JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.28 of 2020
Namoos Zaheer
Versus
Azfar Hasnain and another

Date of Hearing:	07.09.2022, 08.09.2022, 15.09.2022 and 30.03.2023.
Appellant by:	M/s Hamza Siddiqui and Areeba Altaf, Advocates.
Respondents by:	Umer Ijaz Gillani, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal the appellant, Namoos Zaheer, impugns the judgment and decree dated 14.01.2020 passed by the Court of the learned Civil Judge, Islamabad, decreeing the suit for recovery of Great Britain Pounds (**"£"**) 31,415/- instituted under Section 13 of the Code of Civil Procedure, 1908 (**"C.P.C."**) by the respondents, Azfar Husnain and his wife Nasrine Husnain, for enforcement of the judgment dated 28.10.2015 (**"the Foreign Judgment"**) passed by the County Court at Central London, Royal Courts of Justice, United Kingdom.

2. The facts essential for the disposal of the instant appeal are set out in sufficient detail in an earlier order passed by this Court in F.A.O. No.06/2016 titled, "Ms. Namoos Zaheer Vs. Mr. Azfar Hussain, etc." reported as 2016 CLC 1425, but for the purposes of the instant appeal, it is essential to restate certain facts.

3. The respondents are owners of Flat No.19, Nottingham Terrace, London, NW1 4QB, United Kingdom (**"the Flat"**), which was occupied by the appellant for a period of six years as a tenant. On 28.10.2015, the respondents instituted an action (Claim No.A02YP983) against the appellant before the County Court at London for declaration and recovery of unpaid rent and damage to the Flat. The appellant contested the said action by not just filing her detailed defence but also a counter-claim. The appellant had vacated the Flat on 30.11.2013 and claimed that the rent payable to the landlords had to be offset against the improvements carried out by her on the Flat.

4. The appellant's defence and counter-claim show that she did not object to the jurisdiction of the County Court at London to adjudicate on the respondents' claim. The appellant contested the claim on merits and also pursued her counter-claim. The proceedings before the County Court at London culminated in the Foreign Judgment whereby a declaration was given that the arrears of rent owed by the appellant to the respondents amounted to £28,175/-. It was also declared that the appellant was entitled to offset the amount of her deposit, which was £1,625/- from the arrears of rent. The net result was that the respondents were given an order in the sum of £26,550/- plus interest at the rate of 2% on the arrears in the total sum of £2,210.56 up to 16.10.2015 and continuing thereafter at the judgment debt rate. This shows that the appellant's counter-claim was allowed to the extent of £1,625/-. There is nothing on the record to show that the appellant challenged the Foreign Judgment before a higher forum in the United Kingdom.

5. On 17.12.2015, a suit for declaration and permanent injunction was instituted by the appellant against the respondents before the Court of the learned Civil Judge, Islamabad. The suit was in the nature of an anti-suit injunction seeking to prevent the respondents from presenting the Foreign Judgment before any Court in Pakistan or any reciprocating territory for enforcing the said order. The appellant had also sought a declaration to the effect that the Foreign Judgment was void, illegal, against the rules of natural justice, not based on merits, a product of fraud and misrepresentation, and ineffective upon her rights. For purposes of clarity, the prayer clause of this suit is reproduced herein below:-

> ***"WHEREFORE, it is most respectfully prayed that the following decrees may please be passed in favour of the Plaintiff and against the Defendants:***
>
> > ***1.Declaration to the effect that the ex-parte Order dated 28.10.2015, passed by the County Court London, United Kingdom, is against the Rules of Natural Justice; not based on merits; is a product of fraud and mis-representation; and, illegal, void and ineffective upon the rights of the plaintiff.***
> >
> > ***2.Permanent Injunction restraining the Defendants from presenting the ex-parte Order dated 28.10.2015, for execution before any court in Pakistan or the Reciprocal Territory and further utilizing the said Order for instituting***

any further legal proceedings or harassing the Plaintiff based on the said order in any manner whatsoever.
3.Costs."

6. Vide order dated 17.12.2015, the learned Civil Court returned the plaint in the appellant's suit. The operative part of the said order is reproduced herein below:-

"Perusal of file shows that neither defendants reside nor cause of action accrued in Islamabad, therefore, the plaint is hereby returned to plaintiff for its presentation before a competent forum. Office/Ahlmad is directed to return the plaint in original along-with its annexure to the plaintiff as per procedure. He is further directed to retain copy of the plaint along-with annexure and this order and consigned the same to record room after its due completion."

7. Thereafter, the appellant instituted another suit before the Court of the learned Civil Judge, Islamabad for recovery of £26,835/- allegedly spent by her on carrying out refurbishments and improvements in the Flat rented by her from the respondents. It may be mentioned that in the counter-claim filed by the appellant against the respondents before the County Court at London, the same amount had been claimed by the appellant against the respondents. Before the Civil Court at Islamabad, the appellant had also sought recovery of Rs.20 million as damages for mental agony, torture and stress suffered by her. For purposes of clarity, the prayer clause of the said suit is reproduced herein below:-

"WHEREFORE, it is most respectfully prayed that a decree for recovery of amount to the tune of £26,835 (Great Britain Pounds, equivalent to Pakistani Rupees at the rate prevalent at the time of passing of the Decree) may please be awarded in favour of the plaintiff against the defendants, along with interest;
A money decree to the tune of £36,000 (Great Britain Pounds convertible into Pakistani Rupees at the rate prevalent at the time of passing of the Decree) as reasonable compensation/remuneration for the services rendered to the defendants over the six years of her occupancy and management of the flat by the plaintiff; and,
Damages to the tune of Rs.20 Million for mental agony, torture and stress suffered by the plaintiff at the hands of the defendants over the past two years may please be awarded in favour of the plaintiff.
Costs may also be awarded."

8. Vide order dated 18.12.2015, the learned Civil Court returned the plaint in the suit for recovery of damages instituted by the appellant. The said order is reproduced herein below:-

"Present: learned counsel for plaintiff

> ***At the very outset it appears that neither the defendants are resident of Islamabad nor the cause of action accrued in Islamabad, therefore, the plaint is hereby returned to plaintiff for its presentation before a competent forum. Office/Ahlmad is directed to return the plaint in original along-with its annexure to the plaintiff as per procedure. He is further directed to retain copy of the plaint along-with annexure and this order and consigned the same to record room after its due completion."***

9. The said orders dated 17.12.2015 and 18.12.2015 were assailed by the appellant before this Court in two appeals numbered as F.A.O.Nos.6/2016 and 7/2016, respectively. Vide the aforementioned order reported as 2016 CLC 1425 (*supra*), this Court dismissed both the appeals in *limine*. This Court's order was assailed by the appellant before the Hon'ble Supreme Court in civil petition No.872/2016. Vide order dated 08.04.2016, the Hon'ble Supreme Court dismissed the said petition with the remarks that the observations made by the High Court on the merits of the case shall not cause any prejudice to the case of the appellant on merits.

10. At the time when the appellant has filed the suits before the learned Civil Court at Islamabad, the respondents had not filed a suit under Section 13 C.P.C. for the enforcement of the Foreign Judgment.

11. Three days before the said order was passed by the Hon'ble Supreme Court, the respondents had filed a suit under Section 13 C.P.C. before the Court of the learned Civil Judge, Islamabad for the enforcement of the Foreign Judgment. The respondents had sought a decree for the recovery of £31,415.56 in addition to legal costs of £29,429/- with interest at the rate of 10.5% and continuing judgment debt interest at the prevailing bank rate from the date of the institution of the suit till the realization of the decretal amount. The said suit was contested by the appellant by filing a written statement. Vide order dated 12.06.2017, the learned Civil Court framed the following issues:-

> ***"1. Whether the plaintiff is entitled to decree for recovery of sum £31,415.56 along with the cost of £29,429.00/- with interest at the rate of 10.5% and continuing judgment debt interest at the prevailing bank rate in Pakistan from the institution of this suit till realization of the entire amount? OPP***
> ***2. Whether the plaintiff has got cause of action to bring the suit? OPD***
> ***3. Whether the suit in hand is not maintainable in its present form? OPD***
> ***4. Whether the foreign judgment relied upon by the plaintiff does not satisfy the test laid down U/s 13 of CPC? OPD***
> ***5. Whether the relief claimed by the plaintiff is barred by law? OPD***
> ***6. Relief."***

12. Respondent No.1 appeared as PW.1 and produced his affidavit as Exh.P/1 and a copy of the Foreign Judgment as Mark-PA. The certified

copy of the said judgment was produced by the respondents' counsel on 05.09.2018 as Exh.P/2. The appellant gave evidence as DW.1 and also submitted her affidavit-in-evidence as Exh.D/9. Besides that, the appellant also produced email correspondence with the respondents as Exh.D/1 to D/8 and Exh.D/10 to D/14. The trial culminated in the judgment and decree dated 14.01.2020 whereby the said suit was decreed to the extent of recovery of £31,415/-. The said judgment and decree has been assailed by the appellant in the instant appeal.

13. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that respondent No.1's affidavit-in-evidence was the only document that was exhibited whereas the rest of the documents, including a copy of the Foreign Judgment produced by him during evidence were photocopies and were therefore not formally exhibited but simply 'marked'; that along with the suit, the respondents had not filed the list of documents on which they proposed to rely under Order XIII C.P.C.; that the respondents also did not show compliance with the requirements of Order XVI C.P.C. by filing a list of witnesses along with their suit; that the respondents closed their evidence on 14.05.2018 and thereafter on 05.09.2018 a certified copy of the Foreign Judgment was produced by the respondents' counsel as Exh.P/2; that after the respondents' evidence had been closed, a certified copy of the Foreign Judgment could not have been produced; that even the certified copy of the Foreign Judgment produced by the respondents' counsel does not fulfill the requirements of Articles 89 and 96 of the *Qanun-e-Shahadat* Order, 1984 ("the 1984 Order"**); that the Foreign Judgment produced by the respondents' counsel had been attested by the respondents' counsel in the United Kingdom; that the respondents should have obtained a certified copy of the Foreign Judgment in accordance with the laws of the United Kingdom; that the Foreign Judgment was required to be attested by the Pakistan High Commission in the United Kingdom; that the appellant had filed an application to de-exhibit the Foreign Judgment to which the respondents did not file any reply; that the application for de-exhibiting the Foreign Judgment was disposed of vide order dated 04.12.2018; that the judgment dated 14.01.2020 passed by the learned Civil Court does not deal with the question of whether the respondents' counsel could have exhibited the Foreign Judgment after the closure of the respondents' evidence; that there is a discrepancy between the title of the suit and the prayer sought by the respondents;**

that the respondents have not sought the relief for the enforcement of the Foreign Judgment; that if the suit instituted by the respondents was for the enforcement of the Foreign Judgment, it was obligatory on the respondents to have filed a certified copy of such judgment; that there was nothing on the record that could be read as evidence for the purposes of decreeing the respondents' suit; that the stance taken by the appellant in its earlier suits could not operate as waiver or estoppel; that the reason why the appellant filed a suit against the respondents was to prevent the appellants from using the Foreign Judgment against her; that the appellant has also filed a suit for recovery of damages against the respondents before the Hon'ble High Court of Sindh; and that the Foreign Judgment was passed in the appellant's absence. Learned counsel for the appellant prayed for the instant appeal to be allowed and for the impugned judgment and decree to be set-aside.

14. On the other hand, learned counsel for the respondents submitted that the respondents are of a fairly advanced age and the appellant has embroiled them in wasteful litigation over the past eight years before different *fora;* that the appellant, in an effort to avoid her obligation to the respondents under the Foreign Judgment, is taking frivolous objections to the suit instituted by the respondents; that the respondents are seeking the enforcement of the very same Foreign Judgment which was filed by the appellant along with her two suits instituted before the learned Civil Court at Islamabad and one suit instituted before the Hon'ble High Court of Sindh at Karachi against the respondents; that it is not the appellant's case that the Foreign Judgment which the respondents seek to enforce is not the one that had been rendered by the County Court at London on 28.10.2015; that the appellant had also filed copies of the Foreign Judgment before this Court along with her appeals (i.e., F.A.O.Nos.6/2016 and 7/2016) as well as before the Hon'ble Supreme Court along with civil petition No.872/2016; that the appellant had also filed a copy of the Foreign Judgment along with her written statement before the learned Civil Court; that the respondents did not feel the need to have the Foreign Judgment attested by the Pakistan High Commission in the United Kingdom since its existence and the contents had been admitted by the appellant in her written statement; that the existence of the Foreign Judgment is not a fact in issue; that under Article 113 of the 1984 Order, facts that are admitted need not be proved; that the appellant is estopped in terms of Article 114 of the 1984 Order from denying the existence or

contents of the Foreign Judgment; that the appellant did not lead evidence on any of the six grounds enumerated in Section 13 C.P.C. which would make the Foreign Judgment non-conclusive and unenforceable in Pakistan; that the suit instituted by the respondents was for recovery of money on the basis of the Foreign Judgment; that respondent No.1 had produced as Mark-PA a photocopy of the Foreign Judgment that bears the stamp of the County Court at London; that when the respondents' counsel produced the Foreign Judgment attested by the Solicitor in the United Kingdom, the appellant did not take an objection to the existence or the contents of the Foreign Judgment; and that the only objection taken by the respondents before the learned Civil Court was that the attested Foreign Judgment could not have been produced at a stage after the respondents had closed their evidence. Learned counsel for the respondents prayed for the appeal to be dismissed.

15. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 3 to 11 above, and need not be recapitulated.

16. The primary objection taken by the appellant to the respondents' suit was that since the said suit was entirely based on the Foreign Judgment, it was obligatory on the respondents to have proved the same in accordance with Article 89(5) of the 1984 Order by having produced the original judgment or its copy duly certified by its legal keeper with a certificate under the seal of a notary public or of a Pakistan Consul or diplomatic agent that the copy is duly certified by the officer having the legal custody of the original. Learned counsel for the appellant also relied on Article 96(1) of the 1984 Order which provides that the Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Pakistan is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Federal Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

17. The mode adopted by the respondents for proving the Foreign Judgment on the basis of which the respondents have filed the suit clearly does not satisfy the requirements of Article 89(5) or Article 96(1) of the 1984 Order. We say so because the respondents along with their suit have

filed a photocopy of the Foreign Judgment showing that it has been attested by the County Court in London and bears the stamp of the Foreign and Commonwealth Office in London. The said Foreign Judgment is also accompanied by a photocopy of a notarial certificate issued by Mr. John Edward Gerald Anthony Toth, an authorized notary public in the United Kingdom. As mentioned above, these are mere photocopies.

18. Respondent No.1 along with his affidavit-in-evidence produced Mark-PA which again is a photocopy of the Foreign Judgment. On 31.05.2018, respondent No.1's cross-examination was completed and the learned Civil Court recorded the statement of the learned counsel for the respondents regarding the closure of their oral evidence. On 05.09.2018, the learned counsel for the respondents produced a certified copy of the Foreign Judgment which was taken on record as Exh.P/2. Before the learned Civil Court, the learned counsel for the appellant had taken an objection to the effect that the said document could not have been produced after the closure of the respondents' evidence.

19. Rule 74.12(2) of the Civil Procedure Rules, 1998 of the United Kingdom provides that a judgment creditor who wishes to enforce in a foreign country a judgment obtained in the High Court or in the County Court in England must apply for a certified copy of the judgment. Exh.P/2, however, is certified by Vibuhti Parmar of Ashfords LLP, who was the respondents' Solicitor in the United Kingdom. Exh.P/2 is accompanied by an Apostille issued on 18.06.2018 bearing the seal of the Foreign and Commonwealth Office, United Kingdom. The Apostille was issued under the Convention Abolishing the Requirements of Legalisation for Foreign Documents-1961 (**"the 1961 Convention"**), which the Government of Pakistan has acceded to. The effect of an Apostille in terms of the 1961 Convention is to certify the authenticity of the signature, the capacity in which the person signing the document has acted, and identity of the seal or stamp which the document bears. The Apostille does not authenticate the content of the underlying public document.

20. Had the respondents produced the certified copy of the Foreign Judgment and the original notarization, with the same having been consularized by the Pakistan High Commission in the United Kingdom, the appellant would, in all probability, not be left with any basis to question the manner of the filing of the said judgment before a Court in Pakistan. The production of the photocopies of the Foreign Judgment accompanied by a photocopy of the certificate of a notary public does not satisfy the

requirement for the proof of a Foreign Judgment in terms of Article 89(5) of the 1984 Order and the presumption in terms of Article 96(1) of the said Order cannot be attached to such a document. Since neither Mark-PA nor Exh.P/2 have been certified by any representative of the Federal Government of Pakistan in the United Kingdom to have been certified in a manner commonly in use in that country for the certification of copies or judicial records, a presumption as to its genuineness and authenticity in terms of Article 96(1) will not apply. Furthermore, as Mark-PA and Exh.P/2 are not copies of the Foreign Judgment certified by the legal keeper thereof and are not accompanied by a certificate under the seal of a notary public, or by a certificate by the Pakistan Consul or diplomatic agent in the United Kingdom that the copy of the Foreign Judgment is duly certified by the officer having the legal custody of the original, the standard for proving public documents in terms of Article 89(5) of the 1984 Order has not been satisfied.

21. Since the Foreign Judgment has not been proved in accordance with the requirements of Article 89(5) of the 1984 Order, does this mean that this Court is to relegate the parties to the position that existed prior to the institution of the respondents' suit and to require them to re-apply for an attested copy of the Foreign Judgment from the County Court at London and once the same is obtained to have it certified by a notary public as well as a Pakistan Consul or diplomatic agent in the United Kingdom before it could be brought to Pakistan and made the basis for a suit under Section 13 C.P.C? Given the peculiar facts and circumstances of the case at hand, we would say no. This is because at no material stage during the hearing did the appellant take the position that the copy of the Foreign Judgment filed by the respondents along with their suit or produced in evidence by respondent No.1 as Mark-PA or by his counsel as Exh.P/2 is not indeed the judgment that was rendered by the County Court in London in action (Claim No.A02YP983) instituted by the respondent against the appellant. It is this very judgment which was not just filed by the appellant along with her two suits (reference to which has been made in paragraphs 5 to 8 above) before the learned Civil Court at Islamabad but also before this Court in F.A.O.Nos.6/2016 and 7/2016 as well as before the Hon'ble Supreme Court in civil petition No.872/2016. In all these cases, the appellant did not dispute the genuineness or the authenticity of the Foreign Judgment but wanted to preempt the respondents from enforcing it in Pakistan and therefore filed a suit

seeking relief in the nature of an anti-suit injunction and also a declaration to the effect that the Foreign Judgment was void, illegal, against the rules of natural justice, not based on merits, a product of fraud and misrepresentation, and ineffective upon the rights of the appellant. Even during the hearing of the instant appeal, learned counsel for the appellant did not dispute the fact that the judgment produced as Mark-PA and Exh.P/2 was the very judgment that had been rendered by the County Court in London but insisted that it could not form the basis of a suit in Pakistan unless it was proved strictly in accordance with the requirements of Articles 89(5) and 96(1) of the 1984 Order.

22. Because the appellant had filed copies of the Foreign Judgment before different judicial *fora* in Pakistan, we are of the view that she is estopped from questioning its genuineness or authenticity. In other words, by filing copies of the Foreign Judgment before Courts in Pakistan, she has admitted its existence and contents. Therefore, the factum as to the existence and the contents of the Foreign Judgment stood admitted and did not have to be proved in accordance with Article 89(5) of the 1984 Order.

23. In paragraph 7 of the suit, it was pleaded *inter alia* that the trial conducted by the County Court in London resulted in the Foreign Judgment. A copy of the said judgment was annexed to the suit. The appellant, in paragraph 7 of the written statement, did not deny the existence of the Foreign Judgment but pleaded that the trial before the County Court at London had not been conducted in accordance with the requirements of natural justice and that the appellant was penalized for non-appearance. It may be mentioned that in paragraph 9 of the written statement, the appellant pleaded that an appeal had not been preferred against the Foreign Judgment. The appellant had also annexed a copy of the Foreign Judgement to her written statement. In the case of National Bank of Pakistan Vs. General Tractor and Machinery Co. Ltd (1996 CLC 79) the defendant, in its written statement, had admitted a certain document but in the process of admission and denial of documents refused to admit the contents of the document for “want of knowledge.” The Hon'ble High Court of Sindh held such refusal to be vexatious and inconsequential. Furthermore, it was held that there was no reason why the defendant should not be bound by the admission in its written statement and that, in view of such admission, the defendant was estopped from denying the contents of the document.

24. Since the appellant has admitted that a judgment had been given against her by the County Court in London and that that judgment was the one which was annexed to the respondents' suit and which had also been filed by her along with her two suits before the learned Civil Court at Islamabad as well as before this Court and the Hon'ble Supreme Court, we are of the view that she is estopped in terms of Article 114 of the 1984 Order from resisting its enforcement. In holding so reliance is placed on the following case law:-

(i) In the case of Moselle Ellias Vs. Ahmed Said (PLD 1959 (W.P.) Karachi 760), the appellant had filed a suit for recovery of dower at Karachi on the basis of a judgment of the Calcutta High Court whereby her suit for recovery of dower etc. against the respondent was decreed. The appellant's suit was primarily based on the judgment of the High Court of Calcutta. The Court at Karachi passed a decree in the appellant's favour. The appellate Court, however, allowed the respondent's appeal on the ground that the copy of the judgment of the Calcutta High Court was inadmissible and therefore could not be taken into consideration. The appellant filed a second appeal before the Hon'ble High Court of Sindh which allowed the said appeal. Perusal of the judgment in the second appeal shows that the first appellate Court had held the judgment of the Calcutta High Court to be inadmissible on the ground that the same did not bear any certificate contemplated under Section 86 of the Evidence Act, 1872 (which is in *pari materia* to Article 96 of the 1984 Order). It was also held that since there had been no authentication of the judgment by Pakistan's representative in India, the presumptive proof as to the said judgment was lacking. The appellant had produced a certified copy of the judgment of the Calcutta High Court because the original certified copy had been filed before the Hon'ble High Court of Sindh in connection with her claim for the custody of her minor children. The Hon'ble High Court of Sindh, after referring to the evidence recorded by the Trial Court, held that the judgment of the Calcutta High Court had rightly been admitted in evidence by the trial court. It referred to the appellant's testimony that her suit before the Calcutta High Court contained a claim for

dower and that the said claim had been decreed. It also referred to the admission made by the respondent as to the filing of the suit by his former wife before the Calcutta High Court and that the judgment had been passed in the presence of advocates for both parties. It was also mentioned that the judgment bears the seal of the Calcutta High Court. It was held *inter alia* that the respondent could have produced documentary evidence to disprove the fact that what was stated in the certified copy of the judgment produced by the appellant was not the genuine and accurate statement of what had been decreed by the Calcutta High Court. It was with these observations that the Hon'ble High Court of Sindh allowed the appeal and restored the decree passed by the Trial Court in favour of the appellant.

(ii) In the case of Farokh Homi Irani Vs. Nargis Farokh Irani (PLD 1963 Karachi 567), the petitioner (husband) and the respondent (wife) were married in Bombay on 25.07.1954. Thereafter, they came to Karachi and lived together as husband and wife. On 07.12.1955, the respondent left Karachi for Bombay never to return to Karachi. The petitioner claimed that he was entitled to a divorce decree under Section 32(g) of the Parsi Marriage and Divorce Act, 1936 as the respondent had deserted him. During his examination-in-chief, the petitioner admitted that the respondent, on 24.07.1956, had obtained a decree for judicial separation from the Bombay High Court. An objection was taken that the judgment of the Bombay High Court produced in another case between the same parties could not be taken into consideration as it was not duly certified under Section 86 of the Evidence Act, 1872 (which is in *pari materia* to Article 96 of the 1984 Order). This objection was spurned on the basis of an admission made by the petitioner as to a decree for judicial separation having been passed by the Bombay High Court. It was held as follows:-

> *"In the face of this admission the objection raised by the learned counsel is not fatal simply because the judgment in question was not authenticated in the manner stated under section 86 of the Evidence Act. This objection is therefore over-ruled."*

(iii) In the case of Bhatinda Chemicals Ltd. Vs. M.V. "X-PRESS NUPTSE" (AIR 2006 Bombay 311), the plaintiffs had filed a suit for the arrest of a vessel and for a decree for recovery of money against the defendants. During the recording of evidence, the defendants produced a judgment delivered by the Court of first instance at Dubai on 24.06.2000 in support of their plea that the Court in Dubai had attached the container being carried in the vessel which was sought to be arrested. Furthermore, the Court in Dubai had passed a decree sustaining the attachment order. No objection was taken when the said judgment was tendered in evidence. During the arguments, however, the plaintiffs objected that a foreign judgment could only be produced in the manner prescribed in Sections 74(1)(iii), 78(6) and 86 of the Evidence Act, 1872. This objection was turned down by the Bombay High Court in the following terms:-

> *"14. The submission is unfounded for two reasons. Firstly the documents were tendered in evidence. They were received and marked in evidence. There was no objection to the documents being received and marked in evidence. In view thereof, it was not necessary for the Defendants to prove the same. The provisions of Sections 74, 78 and 86 of the Indian Evidence Act would apply where foreign judgments and orders are disputed or objected to being received in evidence for any reason. It is not necessary for a party to prove a foreign judgment or order if there is no objection to the same being received and marked in evidence.*
> *15. Secondly, the facts necessary in support of Mr. Narichania's contention have been admitted by the Plaintiffs' witness in his cross-examination. The Plaintiffs' witness has admitted the fact of the said orders of the Dubai Courts in his cross-examination."*

25. In the case at hand, if the copy of the Foreign Judgment produced as Mark-PA and Exh.P/2 was not a genuine and accurate statement of what had been decided in favour of the respondents and against the appellant by the County Court in London, it was for the appellant to have made an assertion to this effect in her written statement or her evidence. This she did not do. She admits the existence of the Foreign Judgment but is resisting the suit based on the Foreign Judgment by asserting that it was passed in violation of the principles of natural justice and that it was *ex-parte.* It would have been a different matter if the position taken by the appellant was that the Foreign Judgment that had been annexed to the respondents' suit and produced as Mark-PA and Exh.P/2 was not the judgment that had been rendered by the County Court in London.

26. A "foreign judgment" has been defined in Section 2(6) C.P.C. to mean the judgment of a foreign Court. "Foreign Court" has been defined in Section 2(5) C.P.C. to mean a Court situated beyond the limits of Pakistan which has no authority in Pakistan and is not established or continued by the Federal Government. Section 13 C.P.C. makes a foreign judgment conclusive as to any matter thereby directly adjudicated upon between the same parties. If the foreign judgment falls under any of the clauses (a) to (f) of Section 13, it will cease to be conclusive as to any matter thereby adjudicated upon. These six clauses are set out herein below:-

> ***"(a) where it has not been pronounced by a Court of competent jurisdiction;***
> ***(b) where it has not been given on the merits of the case;***
> ***(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Pakistan in cases in which such law is applicable;***
> ***(d) where the proceedings in which the judgment was obtained are opposed to natural justice;***
> ***(e) where it has been obtained by fraud;***
> ***(f) where it sustains a claim founded on a breach of any law in force in Pakistan."***

27. Where a foreign judgment ceases to be conclusive it will then be open to a collateral attack on the grounds mentioned in the six clauses of Section 13. In other words, when a holder of a foreign judgment approaches the appropriate Court in Pakistan to which the provisions of C.P.C. apply, unless the defendant succeeds in establishing any one or some of the objections enumerated under Clauses (a) to (f) of Section 13, the judgment of the foreign court is declared to be conclusive as to any matter that is directly adjudicated between the same parties and a decree is required to be passed in terms of the said foreign judgment by the Pakistani Court. Thereafter, the decree can be executed in the manner provided in the C.P.C.

28. Perusal of the Foreign Judgment shows that the appellant was absent on the day that it was issued. A judgment pronounced by a foreign court in a personal action in absentum, the absent party having submitted himself to the jurisdiction and authority of such Court, would not be a nullity but enforceable with the judgment-debtor being entitled to raise all defences arising under Section 13. Unless the party against whom a foreign judgment is sought to be enforced voluntarily and effectively submitted to the jurisdiction of the foreign court and contested the claim, the judgment of the foreign court cannot be relied upon. But the question for consideration is whether the appellant by her own conduct submitted

to the jurisdiction of the English Court and had therefore precluded herself from objecting to it before the learned Civil Court at Islamabad where the respondents had filed a suit under Section 13 C.P.C. While the suit was pending in the English Court the appellant, in response to personal service, appeared and filed her defence and counter-claim. It is an admitted position that the appellant did not object to the jurisdiction of the English Court to adjudicate upon the respondents' claim against the appellant. The appellant knew or ought to have known that if she submitted to the jurisdiction of the English Court, the judgment passed in such proceedings would hold consequences for her. She did not stay away or object to the jurisdiction of the said Court and deemed it necessary not just to defend the claim against her but also to file a counter-claim against the respondents. The mere fact that she allowed the suit and her counter-claim to be heard and decreed against her would amount to her submitting to the jurisdiction of the English Court. In holding so reliance is placed on the following case law:-

(i) In the case of Munawar Ali Khan Vs. Marfani & Co. Ltd reported as PLD 2003 Karachi 382, the Hon'ble Division Bench of High Court of Sindh held as follows:-

> *"When a defendant appeared before a foreign Court only to protest against assumption of jurisdiction he cannot be assumed to have voluntarily submitted to such jurisdiction. Nevertheless, when he also takes up defences on merits a clear submission can be inferred. Similarly when he applies to have a default judgment set aside and appeals as to merits of the claim such appeal would normally amount to submission to jurisdiction. Nevertheless, if the appeal or application is merely premised upon a jurisdictional issue it would not be treated as submission."*
> **(Emphasis added)**

(ii) In the case of Shaligram Vs. Daulat Ram (AIR 1967 SC 739), it was held that a person who appears in obedience to the process of a foreign Court and applies for leave to defend the suit without objecting to the jurisdiction of the Court when he is not compelled by law to do so must be held to have voluntarily submitted to jurisdiction of such Court.

(iii) In the case of Narhari Shivram Shet Narvekar Vs. Pannalal Umediram (AIR 1977 SC 164), the defendant applied for leave to defend in the foreign Court and thereafter absented himself. The Indian Supreme Court held that the *ex-parte* decree passed thereafter against a person who appears in obedience to the process of a foreign Court and applies for leave to

defend the suit without objecting to the jurisdiction of the Court when he is not compelled by law to do so must be held to have voluntarily submitted to the jurisdiction of the Court. Accordingly, it was declared that the foreign decree does not suffer from the defect which a foreign *ex-parte* decree, without such submission, may suffer.

(iv) In the case of Sheo Tahal Ram Vs. Binaek Shukul (AIR 1931 Allahabad 689), it has been held at Paragraph 25 of the judgment, as follows:-

> ***"It is clear that even a judgment of a foreign Court will be considered to be binding if the defendant submitted to the jurisdiction of such Court. What amounts to a submission to the jurisdiction of a foreign Court is a question of some nicety in many cases. Where in answer to a summons issued by a foreign Court the defendant appears and contests the suit, without raising any question as to jurisdiction, there is no doubt that he submits to the jurisdiction of that Court."***

(v) In the case of Namoos Zaheer Vs. Mr. Azfar Hussain (2016 CLC 1425), this Court had held as follows:-

> ***"34. As regards the contention of the learned counsel for the appellant that the proceedings before the County Court at London were not before a court of competent jurisdiction, I am of the view that a person who institutes a suit or a counter-suit in a foreign Court and claims a decree in personam cannot after the judgment is pronounced against him, say that the Court had no jurisdiction which he invoked and which the Court exercised, for it is well recognized that a party who had submitted to the jurisdiction cannot afterwards question it. The appellant defended the action brought by the respondents against her before the County Court at London without making any objection to its jurisdiction. By doing so, the appellant took a chance of an order in her favour. It is now not right that she should take exception to jurisdiction when the order of the foreign court has gone against her, and assert that the learned civil court at Islamabad had jurisdiction over the matter which had been agitated by her in her counter-claim before the foreign court."***

29. In view of the above, the instant appeal fails and is therefore dismissed with costs throughout.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 04.04.2023.

(JUDGE) **(JUDGE)**

APPROVED FOR REPORTING

*Ahtesham**