

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

BEFORE: -

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.**

**Civil Appeal No. 39/2015 in
CPLA No. 30/2012.**

1. Safdar Enterprise Pvt. (Limited), Col Hassan Shopping Mall Gilgit through Javed Hussain and 04 others.

PETITIONERS.

VERSUS

1. The National Bank of Pakistan through Its President Head Office II Chandigar Road Karachi Pakistan and 05 others.

RESPONDENTS.

PRESENT:-

1. Mr. Shehzad Khan Advocate for the petitioner No.01.
2. Mr. Amjad Hussain Advocate for Petitioners Nos. 02 to 05.
3. Mr. Muhammad Hussain Shehzad Advocate on behalf Respondent No.01 to 03.
4. The Deputy Attorney General for Pakistan at GB on behalf of respondents Nos 04 & 05.
5. The Advocate General Gilgit-Baltistan for respondent No.06.

ORDER DATED: - 20-10-2015.

DATE OF ANNOUNCEMENT OF JUDGMENT:- 25.11.2015.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ.....Mr. Amjad

Hussain Advocate appearing on behalf of petitioner No. 02 to 05 contends that the impugned Judgment dated 27.04.2011, passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 38/2011 was a void order as per the Banking law and vide Notification No. F& A .11.3(1)/2001 read with the enabling articles of "***The Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009.*** While saying so he referred Article 69 & 71 of "***The Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009***", which is reproduced as under:-

"69. Gilgit-Baltistan Chief Court: - (1). There shall be a Gilgit-Baltistan Chief Court, hereinafter called the Chief Court, which shall consist of a Chief Judge and four other judges of whom 60% will be appointed from lawyers community and 40% from subordinate judiciary.

Provided that the Government of Pakistan may from time to time increase the number of judges.

71. Jurisdiction of Chief Court: - (1) The Chief Court shall have such jurisdiction as is conferred on it by this order or by any other law.

(2). Subject to this Order, the Chief Court may if it is satisfied that no other adequate remedy is provided by law.

The learned counsel for the petitioner further contended that neither the Chief Court, Gilgit-Baltistan is having the status of a High Court of a Province nor it has jurisdiction to entertain the cases pertaining to the financial recoveries and above referred articles are silent with regard to the equivalent of the Chief Court with a High Court of a Province. However, He also quoted the article 17 (b) of the Legal Frame Work Order 1994 (as amended 2007) according to said article the Chief Court had the equivalence to the High Court of any Province and had the jurisdiction to entertain the case of financial recoveries in terms of sub Section 1 & 2 of Section 5 of the Financial Institutions (Recovery of Finances) Ordinance 2001 read with Section 2 of the Financial Institutions (Recovery of Finances) Adaptation & Enforcement Order 2001. He further contended that according to "The Legal Frame Work Order 1994", the Ministry of Kashmir affairs & Northern Area was declared as part and parcel of the

Government of Northern Area now renamunclatured as Gilgit-Baltistan after promulgation of The Empowerment and Self Governance Order 2009, likewise, the Chairman/Minister for Kashmir & Northern Area Affairs was the Chief Executive of Gilgit-Baltistan. The Notification dated 17th June, 2001 regarding the Adaption & Enforcement of the Financial Institution (Recovery of Finance) Ordinance 2001 by the Ministry of Kashmir Affairs through its Deputy Secretary is also illegal and the same has not been issued by the Government of Gilgit-Baltistan and in terms of sub Section 1 & 2 of Section 5 of the Financial Institutions (Recovery of Finances) Ordinance 2001 read with Section 2 of the Financial Institutions (Recovery of Finances) Adaptation & Enforcement Order 2001. The Gazette Notification should have been issued by the Federal Government instead of the Provincial Government of Gilgit-Baltistan (Northern Area) He further contended that the Chief Court Gilgit-Baltistan has also no jurisdiction to entertain such cases as it has not been vested such powers through any special federal law i.e. CPC and Cr.PC. He further contended that impugned Banking Court lacks jurisdiction to entertain the suits pending against the petitioner as per Section 2(b)(ii) of Ordinance only a Judge or Judges of High Court can be declared as Banking Judge or Judges whereas article 69 of "**The Gilgit-Baltistan Empowerment and Self Governance Order 2009**" instead of providing High Court for Gilgit-Baltistan provides Gilgit-Baltistan Chief Court which has

no where in the Governance Order, 2009 been given equivalent status of High Court, therefore entrustments of power of Banking Court by the Hon'ble Chief Court to one of its Judge or Judges as Judge or Judges of Banking Court is Coram non-judice. That the declaration of Banking Court by Chief Court without any Notification in Official Gazette by Government of Gilgit-Baltistan, as Banking Court is also corrum non-judice therefore the same is lack of jurisdiction to entertain the suits pending against petitioners. That the honorable Judge of Chief Court lacks jurisdiction to entertain the suits against petitioners as Banking Court because of not being constituted under section 5 of the Financial Institution Ordinance 2001. That the recovery suits against the petitioners have been filed by the respondent No.3 without adopting the proper procedure laid down in Financial Institution ordinance 2001. That if the suits in its present form has been let to entertain by the impugned forum as Banking Court, the petitioner will be prejudiced from their inalienable right of intra-court appeal.

He also submits that unless the Government of Gilgit-Baltistan issues Gazette Notification with regard to the establishment of Banking Court first and thereafter nomination of the Banking Judge with the consultation of the Chief Judge of Chief Court, the impugned Judgment dated 27.04.2011, passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 38/2011 has no legality in the eyes of law and procedure. The

impugned Judgment is required to be set aside being not based on facts and law.

Mr. Shah Baz Khan Advocate appearing on behalf of the petitioner No-01 contended that the functioning and taking cognizance/jurisdiction of loan recovery cases by Banking Courts in Gilgit Baltistan are illegal, unlawful, without authority and jurisdiction thus ab-initio void, due to non existence of any Gazette Notification regarding establishment of Banking Courts through Official Gazette by the Government of Gilgit Baltistan being Competent Authority in Gilgit Baltistan in terms of sub Section 1 & 2 of Section 5 of the Financial Institutions (Recovery of Finances) Ordinance 2001 read with Section 2 of the Financial Institutions (Recovery of Finances) Adaptation & Enforcement Order 2001.

He further contended that the taking cognizance & jurisdiction of Bank Recovery case of the petitioners and all other cases of the amounts exceeding to 50 Million Rupees by the Honorable Judge Chief Court as Judge Banking Court is unlawful, illegal and without lawful authority as the Honorable Judge of Banking Court has not been appointed by the Government of Gilgit Baltistan being the competent authority in term of Sub-Section 4 of Section 5 of the Financial Resources (Recovery of Finances) ordinance 2011 read with section 2 of the Financial Institutions (Recovery of Finances) Adaptation order 2001.

The learned counsel for the petitioner continues his arguments and contended that directions to Respondent No.4 Government of Gilgit Baltistan to exercise its powers vested in him vide Section 2 of the Financial Institutions (Recover of finances) Adaptation Order 2001 Read with Section 5 of the Financial Institutions (Recovery of Finances) Ordinance 2001 to establish Banking Courts in Gilgit Baltistan through proper Notification published in Official Gazette Government of Gilgit Baltistan, and thereafter appoint Banking Court Judges after consultation with the learned Chief Judge, Chief Court, Gilgit Baltistan.

He continued his arguments while saying that the orders of the Chief Judge, Chief Court, Gilgit Baltistan dated 27/04/2011 in Civil Suit No. 2 of 2010, nominating Hon'ble Justice Muzaffar Ali to act as Banking Judge to take cognizance of all Bank Recovery cases in Gilgit Baltistan exceeding amount of 50 Million Rupees under the provisions of a repealed law of Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act of 1997, is totally illegal, unlawful and ab-initio void in the eyes of law. The leaned counsel for the petitioner relied upon a reported case of Indian Supreme Court in case S.C Legal Aid Committee Versus Union of India, 1994 SCC (6) 731, JT 1994 (6) 544. The learned counsel referred Section 47 (Legislative Powers) of "The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. According to the said referred statutes

the financial institution neither included in the list of Gilgit-Baltistan Council nor incorporated in the list of Gilgit-Baltistan Legislative Assembly.

On the other hand the learned counsel for the respondent submitted that the Government of Gilgit-Baltistan being the competent authority after consultation with the learned Chief Judge, Chief Court, Gilgit Baltistan has established the Banking Court in terms of Sub Section 1 & 2 of Section 5 of the Financial Institutions (Recovery of Finance) Adaption & Enforcement Order 2001. Which is lawful and in accordance of the law and Procedure, however, in the Notification while nominating Mr. Muzaffar Ali Judge as Banking Judge, the said law has erroneously been misquoted with provisions of a repealed law of Baking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997. He contended as parameters laid down by the Hon'ble Supreme Court of Pakistan in a case of M/s Pakistan Fishers Limited versus United Bank Limited (PLD, 1993, Section, 109), as long as the powers to hear and decide a matter vests in a Court, mere referred to a wrong provision of law, for invocation of that power is not a bar to exercise of that power. He stressed on the following points in response to the contentions raised by the learned counsel for the petitioners:-

1. Sub Section 1 & 2 of Section 5 of the Financial Institutions (Recovery of Finance) Adaption & Enforcement Order 2001 has been adopted and extended to Gilgit-Baltistan.

2. That the Ministry of Kashmir Affairs and Gilgit-Baltistan Affairs is part & parcel of Federal Government and issues Notifications/Ordinances etc on behalf of Federal Government. The Ministry in question is also a coordinates with the Federal Government and Government of Gilgit-Baltistan.
3. Article 84 of the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 Protects continuance of existing laws. The said article is reproduced as under:-

“84. Continuance of existing laws:- Subject to the provisions of this Order, all laws which immediately before the commencement of this Order, were in force in Gilgit-Baltistan shall continue to be in force until altered, repealed or amended by an Act, of the appropriate authority.

Explanation:- In this Article:-

(a). The expression law includes Ordinance, Orders, rules, bye-laws, regulations and any notification and other legal instruments having the force of law, and

(b). The expression in force in relation to any law, means having effect as law whether or not the law has been brought into operation”.

The learned counsel for the respondent Bank submits that in the light of the above quoted law and procedure, the Judgment dated 27.04.2011, passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 38/2011 requires to be maintained as the same is well reasoned based on facts and law and there is no illegality and infirmity in the judgment in question. He relied upon the reported cases in support of his arguments i.e. PLD 1993 SC 109, case titled “ Pakistan Fisheries Ltd Karachi & others Versus United Bank Limited, SCMR 2002, 496, 2003 CLD 67 and PLJ 2002 SC 254. The learned counsel for the respondents finally concluded his arguments saying that the lengthy arguments on the behalf the petitioners are only for the

sake of creating confusion while challenging the technicalities of the law and procedure. He says that there is no ambiguity in the Statutes with regard to the establishment of Banking Court in Gilgit-Baltistan and consequently the nomination of the Banking Judges consist of High Court Judge(s) and banking Judge(s).

The learned Deputy Attorney General for Pakistan at Gilgit and learned Advocate General Gilgit-Baltistan support the impugned judgment passed by the learned Chief Court Gilgit-Baltistan and adopted the arguments of the learned counsel for respondent Bank.

We have heard both the learned counsels for the respective parties at length as well as the learned Advocate General, Gilgit-Baltistan and learned Deputy Attorney General for Pakistan at Gilgit-Baltistan, perused the record of the case file and gone through the impugned judgment 27.04.2011, passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 38/2011. We have also perused Section 2 of The Financial Institutions (Recovery of Finances) Adaptation Order 2001 Read with Section 5 of The Financial Institutions (Recovery of Finances) Ordinance 2001 and provision of a repealed law of Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act of 1997. The relevant provisions of “The Gilgit-Baltistan (Empowerment and Self Governance) Order 2009 and “The Northern Areas Governance Order, 1994 In our considered view no illegality and infirmity has been pointed out by the

learned counsel for the petitioners in the impugned Judgment dated 27.04.2011, passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 38/2011. The case laws cited by the learned counsel for the respondent Bank are applicable, whereas case laws cited by the learned counsel for the petitioners are distinguishable.

Consequently, the petition is converted into an appeal and the same is dismissed being meritless having no substance. The impugned Judgment in Writ Petition No.38/2011, dated 14.12.2011, passed by the learned Chief Court Gilgit-Baltistan is maintained.

The appeal is dismissed.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?