

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.377/2020
M/s Trade Service Associations and others
Versus
Allied Bank Limited and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.02.2020	Khawaja Muhammad Farooq Mehta, Advocate for the petitioners.

Through the instant writ petition, the petitioners impugn order dated 18.03.2019 passed by the learned Judge Banking Court, Islamabad whereby the Court Clerk (Ahlmad) was directed to belatedly register respondents No.1 to 3's suit under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("the 2001 Ordinance") for the recovery of Rs.39,770,861.46 against the petitioners.

2. The facts essential for disposal of the case are that on 19.01.2015, respondents No.1 to 3 instituted a suit before the Banking Court, Rawalpindi against the petitioners *inter alia* for the recovery of Rs.39,770,861.46. Vide order dated 03.05.2017, the learned Judge Banking Court, Rawalpindi directed the plaint to be returned to respondents No.1 to 3 to be presented to the Banking Court at Islamabad under Order VII, Rule 10 C.P.C. due to lack of territorial jurisdiction.

3. On 19.06.2017, respondents No.1 to 3 presented the said plaint to the Reader of learned Judge Banking Court, Islamabad after which the proceedings continued without any order for registration of the suit. Subsequently, an objection was raised by the

petitioners/defendants regarding improper return of the plaint by the Banking Court, Rawalpindi as well as against improper filing of the suit before the learned Judge Banking Court, Islamabad. While deciding the said objection, the learned Judge Banking Court, vide order dated 18.03.2019 *inter alia* held that the non-registration of the suit filed by respondents No.1 to 3/plaintiff was curable and directed the Court Clerk (Ahlmad) to enter the said suit in the relevant register. The said order dated 18.03.2019 has been assailed by the petitioners in the instant petition.

4. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that there was no endorsement regarding return on the memo of the plaint; that after the return, the plaint was presented directly to the Reader of the Banking Court, Islamabad; that the Reader of the Court was not competent to receive the plaint and only presiding officer can receive the same; that respondents No.1 to 3's suit cannot be considered to have been properly instituted; that the time spent between return of the plaint from Rawalpindi (i.e. 03.05.2017) and order for registration of suit at Islamabad (i.e. 18.03.2019) could not have been regularized as the latter date amounts to fresh filing of the suit; that if 18.03.2019 (when the learned Judge Banking Court, Islamabad passed an order for the registration of respondents No.1 to 3's suit) is considered as the date of filing/registering the same, then almost nine years have elapsed until its institution as the promissory

note and other documents for finance facility were executed; that after the order for the return of the plaint, respondents No.1 to 3/plaintiffs were required to file the suit before the proper forum within a period of fifteen days; that on the expiry of three years till 18.03.2019, the suit is liable to be dismissed as time barred; and that the impugned order dated 18.03.2019 is against the law and procedure. Learned counsel prayed for the petition to be allowed and the impugned order to be set aside. In support of his submissions, learned counsel for the petitioners placed reliance on dicta laid down in the cases of Ali Naqi Vs. All Residents Of Kharpito Mouza Mayordo (2007 CLC 1257) and Khalida Begum Vs. Yasmeen (2000 CLC 1290).

5. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance.

6. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

7. The petitioners have appended a copy of the proceedings between 18.03.2019 to 05.11.2019 before the learned Judge Banking Court, which shows that the suit was adjourned ten times for arguments over an application for leave to defend filed by the petitioners. It was as late as 31.01.2020 when the petitioners/defendants chose to assail the order dated 18.03.2019 through the instant petition.

8. The said order dated 18.03.2019 is an interlocutory order, therefore a significant

question of maintainability emanates as Section 22(6) of the 2001 Ordinance expressly bars a right of appeal or revision against an interlocutory order passed by a Banking Court. The said statutory bar cannot be circumvented by challenging such an interlocutory order in the Constitutional jurisdiction of a High Court. A party aggrieved by such an interlocutory order has to wait until a Banking Court passes a final order and then to challenge it in an appeal. This is because an interlocutory order merges into the final verdict. The purpose behind barring an appeal or a revision against an interlocutory order of the Banking Court is to avoid delays in disposal of the cases by the Banking Court. Since the suit instituted by respondents No.1 to 3 is for recovery of Rs.39,770,861.46 etc., the final decree that may be passed by the learned Banking Court would be appealable under Section 22(1) of the 2001 Ordinance. Reference in this regard may be made to the following case law:-

- (i) In the case of Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165), it has been held as follows:-

"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

- (ii) In the case of Pakistan Fisheries Ltd. Vs. United Bank Limited (PLD 1993 SC 109), it was held as follows:-

“The object of enacting the Banking Companies (Recovery of Loans) Ordinance, 1979, is to provide speedy measures for recovery of outstanding loans of the Banking Companies as their recovery suits remained pending in the Civil Courts for years together. If the orders in the nature of interlocutory orders are brought under challenge before the High Court, the object for which the enactment was made would be frustrated. The appellate power conferred on the High Court is only to the extent of entertaining appeal against the final order and judgment of the special Court and that too subject to the condition precedent prescribed by section 12 that the appellant deposits in the High Court an amount equivalent to the decretal amount or with the leave of the Court furnishes security equal in value to such amount.”

- (iii) In the case Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab (1976 SCMR 450), it has been held as follows:-

“As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitled the petitioner to prosecute a writ petition despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law.”

- (iv) In the case of Messrs Umar Auto Store Vs. Judge, Banking Court (2014 CLD 1452), it has been held as follows:-

“14. If the constitutional petitions are allowed to be entertained against the interlocutory orders passed by the Banking Court, including an order granting or rejecting the application for grant of leave to defend, then the said course of action would itself negate the provisions of Banking Statutes which have been promulgated from time to time for

the speedy disposal of the cases relating to the Financial Institutions and for the recovery of public money; which would seriously defeat the clear legislative intent."

- (v) In the case of Bank of Punjab Vs. Messrs AMZ Ventures Limited (2013 CLD 2033), the Division Bench of the Hon'ble High Court of Sindh, held as follows:-

"21. ... Under the F.I.O., 2001 a provision of appeal is clearly provided under section 22 thereof but, in order to avoid unnecessary delays in disposal of cases under the said enactment interlocutory orders have been specifically excluded from the purview of the said section. Only judgments, decrees, sentences and final orders have been made the subject matter of this section. So it cannot be argued that no provision of appeal is provided under the F.I.O., 2001. ...

22. ...

23. As regards contention regarding conversion of appeal into constitutional petition is concerned, we have no doubt that this Court has wide powers to treat an appeal as petition under Article 199 and, likewise, a petition can be converted into appeal subject to limitation and jurisdiction. But this appeal cannot be converted into Constitution petition because the statute excluding a right of appeal from the interim order cannot be bypassed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

- (vi) In the case of Ms. Afshan Ahmed Vs. Habib Bank Limited (2002 CLD 137), it was held as follows:-

"It is a settled principle of law that when a statute does not provide an appeal against an interlocutory order then the same cannot be challenged by way of a

Constitutional Petition as allowing such an order to be impugned by way of a Constitutional Petition would amount to negating the provisions of the statute which does not provide for an appeal against an interlocutory order. According to the principles of interpretation of statute the Court would not act in a manner by which the object of a statute is defeated and the same is rendered nugatory.”

9. The exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, *malafide*, void or *coram non judice*. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the Banking Court. The impugned order is neither without jurisdiction, nor *malafide*, void or *coram non judice* so as to warrant interference in the Constitutional jurisdiction of this Court under Article 199 of the Constitution.

10. The order dated 18.03.2019, being purely interlocutory in nature, could not be subjected to challenge by filing a Constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 22(6) of the 2001 Ordinance. Therefore, I am not inclined to interfere in the said interlocutory order passed by the learned Judge, Banking Court.

11. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 18.03.2019 to be satisfied in the case at hand, the instant writ petition is dismissed as not maintainable. The petitioner will be at liberty

to challenge the said order dated 18.03.2019 in an appeal against the final order passed by the learned Judge, Banking Court, if the occasion arises for doing so. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE