IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEALS NO.104-L, 106-L AND 107-L OF 2015
(Against the judgment dated 17.2.2015 of the Lahore High Court, Lahore passed in R.F.A. No.779/2010)

1. Al-Meezan Investment Management Company Ltd. ...in C.A.104-L/2015

2. Soneri Bank Limited ...in C.A.106-L/2015

3. National Fertilizer Corporation of Pakistan (Pvt.) Ltd. through its Chairman ...in C.A.107-L/2015

...Appellant(s)

VERSUS

WAPDA First Sukuk Company Limited, Lahore etc.

...Respondent(s)
(in all appeals)

For the appellant(s): Mr. Uzair Karamat Bhandari, ASC
Mrs. Tasneem Amin, AOR
(in C.A.104-L/2015)

Mr. Shehryar Kasuri, ASC
(in C.A.106-L/2015)

Mr. Asad Javed, ASC
Mr. Mahmudul Islam, AOR
(in C.A.107-L/2015)

For the respondent(s): Ms. Ayesha Hamid, ASC
Syed Fayyaz A. Sherazi, AOR
(for respondents No.1 & 2 in all appeals)

Mr. Asad Javed, ASC
Mr. Mahmudul Islam, AOR
(for respondent No.3 in C.As.104-L & 106-L/2015)

Mr. Uzair Karamat Bhandari, ASC
Ms. Tasneem Amin, AOR
(for respondent No.4 in C.A.106-L/2015 and for respondent No.3 in C.A.107-L/2015)

Mr. Fayyaz A. Sherazi, AOR
(for respondent No.6 in C.As.106-L & 107-L/2015)

Mr. Shehryar Kasuri, ASC
(for respondent No.5 in C.As.104-L & 107-L/2015)

Date of hearing: 10.10.2016

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JUDGMENT

MIAN SAQIB NISAR, J.- Through this order we will decide three civil appeals bearing Nos.104-L, 106-L and 107-L of 2015 which arise out of the common judgment dated 17.2.2015 passed by the Lahore High Court whereby it set aside the order dated 21.5.2010 of the Trial Court rejecting the plaint of the Respondent Nos. 1 and 2. For the purposes of this common judgment we will treat Civil Appeal No.104-L of 2015 as the main appeal. The appellant therein, Al-Meezan Investment Management Company Limited will be referred to as the appellant. The factual background of these appeals is that WAPDA/respondent No. 2 wanted to raise funds for its various projects and to this end the Wapda First Sukuk Company/respondent No.1 was incorporated, which is a public limited company wholly owned by respondent No.2, which is a statutory authority constituted under the Pakistan Water and Power Development Authority Act, 1958. In terms of the Declaration of Trust dated 15.11.2005 the respondent No.1 issued sukuk certificates having a value of Rs.8,000,000,000/- *(rupees eight billion) (388 physical certificates worth Rs.3,374,500,000/- and the remaining with Central Depository System governed by Central Depository Act 1997)* due and payable in 2012. In terms of the Purchase Agreement dated 15.11.2005 respondent No.1 purchased and respondent No.2 sold 10 turbines at the Mangla Hydel Power Station which became the trust assets owned by respondent No.1. Through the Purchase Undertaking dated 15.11.2005 respondent No.2 undertook to buy back the 10 turbines at the time of the dissolution/maturity of the sukuk certificates in 2012. As per Ijara Agreement dated 15.11.2005 between respondent Nos.1 and 2 and MCB Bank Limited as the delegate of the Trustee viz respondent

No.1, the rental payments in respect of these sukuk certificates were to be made on the 22nd of April and the 22nd October of each year upto and including 22nd October 2012 *[the maturity date]*. Through Agency Agreement dated 15.11.2005 executed by respondent No.1, Citibank NA, Lahore Branch was the Paying Agent, Jahangir Siddique & Company Limited was the Reference Agent and the WAPDA Bonds Cell of respondent No.2 was the Registrar, Transfer Agent and Replacement Agent.

2. The National Fertilizer Corporation *[hereinafter the "NFC"] [the appellant in Civil Appeal No.107-L of 2015]* purchased 300 physical certificates of the value of Rs.750,000,000 *(rupees seven hundred and fifty million)*. On receipt of a letter dated 12.2.2009 purportedly issued by the Deputy General Manager Accounts of NFC to the effect that NFC had sold certificates of the value of Rs.180,000,000 *(rupees one hundred and eighty million)* out of its holding of Rs.750 million to Swift Engineering Solutions and surrender of 72 physical certificates of aforesaid value of Rs.180 million for transfer to said Swift Engineering Solutions, the Wapda Bonds Cell of the respondent No. 2 issued/substituted 6 physical certificates of the value of Rs.180 million to Swift Engineering Solutions. The appellant purchased the said 6 certificates from the Swift Engineering Solutions on 6.3.2009. Thereafter request was received by respondent Nos. 1 and 2 from the appellant to transfer the 6 physical sukuk certificates to the Central Depository System which was done by respondent No.2's Bond Cell on 17.3.2009.

3. During the course of April 2009, when NFC received profit for only Rs.57 million sukuk certificates from Citibank *(the Paying Agent)* against its holding of Rs.750 million, it raised this issue with

respondent Nos. 1 and 2. NFC informed respondent Nos. 1 and 2 that it had not sold its sukuk certificates to Swift Engineering Solutions and in time the apparent fraud was revealed. NFC informed respondent Nos. 1 and 2 that the purported letter dated 12.2.2009 was fake and had not been signed by Deputy General Manager (Accounts) of NFC and that any transaction made by respondent Nos. 1 and 2 on basis of said letter was illegal and fraudulent. Respondent No.2 informed the Central Depository Company *(hereinafter the "CDC") (respondent No.6)* that further transfer/transaction of subject sukuk certificates be stopped till further instructions. Despite aforesaid instructions sukuk certificates were further sold by the appellant and CDC gave effect to the said sales. Presently the subject sukuk certificates are variously owned by BankIslami *(respondent No.4)* and Soneri Bank *(appellant in Civil Appeal No.106-L of 2015)* and Meezan Bank *(in respect of whom an application under Order 1 Rule 10 CPC was pending before the Trial Court when the plaint was rejected vice order dated 21.5.2010)*.

4. At this stage inquiry No.76/2009 dated 12.5.2009 was registered with FIA Crimes Circle, Lahore by respondent No.2. FIA inquired into the matter and on basis of their inquiry FIR No.28/2009 dated 5.8.2009 was lodged and separate criminal proceedings on the basis thereof are at varying stages before the competent courts of law, the fate whereof does not concern us in these civil proceedings; it is sufficient that fraud was prima facie established in respect of the "sale" of sukuk certificates of the value of Rs.180 million from NFC to Swift Engineering Solutions.

5. Upon becoming aware of the doubtful transaction of the sale of the sukuk certificates to the appellant, respondent Nos. 1 and 2 sought a refund of the rental ijara payment made to the appellant

in April 2009. On 22.10.2009 the appellant filed Suit No. 1497 of 2009 titled "Al-Meezan Investment Management Company Ltd and Central Depository Company Vs. Wapda First Sukuk Company Ltd and 3 others" before the Sindh High Court at Karachi *[hereinafter "Suit No.1497/2009"]* claiming, inter alia, that it was the rightful owner of the sukuk certificates valuing Rs.180 million at all material times and seeking a declaration that it was entitled to the rental profit of Rs.13,640,900/- paid in April 2009. In addition NFC claimed the rental on the sukuk certificates valuing Rs.180 million from the respondent Nos.1 and 2 and insists that it is the rightful/lawful owner thereof and claimed further rentals/profits on said certificates. Similar claims to be the rightful/lawful owners of the sukuk certificates valuing Rs.180 million were put forward by BankIslami, Soneri Bank and Meezan Bank, alongwith claims to rental ijara payments on the basis of their holding in respect of said certificates.

6. In view of the conflicting claims to the sukuk certificates valuing Rs.180 million, on 12.12.2009 respondent Nos.1 and 2 filed an interpleader suit under Section 88 CPC before the Civil Court at Lahore *[hereinafter the "Interpleader suit"]* stating that they claim no title in the certificates valuing Rs.180 million and are ready to pay the rental profits, and ultimately in October 2012 the principal amount, to whoever is determined to be the true owner by the learned court. It is pertinent to mention that initially pursuant to order passed by the learned Civil Court at Lahore in the Interpleader suit and later in compliance with orders dated 19.7.2010 and 10.10.2012 passed by the learned High Court in RFA No.779/2010 allowing the respondents' applications to that effect, the respondent Nos.1 and 2 deposited the rental ijara payments for the sukuk certificates valuing

Rs.180 million and finally the encashment value of Rs.180 million at the time of maturity into an account maintained by the Civil Court for said purpose.

7. NFC filed a written statement in the Interpleader suit wherein it raised certain preliminary objections on the basis whereof the learned Civil Court rejected the plaint vide order dated 21.5.2010 holding that the Interpleader suit was not maintainable in terms of Order 35 Rule 5 CPC and in terms of the proviso to Section 88 CPC and lastly on the basis of the ratio of **G. Hari Karmarkar Vs. J. A. Robin and others (AIR 1927 Rangoon 91)**. Respondent Nos.1 and 2 challenged the said order through RFA No.779/2010 which was accepted vide the order dated 17.2.2015 passed by the Lahore High Court, impugned in these appeals.

8. Mr. Uzair Bhandari, learned counsel for the appellant apprised us of the detailed facts set out hereinabove. He stated that the appellant is a bona fide purchaser without notice and its title to the sukuk certificates valuing Rs.180 million is duly recorded in the Central Depository Register and is not liable to be rectified by virtue of Section 11 of the Central Depositories Act, 1997. He stated that the various claimants to the sukuk certificates valuing Rs.180 million are not claiming the same debt but two different and distinct debts and respondent Nos.1 and 2 are liable to satisfy both claims viz those of the NFC and of the appellant and those who claim title on the basis of the appellant's title. He sought to persuade us that the relationship of the appellant and respondent No.1 is that of principal and agent. Respondent No.1 acts as the agent of the appellant in respect of the trust assets and conducts transactions on behalf of the appellant with respect thereto in its capacity as agent; this

relationship precludes respondent No.1 from filing an Interpleader suit because Order 35 Rule 5 CPC specifically bars the agent from bringing an interpleader suit against his principal. He also relied on the proviso to Section 88 CPC to argue that as Suit No.1497/2009 was filed prior in time and the pith and substance of the controversy can be adjudicated therein, therefore the Interpleader suit is not maintainable. He submitted that the Interpleader suit was not filed through an authorized person as the documents establishing his authority were not placed on the record of the Civil Court. He submitted that respondent Nos.1 and 2 had not approached the court with clean hands and that the Interpleader suit was simply a device to transfer the loss caused by the fraud onto the appellant and those parties who claim title from it. He in support of his contention has cited judgments from the foreign jurisdiction such as:- **Conley et al. Vs. Alabama Gold Life Insurance Company [(1880) 67 Ala. 472]**, **National Life Ins. Co. Vs. Pingrey and others [(1880) 141 Mass. 411]**, **Sablicich Vs. Russell [(1866) 2 EC 441]**, **Ann Dalton Vs. The Midland Railway Company [(1852) 138 ER 985]**, **Farmers Irrigating Ditch Reservoir Company Vs. Nick Kane, et al. [(1988) 845 F.2d 229]**, **Atoka Coal & Min. Co. Vs. Hodges et al. [(1894) 59 FR 836]**, **Finn Vs. Missouri State Life Ins. Co. [(1931) 222 Ala. 413]** and **Great American Insurance Company, a Corporation Vs. Bank of Bellevue and American Home Assurance Company [(1966) 366 F.2d 289]**.

9. Learned counsel for appellant in Civil Appeal No.106-L of 2015 concurred with the grounds urged by Mr. Uzair Bhandari and submitted that respondent Nos.1 and 2 had accepted indemnity from the NFC and the same constituted a violation of the provisions of

Order 35 Rule 1(c) CPC and therefore the Interpleader suit was not maintainable. Learned counsel for the NFC urged the same grounds before us.

10. Ms. Ayesha Hamid, learned counsel for respondent Nos. 1 and 2 submitted that respondent Nos.1 and 2, faced with the adverse claims of the NFC, the appellant, BankIslami, Soneri Bank and Meezan bank were entitled to file an Interpleader suit in order for the Civil Court to determine the lawful ownership of the sukuk certificates valuing Rs.180 million. Respondent Nos.1 and 2 claimed no interest in the disputed sukuk certificates and this was proved by the fact that all rental ijara payments and the final encashment value of the disputed certificates had been deposited with the Civil Court since institution of the interpleader suit and it was for the said Court to release the amount to the rightful owner. She stated that the respondent No.1 was a trustee in respect of the trust assets and the certificate holders were the beneficiaries; there was no relationship of agent and principal betwixt them as respondent No.1 could not bind NFC to third parties and nor was it bound to render accounts to the certificate holders. Reliance in this regard was placed on the case cited as **Bolan Beverages Pvt Ltd Vs. Pepsico Inc. (PLD 2004 SC 860)**, which lays down the tests for establishing the relationship of agent and principal. Ms. Ayesha Hamid stated that the Interpleader suit is not hit by the proviso of Section 88 CPC for the reason that all the claimants to the disputed sukuk certificates are not party to the Suit No.1497/2009 before the Sindh High Court, notably Soneri Bank, BankIslami and Meezan Bank are missing from the array of defendants and the prayer in the said suit is not for the Court to determine the ownership of the disputed sukuk certificates but

rather to declare that at all material times the appellant was the rightful owner thereof and is entitled to retain the rental payment received in April 2009. Therefore, the rights of all parties could not properly be decided in Suit No.1497/2009. She provided us with a list of cases relating to the disputed sukuk certificates pending before the Sindh High Court in addition to Suit No. 1497/2009; Suit No. 726/2012 filed by Meezan Bank, Suit No. 1269/2010 filed by Soneri Bank and Suit No.1086/2013 filed by the appellant. In addition NFC has also filed Suit No.40163/2015 before the Civil Court at Lahore *[hereinafter collectively referred to as the "other suits"]*. She relied on the case cited as **Abdul Karim Vs. Florida Builders (Pvt) Ltd (PLD 2012 SC 247)** to argue that the objections as to the Interpleader suit not being filed by duly authorized person, or as to the motivations or purpose for filing the Interpleader suit do not fall within the parameters laid down by this Court for rejection of plaint and hence the Interpleader suit was maintainable.

11. Heard. The instant appeals have raised rather interesting and intriguing questions of law before us as there is no precedent in our jurisprudence with respect to Interpleader suits. In this context we feel it would be useful to examine the origins of this law. The law of Interpleader comes from the laws of England. Halsbury's Laws of England[1] explains the same in the following terms:-

> *"Where a person, for example an enforcement officer who has levied a writ of execution, is in possession of property or its proceeds of sale and he is, or expects to be, sued in respect thereof by two or more persons making adverse*

[1] Halsbury's Laws of England/Civil Procedure (Volume 12(2009) 5th Edition, Paras 1109-1836, para 1586.

> *claims thereto, he may apply to the court for an order requiring the claimants to litigate their differences and to abide by the court's final order in respect thereof. He is thereafter safeguarded by being able to act in respect of the property or its proceeds of sale consistently with, or as may be directed by, the court's final order. In these circumstances he is said to apply to the court for relief by way of interpleader."*

Further elucidation for the scope and the description of interpleader suit is found in Black's Law Dictionary, which reads as under:-

> *"1. A suit to determine a right to property held by a usu. disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. Typically, a stakeholder initiates an interpleader both to determine who should receive the property and to avoid multiple liability…2. Loosely, a party who interpleads. – Also termed (in civil law) concursus.*
>
> > *"Interpleader is a form of joinder open to one who does not know to which of several claimants he or she is liable, if liable at all. It permits him or her to bring the claimants into a single action, and to require them to litigate among themselves to determine which, if any, has a valid claim. Although the earliest records of a procedure similar to interpleader were at common law, it soon became an equitable rather than a legal procedure." Charles Alan Wright, The Law of Federal Courts § 74, at 531 (5th ed. 1994)."*

The law relating to interpleader was originally codified in the sub-continent in the Code of Civil Procedure, 1882 at Sections 470 to

476. It is now contained in Section 88 and Order 35 of our Code of Civil Procedure, 1908. The law of Interpleader may have its origins in equity but since it is now codified in our statute, equity must yield to law. Section 88 and Order 35 Rules 1, 3 and 5 CPC are reproduced below for ease of reference.

> *"88.* ***Where interpleader suit may be instituted.****-- Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:*
> *Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.*
>
> ***Order XXXV***
>
> ***1.Plaint in interpleader suits.****---In every suit of interpleader the plaint shall, in addition to other statements necessary for plaints, state—*
> *(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;*
> *(b) the claims made by the defendants severally; and*
> *(c) that there is no collusion between the plaintiff and any of the defendants.*
>
> **3.** ***Procedure where defendant is suing plaintiff.****- Where any of the defendants in an inter-pleader suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is*

pending shall, on being informed by the Court in which the inter-pleader suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the inter-pleader suit.

***5. Agent and tenants may not institute interpleader suit**.- Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or the landlords.*

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C."

12. There are certain conditions precedent which are required to be satisfied before an Interpleader suit can be competently filed. Firstly, there must be rival claimants. Secondly, the same debt, sum of money or other property, moveable or immoveable must be claimed by two or more claimants. Thirdly, the person from whom such debt, sum of money etc. is being claimed

must claim no interest in the same. These conditions are set out in Section 88 CPC and reinforced by Order 35 Rule 1 CPC.

13. There is no quibbling with the fact that respondent Nos.1 and 2 are faced with several rival claimants. The appellant, NFC, Soneri Bank, BankIslami and Meezan Bank are calling on respondent Nos.1 and 2 to make good for various amounts in respect of rental ijara payments as well as laying claim to differing sums of money on account of the encashment value of the disputed sukuk certificates on the basis of their holding of the said certificates. Therefore, the first condition precedent stands satisfied in the present circumstances.

14. Do the disputed sukuk certificates of the value of Rs.180 million which are claimed by NFC on the one hand and by the appellant and those who claim to derive title from them, represent the same debt, sum of money or other property? It is an admitted fact that the disputed sukuk certificates were originally purchased by the NFC. It is an admitted fact by all parties to the present appeals that the onward "sale" of the sukuk certificates of the value of Rs.180 million from NFC to Swift Engineering Solutions was effected through apparent fraud. At whose door such apparent fraud is to be laid is the subject of separate criminal proceedings and does not concern us for the moment. At the time of the fraudulent "sale" of the disputed sukuk certificates, apparently 72 forged physical sukuk certificates were surrendered to the Wapda Bonds Cell and instead of the surrendered certificates the Wapda Bonds Cell **issued/substituted** 6 physical sukuk certificates. Because the substituted 6 physical sukuk certificates were not forged or fake, the appellant disingenuously claims that it is a bona fide purchaser without notice

and that the 6 **new** physical sukuk certificates represent a different debt/sum of money being claimed from the respondent Nos. 1 and 2. We are not convinced that this is so: the substitution of the 72 physical sukuk certificates by the 6 physical sukuk certificates does not give rise to a new debt. The appellant and those who claim to derive title from it and NFC on the other hand are rivals claimants for the same debt/sum of money. Section 11 of the Central Depositories Act, 1997 cannot override fraud if it is once established as it is settled law that fraud vitiates the most solemn of proceedings and a superstructure built on a foundation of fraud must fall like a house of cards.

15. Do respondent Nos.1 and 2 claim an interest in the disputed sukuk certificates? Ms. Ayesha Hamid, learned counsel for the respondent Nos.1 and 2 stated categorically that respondent Nos.1 and 2 have divested themselves of the entire amount to be paid on account of the disputed sukuk certificates and have deposited the rental ijara payments alongwith the encashment value of the disputed sukuk certificates with the learned civil court. This establishes the bona fides of the respondent Nos.1 and 2. At the time the rental ijara payment was made to NFC in October 2009 respondent Nos.1 and 2 sought and obtained an indemnity from NFC to the effect that *"It is hereby undertaken that NFC will remit back to WAPDA Rs.13,640,900/- if it is found that NFC had actually transferred certificates worth Rs.180 million to the Swift Engineering Solution. NFC will also extend full cooperation to the investigation Agency for further probe into the matter."* This undertaking is altogether different from the 'indemnity' referred to in **G. Hari Karmarkar**'s case *[relied on by the learned Civil Court in its order dated 21.5.2010 rejecting the plaint]* in terms of which the plaintiff filing an

interpleader suit had entered into an agreement with one of the parties whereby he would have to pay very much less to said party if it succeeded. On those facts it was held that it could not be said that the plaintiff in the suit had no interest in the result of the proceedings initiated by him. An Indemnity is a collateral contract or assurance, by which one person engages to secure another against an anticipated loss or to prevent him from being damnified by the legal consequences of an act or forbearance on the part of one of the parties or of some third person[2]. In the present circumstances does this undertaking indemnify the respondent Nos. 1 and 2 against anticipated claims by the appellant or those who claim to derive title from the appellant? Patently not. The aforesaid "indemnity" is no more than an assurance by NFC to return a particular ijara rental payment to the respondent Nos.1 and 2 in case it is found disentitled to the same. When interpreting Section 88 CPC's requirement that the plaintiff "claims no interest" in the debt/sum of money etc in dispute and Order 35 Rule 1(c) CPC's requirement that, *"that there is no collusion between the plaintiff and any of the defendants"* in an interpleader suit, we must first look to the text of the statute, its history, traditions, precedent, purpose and consequences. The purposive interpretation of the provisions ibid lead us to conclude that what is to operate as a bar to an interpleader suit is collusion; collusion between the plaintiff and one or more of the defendants that would destroy the neutrality of the plaintiff in an interpleader suit. An indemnity per se is not barred under the relevant provisions. Collusion is a deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for

[2] Black's Law Dictionary

some evil purpose, as to defraud a third party of his right: a secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice would not give them, by deceiving a court or its officers.[3] It was not argued before us by any of the appellants that the "indemnity" obtained from NFC by the respondent Nos.1 and 2 was the outcome of some deceitful arrangement or some secret negotiations. If the respondent Nos.1 and 2, on account of the so-called indemnity were more interested in the appellant succeeding or NFC for that matter there may be some remote possibility that their neutrality was compromised in some manner. But if NFC were to be declared the rightful owner they would retain the rental ijara payment made to them under the aegis of the so-called indemnity, respondent Nos.1 and 2 would not be entitled to the said payment. If, suppose, the appellant or some party deriving title from the appellant were to be declared the rightful owner, respondent Nos.1 and 2 would, on the basis of the so-called indemnity, be entitled to the return of the rental ijara payment, only for the same to be paid onwards to the declared rightful owner. In neither of these two scenarios is it the case that respondent Nos.1 and 2 are more interested, financially, if one party succeeds over another. In the circumstances of the present appeals we do not find that the undertaking obtained by respondent Nos.1 and 2 from the NFC is tantamount to either collusion with a party to the Interpleader suit or an interest in the suit property i.e. the disputed sukuk certificates.

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[3] Black's Law Dictionary.

16. Let us now address the question of the purported bar of Order 35 Rule 5 CPC; all the learned counsels for the three different appellants variously argued that the relationship inter se respondent Nos.1 and 2 and the certificate holders was that of agent and principals respectively and on account thereof respondent No.1 in particular was barred from filing an Interpleader suit. Why is an agent precluded from interpleading his principal? Again, a purposive construction of the statute is our best guide. An agent owes a duty of care to his principal. An agent is accountable to his principal. Indeed, he has a fiduciary duty to his principal, having been entrusted with the care of the principal's property or funds. In these circumstances the agent cannot absolve himself of his responsibility to be held accountable to his principal by suing him and compelling him to interplead with another party *(other than a person who claims through the principal)*. This rule is based upon the sound legal principle that an agent cannot be allowed to dispute the authority of his principal. Similarly, the tenant is barred from filing a suit of interpleader against his landlord as he is not to dispute the title of his landlord during the subsistence of tenancy *(other than a persons who claims through the landlord)*. The Declaration of Trust dated 15.11.2005 clearly defines the role of respondent No.1 as Trustee with respect to certificate-holders, as defined in the Trust Act 1882. In any event, in the **Bolan Beverages** case *(supra)* this Court has clearly set out the parameters of the relationship of agent and principal. It was held at paragraph 15 that:-

> *"We hold in the light of the above discussion as well as the law, that an agent is a hyphen that joins and a buckle that*

> *binds the relation between the principal and the third party. Where an agent is not a link between the principal and a third party, the institution of agency is not created. Where a person is not liable to the principal for the submission of accounts such person cannot be dubbed as agent."*

Describing the essentials for the relationship of agency in the judgment of the Lahore High Court reported as **Concentrate Manufacturing Company of Ireland and 3 others versus Seven-Up Bottling Company (Private) Limited and 3 others (2002 CLD 77)** it has been held:-

> *"From the above, it is clear that in effect an agent is the connecting link between the principal and third person---a sort of conduit pipe or an intermediary. This intermediary has the powers to create legal relationship between the principal and third party. He has competence to make the principal responsible to the third person. He is an imperative bridge by crossing which, the third person can reach the principal to enforce his legal right or vice versa. The principal is liable to the third person for all the act and deeds performed, within the authority of agency, by his agent, as if those were personally performed by him. The agent necessarily and the principal in certain circumstances are liable to each other for accounts. If a so-called agent is not liable to the so-called principal for the submission of accounts, such as the profit and loss, he cannot be termed as agent."*

The provisions of Order 35 Rule 5 are not attracted to the facts of the Interpleader suit. In any event it cannot be assumed that the agent/principal relationship existed between respondent No.1 and

certificate holders, including the appellants, without framing an issue thereon and recording evidence.

17. Now let us address the question of the proviso to Section 88 CPC; does the pendency and prior filing of Suit No.1497/2009 of the appellant bar the Interpleader suit? It is admitted by the appellant at ground VIII of its memorandum of appeal that subsequent purchasers of the disputed sukuk certificates are not impleaded in its Suit No. 1497/2009 pending before the Sindh High Court, Karachi. In juxtaposition the Interpleader suit brings all claimants to the disputed sukuk certificates before the civil court at Lahore and respondent Nos.1 and 2 had filed an appropriate application under Order 1 Rule 10 CPC before the Civil Court at Lahore in the Interpleader suit with respect to Meezan Bank Ltd to implead it as respondent No.6 when the suit was rejected vide order dated 21.5.2010. Still further, as is evident from a bare perusal of the plaint filed by the appellant in its Suit No.1497/2009 for declaration, injunction and damages, the matters in issue in the two suits are not the same, and it is only in respondent Nos.1 and 2's Interpleader suit that it can be definitively decided as to who is the true and original owner of the disputed sukuk certificates of the value of Rs.180 million. We are not convinced that the respondent Nos.1 and 2 could be non-suited on the basis of the proviso to Section 88 CPC.

18. Whether or not the person filing the Interpleader suit on behalf of respondent Nos.1 and 2 was duly authorized to do so is an issue that can only be proved through evidence if and when the trial court deems it appropriate to frame an issue in respect thereof. Other objections raised by the learned counsels for the appellant, such as the motivation(s) of the respondent Nos.1 and 2 in filing the

Interpleader suit are not germane to the question of rejection of a plaint on the touchstone of Order 7 Rule 11 CPC. This Court in the case cited as **Haji Abdul Karim and others Vs. Messrs Florida Builders (Pvt.) Ltd (PLD 2012 SC 247)** has comprehensively discussed the scope and parameters of Order 7 Rule 11 CPC and has set out the following guidelines for interpretation thereof:-

> *"Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint ……*
> *Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect……..*
> *Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded to its normal judicial power……."*

The said judgment also defines the scope of Order 7 Rule 11(d) CPC: suffice it to say that the question of whether a suit is maintainable or not is moot with respect to whether or not a plaint is to be rejected as being barred by law. Both are a different species altogether and it may well be that a plaint is not rejected in terms of Order 7 Rule 11 CPC but the suit is dismissed eventually as not maintainable for a possible host of reasons.

19. For the aforesaid reasons we uphold the impugned order dated 17.2.2015 and dismiss the appeals. Before parting we would like to note with appreciation the able assistance rendered by Mr. Uzair Bhandari and Ms. Ayesha Hamid. We also note with concern that the Interpleader suit is pending before the Civil Court at Lahore

since 2009 and is still at a preliminary stage: given that the entire eventual decretal amount is already deposited with the learned Civil Court, the learned Civil Court at Lahore is directed to proceed with the Interpleader suit on day to day basis and decide the same as soon as possible but no later than 3 months from receipt of this order. No order as to costs.

JUDGE

JUDGE

JUDGE

Bench-I
Lahore, the
10th October, 2016
Approved For Reporting
Waqas Naseer / *