

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

F. A. O. No.22/2019

Dr Omar Masood & another

Versus

Syed Amir Hussain Naqvi & another

Appellants by : Ms Zainab Janjua, Advocate.
Respondents by : Mr Moazzam Habib, Advocate.
Mr Ibrar Saeed, Law Officer, SECP.
Date of Hearing : 05-07-2019

ATHAR MINALLAH, C.J.- This appeal is directed against order, dated 11-12-2018, passed by the learned Civil Judge 1st Class, Islamabad (West).

2. The facts necessary for the adjudication of this appeal are that Chrome Ore Services (Pvt) Limited (*hereinafter referred to as the 'petitioner Company'*) was incorporated as a private limited company under the Companies Ordinance, 1984 (*hereinafter referred to as the 'Ordinance of 1984'*). Dr Omar Masood, son of Mian Masood Ahmed (*hereinafter referred to as the 'Petitioner'*) is one of

its Directors and also holds the post of Chief Executive Officer of the Company. The controversy is between the petitioners and Syed Amir Hussain Naqvi, son of Syed Shaukat Hussain (*hereinafter referred to as the 'Respondent'*). The petitioner Company had employed the Respondent vide letter dated 08-04-2015. The latter was made a Director pursuant to the transfer of one share in his name. The Respondent was terminated vide letter dated 13-03-2017. It is alleged that the Respondent, after his termination, left without surrendering the vehicle owned by the petitioner Company and instead took it to his native town i.e Burewala. The Petitioner, who was visiting Lahore on 13-05-2017, was contacted by the Respondent and he informed him that he was willing to hand over the vehicle at some safe venue. It is alleged that when the Petitioner reached the agreed venue he was abducted and taken to Burewala. It is further alleged that FIR No.192/2017 was registered at Police Station Burewala on 05-05-2017. It is also alleged that the Petitioner was kept in illegal confinement with the connivance of the police officials and some private persons at Burewala. It is the case of the Petitioner that he was forced by the Respondent to execute a document purported to be a settlement/compromise deed. The said document was executed on 13-05-2017. It was on the basis of the said compromise deed, dated 13-05-2017, that the Petitioner was granted anticipatory bail. The investigations carried out in the criminal case led the Investigating Officer to conclude that the allegations were false and, therefore, cancellation report, dated 15-05-2017, was

submitted which was accepted and consequently the Petitioner stood discharged. The Respondent filed a suit in Islamabad seeking declaration, permanent and mandatory injunction with consequential relief for seeking performance of the compromise deed, dated 13-05-2017, and a direction to transfer 25% shares of the petitioner Company. Likewise a separate suit was instituted by the Petitioner seeking declaration and cancellation of the compromise agreement and transfer deed, dated 13-05-2017. The Petitioner and the petitioner Company filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*). The parties also filed separate applications under Order XXXIX Rules 1 and 2 of the CPC. The learned trial Court allowed the application filed by the Respondent and consequently the defendants were restrained from alienating 50% shares of the Company. The applications filed by the Petitioner and the petitioner Company were dismissed. The impugned order, dated 11-12-2018, has been challenged through the instant petition.

3. The learned Counsel for the appellants has argued that; exclusive jurisdiction is vested in the Court, defined under the Ordinance of 1984 i.e. the Company Judge; the superior Courts have consistently held that if factual disputes are involved, then if satisfied, the High Court may refer the matter to a learned civil court; the august Supreme Court in the case titled '*Mian Javed Amir and others v. United Foam Industries (Pvt) Ltd., Lahore and others*' [2016 SCMR

213] has held that a High Court, exercising jurisdiction under section 7 and 9 of the Ordinance of 1984, was empowered to record oral as well as documentary evidence and thus decide matters involving factual disputes; the Companies Act 2017 (*hereinafter referred to as the 'Act of 2017'*) has explicitly ousted the jurisdiction of the civil courts and in this regard language of sub section (2) of section 5 is explicit; section 4 of the Act of 2017 declares that the provisions thereof have an overriding effect; transfer of shares and title thereof are dealt with under sections 74 to 77, 80 and 122(3); the Court defined under the Act of 2017 has exclusive power and jurisdiction; the provisions of the Act of 2017 would prevail over the general law i.e. CPC; reliance in this regard has been placed on the cases of '*Muhammad Mohsin Ghuman and others v. Government of Punjab through Home Secretary, Lahore and others*' [2013 SCMR 85], '*Gulistan Textile Mills Ltd. and another v. Soneri Bank Ltd. and another*' [2018 CLD 203]; in order to determine jurisdiction, a Court is required to look at the pith and substance of the matter; the Respondent has instituted the suit essentially to seek transfer of shares of a juridical person which exclusively falls within the ambit of the Act of 2017.

4. The learned Counsel for the Respondent, on the other hand, has placed reliance on the case of '*National Investment Trust Ltd. v. Lawrencpur Woollen and Textile Mills Ltd.*' [2002 CLD 527] in support of his contention that the dispute between the parties relates

to the performance of the compromise agreement regarding sale of shares and that such a dispute was not covered under the provisions of the Act of 2017; disputes involving complex factual controversies are required to be referred to a civil court and in this regard reliance has been placed on the case of *'Muhammad Aslam Javed and another v. Malik Ijaz Ahmad and another'* [2003 CLD 1442]; the law laid down by the august Supreme Court in the case titled *'Mian Javed Amir and others v. United Foam Industries (Pvt) Ltd., Lahore and others'* [2016 SCMR 213] has become distinguishable after the promulgation of the Act of 2017 in view of section 6 thereof; performance of a contract relating to transfer of shares is not covered under the Act of 2017 and, therefore, for the purpose of enforcement resort has to be made to the Specific Relief Act 1877; this appeal has been filed under Order XLVIII Rule 1 of the CPC and, therefore, to the extent of Order VII Rule 11 of the CPC it is not competent; courts are not empowered to either enlarge the scope of legislation or the intent of the legislation; reliance has been placed on the case of *'Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources v. Dewan Petroleum (Pvt) Ltd. through M.D./Chief Executive and another'* [PLD 2012 SC 189]; a remedy provided under the company laws can be resorted to before competent forums; reliance has been placed on *'Messers Chalna Fibre Company Limited, Khulna and 4 others v. Abdul Jabbar and 9 others'* [PLD 1968 SC 381].

5. The learned Counsel who has appeared on behalf of the Securities and Exchange Commission of Pakistan has placed reliance on the provisions of the Act of 2017 in support of his contention that the jurisdiction of the civil court in matters covered under the Act of 2017 is ousted.

6. The learned Counsels have been heard and the record perused with their able assistance.

7. The admitted facts are that the Respondent was employed by the petitioner Company and pursuant thereto he was appointed as a Director and one share was duly transferred in his name. His employment was terminated on 13-03-2017. The latter registered a criminal case at Burewala. A plain reading of the FIR shows that the allegations recorded therein were in connection with the affairs of the petitioner Company and the transfer of its assets by the Petitioner. It is noted that no cause of action had arisen nor any offence was committed within the jurisdiction of the Police Station at Burewala. It is the case of the Petitioner that he had been abducted and was forcibly taken to Burewala where he had been coerced and without his free consent was made to execute a document which was purported to be a compromise deed. It was only after the execution of the said deed that the Respondent did not oppose confirmation of his anticipatory bail. The criminal case registered at Burewala was later cancelled pursuant to acceptance of a cancellation report

submitted by the Investigating Officer after conducting investigations. The Respondent filed a suit in Islamabad seeking the transfer of 25% shares of the Company on the basis of the compromise/settlement agreement, dated 13-05-2017. A separate suit was also filed by the Petitioner for the cancellation of the compromise/agreement, dated 13-05-2017. The application seeking an injunctive order was allowed by the learned trial Court vide the impugned order, dated 11-12-2018, while that of the Petitioner was dismissed. The application filed by the Petitioner under Order VII Rule 11 of the CPC was also dismissed. The questions which have emerged for adjudication arising out of the arguments advanced by the learned Counsels are, firstly, whether the jurisdiction of the civil court is barred under the Act of 2017 and, secondly, whether the learned trial Court had correctly exercised jurisdiction by granting an injunction in favour of the Respondent and restraining the petitioner Company from dealing with 50% of its shares. It would be beneficial to examine the provisions of the Ordinance of 1984 and the Act of 2017 in order to answer the said questions raised in the case in hand.

8. The Ordinance of 1984 was promulgated with the object to consolidate and amend the law relating to companies. The expression 'Court' has been defined under section 2(11) as meaning the Court having jurisdiction under the Ordinance of 1984. Section 7 unambiguously declares that the Court having jurisdiction for the purposes of the Ordinance of 1984 shall be the High Court, vested

with jurisdiction in the place at which the registered office of the company is situated. Sections 8 and 9 describe the constitution of the Benches and procedure relating to the Court. The august supreme Court in the case titled '*Mian Javed Amir and others v. United Foam Industries (Pvt) Ltd., Lahore and others*' [2016 SCMR 213] held that in the context of rectification of the register of members that the High Court is empowered under section 152 of the Ordinance of 1984 to rectify the register and if it is of the opinion that the dispute involves factual controversy then it could advise the parties to approach a civil court for resolution thereof. In the case titled '*Mian Javed Amir and others v. United Foam Industries (Pvt) Ltd., Lahore and others*' [2016 SCMR 213] the august Supreme Court, after examining the provisions of the Ordinance of 1984, has held that the expression 'summary procedure' used in section 9(3) did not abridge or curtail the power of the High Court to enter into a factual inquiry followed by framing of issues and recording oral as well as documentary evidence in the proceedings before it. It has been held, therefore, that a Company Judge is empowered to receive evidence in all matters relating to companies, notwithstanding those involving factual controversies. In other words, the Court is vested with jurisdiction under the Ordinance of 1984 to even record evidence and resolve factual controversies. It has been explicitly observed that a civil court could not be the appropriate forum for resolving such matters.

9. The Act of 2017 was promulgated and notified in the official gazette on 30-05-2017 and through section 509 ibid the Ordinance of 1984 was repealed, except for those provisions which are mentioned therein. Section 2(23) defines the expression 'Court' as meaning a Company Bench of a High Court having jurisdiction under the Act of 2017. Section 5 describes the jurisdiction of the said Court and the creation of Benches. Sub section (1) provides that the Court having jurisdiction under the Act of 2017 is the High Court, having jurisdiction in the place at which the registered office of the company is situated. Sub section (2) of section 5 starts with a non-obstante clause and provides that notwithstanding anything contained in any other law, no civil Court as provided in the Code of Civil Procedure, 1908 or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under the Act of 2017. Section 6 provides for the procedure of the Court vested with jurisdiction under section 5. Sections 74 to section 80 describe the mechanism for transfer of shares and other securities. Section 75 expressly provides that the Board of a company shall not refuse to transfer any shares or securities unless the transfer deed is for any reason defective or invalid. If a company refuses to register the transfer of any share, then in such an eventuality section 77 prescribes that notice shall be sent to the transferee indicating the reason(s) for doing so. Moreover, failure to give notice of refusal and its effects have been dealt with in the proviso. Section 80 provides for

a right of appeal, inter alia, against refusal of transfer of shares under sections 75 to 79. Sub section (3) of section 126 empowers the Court vested with jurisdiction under section 5 to decide any question relating to the title of any person who is party to an application filed under sub section (3), whether his or her name is entered in or omitted from the register and, generally, to decide any question which is necessary or expedient for the rectification of the register.

10. A combined reading of the provisions of the Act of 2017 unambiguously manifests the legislative intent. The legislature has intended that all matters relating to title or transfer of shares of a juridical person incorporated under the Act of 2017 shall be dealt with by the Court vested with jurisdiction under section 5 to entertain or proceed to determine under the Act of 2017.

11. In order to examine the scope of the ouster clause contained in sub section (2) of section 5 of the Act of 2017 it would be advantageous to examine the principles and law enunciated by the superior Courts in the context of interpreting 'ouster clause'.

12. The earliest judgment wherein the principles of an ouster clause were considered is titled "*Yousaf Ali versus Muhammad Aslam Zia and 02 others*" [PLD 1958 S.C. 104] wherein it has been observed as follows.-

"Where the Legislature clothes an order with finality, it always assumes that the order which it declares to be final is within the powers of the authority making it, and no party can plead as final an order made in excess of the powers of the authority making it, in the eye of the law such order being void and non-existent."

13. In the case titled *"Zafar-ul-Ahsan versus The Republic of Pakistan through Cabinet Secretary, Government of Pakistan"* [PLD 1960 Supreme Court 113], the Hon'ble Chief Justice and four Hon'ble Judges of the august Supreme Court laid down the conditions to be satisfied for a ouster clause to operate and the relevant portion is as follows.-

"If a statute provides that an order made by an authority acting under it shall not be called in question in any Court, all that is necessary to oust the jurisdiction of the Courts is that the authority should have been constituted as required by the statute, the person proceeded against should be subject to the jurisdiction of the authority, the ground on which action is taken should be within the grounds stated by the statute, and the order made should be such as could have been made under the statute. These conditions being satisfied, the ouster is complete even though in following the statutory procedure some omission or irregularity might have been committed by the authority. If an appellate authority is provided by the statute the omissions or irregularity alleged will be a matter for that authority, and not, as rightly observed by the High Court, for a Court of law. Of

course where the proceedings are taken malafide and the statute is used merely as a cloak to cover an act which infact is not taken though it purports to have been taken under the statute, the order will not, in accordance with a long line of decisions in England and in this sub-continent, be treated as an order under the statute."

14. The august Supreme Court in the case titled "*Keramat Ali and another versus Muhammad Yunus Haji and others*" [PLD 1963 S.C. 191] has quoted with approval the principles enunciated by the Judicial Committee of the Privy Council in the case of the "*Collector of South Arcot v. Mask and Company* (1) 67 I A 222" and the same are as follows.-

"The exclusion of the jurisdiction of Civil Courts must either be explicitly expressed or clearly implied and is not to be readily inferred. Even if jurisdiction be so excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure."

15. The august Supreme Court in the case of "*Muhammad Ismail and others versus The State*" [PLD 1969 S.C. 241], has considered and enunciated the principles of interpretation of statutes in the context when a legislation has used language having the effect of taking away the jurisdiction of the Courts and in this regard the

apex Court referred to the treatises of Maxwell and Craies, the relevant portion whereof is as follows;-

"It is no doubt true that in constructing a statute the Courts are normally reluctant to attribute to the Legislature an intention of introducing a radical or sudden change of policy unless they are compelled to do so by the express and unequivocal manifestation of the intention of the Legislature, but at the same time it has to be pointed out that there is always a strong presumption that the Legislature does not make mistakes. 'If blunders are found in legislation, they must be corrected by the Legislature, and it is not the foundation of the Court to repair them.' (Vide Halsbury's Laws of England, 3rd Edition, Volume 36 page 390). 'As a general rule a Court of law is not authorized to supply a cassus omissus, or to alter the language of a statute for the purpose of supplying a meaning, if the language used in the statute is incapable of one, even though they may be of opinion that a mistake has been made in drawing the Act' (Vide Caries on Statute Law, 6th Edition, page 520)."

"The purpose of construction or interpretation of a statutory provision is no doubt to ascertain the true intention of the Legislature, yet that intention has, of necessity, to be gathered from the words used by the Legislature itself. If those words are so clear and unmistakable that

they cannot be given any meaning other than that which they carry in their ordinary grammatical sense, then the Courts are not concerned with the consequences of the interpretation however drastic or inconvenient the result, for, the function of the Court is interpretation, not legislation."

16. The judgment in the case of "*Federation of Pakistan and another versus Malik Ghulam Mustafa Khar*" [PLD 1989 S.C. 26], was rendered by the Full Court of the august Supreme Court which included the Hon'ble Chief Justice and nine Hon'ble Judges. The august Supreme Court reaffirmed the principles and law laid down in an earlier judgment titled "*The State versus Zia ur Rehman and others*" [PLD 1973 S.C. 49]. The relevant portion as reproduced by the august Supreme Court is as follows;-

"There is a presumption against the ouster of jurisdiction of the Superior Courts and any law which has the effect of denying access to them has to be narrowly construed for the reason that these are the forum created by the people for obtaining relief from oppression and redress for the infringement of their rights. But then where the ouster clause is clear and unequivocal, admitting of no other interpretation, the Courts unhesitatedly give effect of it."

17. The august Supreme Court, after examining the judgments rendered earlier, held as follows.-

"These decisions do indicate that where the jurisdiction of the Courts to judicially review any executive act has been competently taken away, then the Court will not be able to assert its jurisdiction to do so under any circumstances but this must, in my opinion, depend upon the nature of the jurisdiction sought to be ousted and the nature and extent of the ouster itself. If the language used is such that it leaves no room for doubt as to the intention of the Legislature to oust the jurisdiction of the Courts in all circumstances, then that will have to be given effect and even acts performed without jurisdiction or malafides will not be open to judicial scrutiny. But the Courts having the right to interpret the law will in each given case decide the precise nature of the ouster clause and the extent to which the jurisdiction of the Courts has been ousted, keeping in mind the principle consistently affirmed by all Courts that provisions seeking to oust the jurisdiction of superior Courts are to be construed strictly with a pronounced leaning against ouster."

18. In the case of *"Allied Bank of Pakistan Ltd. versus Khalid Farooq"* [1991 SCMR 599], the august Supreme Court with reference to the ouster of jurisdiction has observed and held as follows;-

"With regard to the question of ouster of power, it is a recognized principle of law that a claim in respect of the ouster of power of the High

Court in respect of any matter or subject available to it under the Codes of Civil or Criminal Procedure cannot be lightly accepted, unless there is a clear, definite and positive provision ousting the jurisdiction. Express words or clear intendment or necessary implication are required to take away the jurisdiction of a High Court or any superior Court. In Zahoor Elahi v. The State (PLD 1977 S.C. 273), this Court has held that it is a well settled principle relating to the construction of statutes that the exclusion of jurisdiction of superior Courts is not to be readily inferred, that there is a strong leaning against any such exclusion, that this rule is deep seated and if it is to be overturned, it must ordinarily be done by a clear, definite or positive provision, not left to mere implication."

19. It was observed and held by the august Supreme Court in the case "Abbasia Cooperative Bank (now Punjab Provincial Cooperative Bank Ltd.) through Manager and another versus Hakeem Hafiz Muhammad Ghaus and 05 others" [PLD 1997 S.C. 3] as follows.-

"It is a well settled principle of interpretation that the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to. It is also well settled law that where the jurisdiction of the Civil Court to examine the validity of an action or

an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not malafide; (c) that the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or malafide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court."

20. The principles of interpretation relating to the ouster of jurisdiction of a Court under a statute was yet again affirmed by the august Supreme Court in the case titled "*Evacuee Trust Property Board and others versus Ahmed and others*" [2004 SCMR 440], the relevant portion is as follows;-

"It is now well settled that ouster of jurisdiction under the statute has to be interpreted

strictly and it can only operate, if it is shown and proved on the record that certain proceedings are without jurisdiction or coram non judice or the action was tainted with malafide.”

21. In the judgment titled *“Munir Hussain Bhatti, Advocate and others versus Federation of Pakistan and another”* [PLD 2011 S.C. 407], the august Supreme Court interpreted Article 175-A of the Constitution. After examining the precedent law and the various provisions of the Constitution the apex Court observed.-

“There is a vast body of precedent in our legal corpus which has consistently held that the Court’s jurisdiction may only be ousted through express words in a legal text. This principle of law is by now well settled. Even Mr. Agha did not give any valid reason to question this legal principle or to show that it does not apply to the circumstances of this case. On the other hand, any number of cases can be cited in support of the argument advanced by learned counsel for the petitioners that while interpreting a legal text, ouster of jurisdiction should not be inferred.”

22. In the case of *“Pir Sabir Shah versus Federation of Pakistan and others”* [PLD 1994 S.C. 738], the august Supreme Court, in the context of the constitutional provisions whereby the jurisdiction of the Courts is ousted expressly and by using clear language, held and observed that even where such a protection has

been given the superior Courts still have the jurisdiction to interfere with three categories of cases, namely, without jurisdiction, coram-non-judice and malafide. Reference may also be made to judgment in the case of PLD 2006 S.C. 1442.

23. It would also be relevant to refer to the Halsbury's Laws of England, Fourth Edition, in the context of ouster of jurisdiction by statute and the same is as follows.-

"The subject's right of access to the courts may be taken away or restricted by statute, but the language of any such statute will be jealously watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. Moreover, a statutory provision ousting the jurisdiction of the courts must now be interpreted, as far as possible, so as to be compatible with the right to a fair and public hearing under the European Convention on Human Rights as incorporated into domestic law."

24. In a judgment delivered by the House of Lords titled "*Anisminic, Ltd. v. The Foreign Compensation Commission and another*" [1969] 1 All E.R. 2008], Lord Reid, while referring to the principles relating to provisions ousting the jurisdiction of the Courts observed.-

"It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly—meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity."

25. In a judgment rendered by the Court of Appeal in the case "*Re Gilmore's Application*" [1957] 1 All E.R. 796], Denning L.J., in the context of a statutory provision which provided that any decision or claim or question shall be final has observed as follows;-

"It does arise here, and on looking again into the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not enough. That only

means 'without appeal'. It does not mean 'without recourse to certiorari'. It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a statute made 'final', certiorari can still issue for excess of jurisdiction or for error of law on the face of the record."

26. The above principles and law regarding construing statutory provisions couched in language ousting the jurisdiction of the Courts may be summarized as follows.-

- (i) The legislature is competent to oust or exclude the jurisdiction of courts.
- (ii) There is a presumption against the ouster of jurisdiction. Any law or statutory provision which denies access to the courts is to be construed very strictly and narrowly.
- (iii) Ouster or exclusion of jurisdiction must be expressly and clearly implied and not readily inferred. The language used by the legislature ought to show express and unequivocal manifestation of the legislative intent to exclude the jurisdiction of the courts.
- (iv) If the language is so clear and unmistakable that it leaves no room for doubt as to the

intention of the legislature in ousting jurisdiction in all circumstances then that will be given effect to and even cases of malafide and without jurisdiction would not be open to judicial review and the courts would not be concerned with the consequences.

- (v) Ordinarily, unless the intention of the legislature is so clear that no other meaning can be given to the language used, the jurisdiction of the courts will not be ousted in three categories of decisions/orders i.e. a) without jurisdiction, b) coram non judice and c) tainted with malafide.
- (vi) Ordinarily, when the legislature declares an order or decision to be final, it has reference to such orders/decisions which is within the powers of the authority making it, the authority should have been constituted in accordance with the statute, the person proceeded against should be subject to jurisdiction, the order passed or action taken should be such as could have been made under a statute and if these conditions are fulfilled then an omission or irregularity

committed in following the statutory procedure will not be a sufficient ground to avoid giving effect to the exclusion of jurisdiction.

27. In view of the above principles and law, it is held that the jurisdiction of a civil court has been expressly ousted under sub section (2) of section 5 of the Act of 2017 to entertain any suit or proceedings in respect of any matter which the Court is empowered to determine by or under *ibid*. Moreover, the legislature has prescribed the mechanism for the transfer of shares and the consequences of refusal by the company. A statutory right of appeal has also been provided. The Respondent had filed a suit and notwithstanding the wordings of the prayer sought therein, the latter was in fact seeking transfer of shares on the basis of the settlement deed. The mechanism in this regard has been provided under the Act of 2017 which was bypassed by instituting the suit which was barred under sub section 2 of section 5 *ibid*. The suit filed by the Respondent was definitely barred and, therefore, proceedings therein should have come to an end by accepting the application under Order VII of the CPC. The learned counsel has argued that the impugned order, to the extent of dismissal of the application filed under Order VII rule 11 of the CPC, cannot be considered. This Court is empowered to take cognizance on its own motion under section 115 of the CPC and, therefore, exercising powers there under, the impugned order to the

extent of dismissal of the application filed under Order VII rule 11 of the CPC is set aside and it is thus declared that the suit was barred under sub section (2) of section 5 of the Act of 2017. The application under Order XXXIX rule 1 and 2 of the CPC was not competent and, therefore, could not have been allowed. Consequently the instant appeal is allowed and the impugned order is set aside.

(CHIEF JUSTICE)

Approved for reporting.

Luqman Khan/*