 5(1) of the “*Ordinance*” deals with the Banking Court to considers necessary to exercise jurisdiction under the “*Ordinance*”. In order to decide the lis in hand, this court has first to decide the preliminary objection qua territorial jurisdiction as raised by the counsel for the “*Defendants*”.

(iii) **Pathology of Section 10 of the Ordinance.**

16. The wording of Section 10(1) of the “*Ordinance*” states that in any case in which the summons has been served on the defendant under Section 9(5) the defendant shall not be entitled to defend the suit unless he obtains leave from the Banking Court. While Section 10(3) of the “*Ordinance*” give a chance to the defendants to file leave to defend containing substantial questions of law as well as of fact. In the case in hand, the addresses of the Defendants are mentioned as of Islamabad and Hattar whereas only the registered office of the “*Defendant Company*” is based on Rawalpindi. As Section 2(a) read with Section 9(5) of the “*Ordinance*” mentions branch offices, the amount of finance availed, carrying on or transaction of business therefore; the statement of account being sent to the defendants at their addresses would also be taken into consideration while deciding the leave to defend.

17. Pertinently, the “*Ordinance*” was enacted by the Government to ensure speedier recovery of the finances advanced by the financial institutions and to make the banks recovery law more effective preamble of which reads as under:

WHEREAS it is expedient to repeal and with certain modifications, reenact the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the proclamation of Emergency of the fourteenth day of October, 1999 and Provisional Constitution Order No. I of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance”.

. The above extracted preamble clearly provides that the same was enacted to expedite the process of stuck-up loans from the unscrupulous customers/debtors of the banks. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. Reliance in this regard is placed on “DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others” (2016 SCMR 447) whereby the Supreme Court held that *“indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature”*. It would be advantageous to add that the purpose and object of the *“Ordinance”* has already been elaborated by this Court in the case of “NATIONAL BANK OF PAKISTAN Versus Messrs KOHINOOR SPINNING MILLS and others” (2021 CLD 1112) in the following manner:

“It is deemed pertinent to take a precise note on the purpose and object of the “Ordinance” and the mechanism provided thereunder to settle the financial disputes between the financial institutions and customers who availed finance

facilities therefrom. The Ordinance was promulgated with an aim to streamline and expedite financial disputes between a financial institution and its customers and separate independent forum of Banking Court was also established under the Ordinance to achieve the goal of speedy decisions and a mechanism was devised wherein traditional extensive course of litigation was curtailed to a composite summary procedure to make sure adjudication in expeditious manner but at the same time safeguarding and securing rights of the parties and that is why Banking Courts defined under Section 2(b) and established under Section 5 of the Ordinance is simultaneously vested with powers of a Civil Court under the Code of Civil Procedure, 1908 and powers of a Court of Sessions under the Code of Criminal Procedure, 1898 as per Section 7 of the Ordinance”.

18. Section 2(b) of the “Ordinance” defined the Banking Court, in respect of a case, (i) in which the claim does not exceed hundred million rupees, and for the trial of offences under the “Ordinance”, in terms of section 2(b)(i), (ii) means, a court established under section 5 of the “Ordinance”, and in respect of any other case, the High Court. While Section 5 of the “Ordinance”, enables the Federal Government to establish Banking Courts to exercise jurisdiction under the “Ordinance”. Being creature of the statute, the Banking Courts derive powers/jurisdiction under Section 7 of the “Ordinance” which reads as:

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)

(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).**

(3)

(4)

(5)

(6)

(7)

The above referred provision of law stipulates that the Banking Court, in the exercise of its civil jurisdiction, shall have all powers otherwise available to a Civil Court under the Code of Civil Procedure, 1908 (hereinafter referred to as the “**CPC**”). By virtue of the said provision, the Banking Court is bound to follow the procedure as provided in the “*Ordinance*”, however where it is silent, the procedure provided in the “**CPC**” shall apply. Pertinently, the Banking Courts are creatures of statute and they derive their powers/jurisdiction from Section 7(4) read with Section 9(1), 2(a), 2(c), 2(d), 2(e) and 4 of the “*Ordinance*” and where the “*Ordinance*” does not prescribe a particular procedure with respect to a matter, the proceedings under the “*Ordinance*” are to be governed by the “**CPC**”) as held by the Supreme Court of Pakistan in a case titled “HABIB BANK LTD. Versus WRSM TRADING COMPANY, LLC and others” (PLD 2018 SC 795). Reliance is also placed on “GULISTAN TEXTILE MILLS LTD. and another Versus SONERI BANK LTD. and another” (PLD 2018 SC 322) where the Supreme Court of Pakistan has held that “*a Banking Court is to follow the procedure laid down in the C.P.C. in all matters with respect to which the procedure has not been provided in the Ordinance*”.

19. It is added that Section 20 of the “**CPC**” contains a general rule regarding territorial jurisdiction which *inter alia*, enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action wholly or in part arises. The explanation to said section prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any

place where it has also a subordinate office, at such place. Since this provision primarily keeps the Defendant in perspective, the corporation spoken of in the Explanation, obviously refers to the Defendant. A plain reading of the said section arguably allows the Plaintiff a multitude of choices in regard to where it may institute its suit, or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of said Section are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens.

20. Barrister Umer Aslam, Advocate for the "*Plaintiff Bank*" argued that this Court has jurisdiction to entertain the suit as the registered office of the "*Defendant Company*" falls within the territorial jurisdiction of this Court and that the partnership deed was also registered with Registrar of Firms, Rawalpindi. While on the other hand, learned counsel for the Defendants Mr. Umar Hanif Khichi, Advocate stated that this court lacks territorial jurisdiction for the reasons that finance facilities, as alleged by the "*Plaintiff Bank*", were extended to the Defendants at Hattar Industrial Estate, Haripur and the agreements pursuant thereto were also executed at Islamabad and Hatter, thus, plaint of this suit is liable to be returned to the Banking Court concerned under order VII Rule 10 of the "*CPC*" for its presentation.

21. The concept of jurisdiction has already been elaborated by this Court in the case of "BAHOO DYING INDUSTRIES (PRIVATE) LIMITED Versus SUI NORTHERN GAS PIPELINES LIMITED and

others” (2021 PLD Lahore 186) by relying on the judgment of Supreme Court of Pakistan cited in “Messrs Muhammad Tufail and Company through Muhammad Tufail (deceased) through Legal Heirs (PLD 2017 SC 51) where it was held that “Section 20, C.P.C. confers jurisdiction on a Court in two ways. Firstly, on the basis of where a defendant(s) resides, carries on business or works for gain within its local limits. Secondly on the basis of where the cause of action wholly or in part arose within its local limits. Jurisdiction means the authority to decide. The concept of jurisdiction of a Court encompasses (i) territorial jurisdiction, (ii) pecuniary jurisdiction and (iii) subject matter jurisdiction. The concept of jurisdiction has its genesis in the physical power of a Court to issue process to persons within the reach of the Court. Shorn of all extraneous 'frills', this is the essence of jurisdiction. A Court is to decide matters when persons relating thereto are within its reach. This basic jurisdiction is then regulated by defining the limits of that 'reach' by setting pecuniary limits, or by assigning different 'subjects' within one territory to different Courts, for example, by assigning banking and environmental matters to different Courts within one territory.”

22. No doubt, the registered office of a defendant/firm serves as official address for legal and administrative purpose and determines the jurisdiction to which the firm is subject to but at the same time it is important to note that the registered office does not necessarily determines the sole basis for establishing jurisdiction, especially when the cause of action arises in a different location/city and in cases where the cause of action accrues in a different city, such as the location of the contract execution, the place where the cause of action arose, or the defendant’s reside may also be considered in determining the appropriate jurisdiction for legal proceedings.

23. In the present case, Agreement for Financing for Short/Medium/Long Term on Markup basis was executed on 28.02.2019 at Hattar Industrial Estate (Page 45 of the suit) and said agreement was subsequently restructured/rescheduled through

Finance Restructuring and Rescheduling Agreement dated 07.10.2019 executed at Islamabad (Page 99 of the suit), 1st Addendum to Finance Restructuring and Rescheduling Agreement executed on 20.07.2020 (Page 148 of the suit), 2nd Addendum to Finance Restructuring and Rescheduling Agreement executed on 12.07.2021 at Industrial Estate Hattar KPK (Page 217 of the suit). In the above-mentioned agreements, the address of registered office of the “*Defendant Company*” was mentioned as AA-73-737, Hamilton Road, Rawalpindi whereas it evinces from the applications for finance made by the “*Defendant Company*” on 01.04.2019, 16.09.2019, 08.04.2020, 23.04.2021, 31.05.2021 that all these were addressed to the Manager, MCB Bank Limited, Industrial Estate Hatter. Alongwith these applications, Borrowers Basic Fact Sheets were also appended which showed the office address of the “*Defendant Company*” as Office Plot No.31, I-11/3, Near Nescom Hospital, Islamabad while address of Factory was mentioned as Plot 31/I, 34/I-A, 36 & 37, Phase IV, Industrial Estate Hatter, District Haripur. However, the residential address of the Defendant No.2/Adeel Khan was stated as “*House No.151, High Street No.77-E, 11, Services Cooperative Housing Society, Islamabad*”; the Defendant No.3/Jehanzaib as “*House No.1570, Street No.87, I-10/I, Islamabad*” and the Defendant No.4/Muhammad Ashiq was mentioned as “*Mohallah sooka Pandak, PO Haripur, District Haripur*”. Moreover, the details of mortgaged properties in all the above stated applications were mentioned as (i) Plot No.34/I-A, 36 & 37, Phase IV, Industrial Estate Hatter, District Haripur and (ii) House No.151, High Street No.77, Services Cooperative Housing Society, Sector-E-11/2, Islamabad and the said properties were mortgaged by the Defendant No.2 and the “*Defendant Company*” as security. Furthermore, the “*Plaintiff Bank*” approved various requests of the “*Defendant Company*” through various facilities advising letters addressed to it at Plot No.34, I-33/3, Near Nascom Hospital, Islamabad and pursuant to such approval, all undertakings by the “*Defendant Company*”, promissory notes, letters

of hypothecation, personal guarantees of the Defendants and memorandum of deposit of title deeds were executed at Hattar. More impertinently, under Schedule-II of Memorandum of Deposit of Title Deeds, two properties were mortgaged; one property bearing Plot No.34/1, 34/1-A, 36 & 37 Phase IV Industrial Estate Hattar was mortgaged by the “*Defendant Company*” whereas property bearing House No.151, High Street No.77, Services Cooperative Housing Society, Sector E-11/2, Islamabad was mortgaged by the Defendant No.2 being the mortgagor.

24. In view of above-mentioned facts and circumstances of the instant case it is obvious that finance facilities were extended to the “*Defendant Company*”, its partners and mortgagors after execution of agreements which were executed at Islamabad and Hattar, the Defendants are the residents of Islamabad and Hattar, correspondence for applying and approving the finance facilities were made by the parties at Islamabad and Haripur, mortgaged properties were situated at Islamabad and Haripur, hence, this Court has no territorial jurisdiction to pass any judgment and decree against the Defendants. As a sequel, the plaint is hereby returned under order VII Rule 10 of the “*CPC*” for presenting it before a Court of Competent Jurisdiction, if the “*Plaintiff Company*” so desires.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE