

**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. 40/2015 in
CPLA No. 27/2013.**

1. M/s Ahmed Brothers Trade International Waliabad Gilgit Gulmat Nagar District Hunza/Nagar through Muhammad Ali Akhtar Managing Director

PETITIONER.

VERSUS

1. National Bank of Pakistan having its head Head Office at 11 Chunderigar Road Karachi Pakistan through President.
2. Regional Head National Bank of Pakistan Gilgit Baltistan Gilgit.
3. Manager National Bank of Pakistan Sost Branch Sost.
4. Government of Gilgit Baltistan through Chief Secretary Gilgit.
5. Gilgit Baltistan Council, GB Council Secretariat Islamabad through Secretary.

(RESPONDENTS)

PRESENT:-

1. Mr. Shehzad Khan Advocate alongwith Mr. Joher Ali Khan AOR for the petitioner.
2. Mr. Muhammad Hussain Shehzad Advocate on behalf of respondent No.01 to 03 alongwith Zubaid Ahmed Sheikh, Regional Head, National Bank of Pakistan and General Manager Operation NBP.
3. The Advocate General Gilgit-Baltistan, Gilgit for respondent No. 04.
4. The Deputy Attorney General for Pakistan at Gilgit-Baltistan for the respondent No.05.

DATE OF HEARING: - 08-10-2015.

DATE OF ANNOUNCEMENT OF JUDGMENT:- 25.11.2015.

Dr. Rana Muhammad Shamim, CJ.....This petition arisen out of the Impugned Judgment dated 28.11.2012, passed by the learned Division Bench, Chief Court, Gilgit-Baltistan in Writ Petition No. 85/2012. Upon hearing it was dismissed being meritless and having no substance. The petitioner

feeling aggrieved by and dissatisfied with the said impugned Judgment dated 28.11.2012, preferred this petition for leave to appeal before this Court with the prayer that the said impugned judgment be set aside. He further prayed that the establishment of Banking Court, the functioning and taking cognizance/jurisdiction of loan recovery cases by Banking Courts in Gilgit Baltistan are illegal, unlawful, without lawful authority and without jurisdiction. No notification regarding the establishment of Banking Courts through an Official Gazette by the Government of 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 has been issued so far.

The learned counsel for the petitioner contended that the taking cognizance & jurisdiction of Bank Recovery case of the petitioner 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 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 further contended that directions may be given 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 a proper and meaningful 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 Rupee 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.

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 dated 27.04.2011 while nominating Mr. Muzaffar Ali as Banking Judge Chief Court, Gilgit-Baltistan, 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 that misquoted of any law does not create any illegality and unlawfulness in any order. Hence, the order /Judgment dated 28.11.2012 in Writ Petition No. 85/2015, passed by the learned Division Bench of the Chief Court Gilgit-Baltistan is requires to be maintained being well reasoned and according to law. He also submits that the Banking Courts were established in accordance with law and their presiding Officers were also competently appointed as after promulgation of “the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009” the powers vested to the Gilgit-Baltistan Council under Serial No. 05. 13, and 50 of Schedule-III of the said Order. He finally submitted that the counsel for the petitioner during his lengthy argument could not pointed out any illegality and infirmity in the impugned judgment dated 28.11.2012 in Writ Petition No. 85/2015, passed by the learned Division Bench of the Chief Court Gilgit-Baltistan. Hence,

the petition for leave to appeal may be dismissed and the said impugned Judgment passed in Writ Petition No. 85/2015, by the learned Chief Court Gilgit-Baltistan be maintained in the interest of the justice and equity. 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 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 counsel 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 dated 28.11.2012 in Writ Petition No. 85/2012. We have also perused 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 and provision of a repealed law of Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act of 1997 as well as “The Gilgit-Baltistan (Empowerment & Self Governance) Order 2009” In our considered view no illegality and infirmity has been pointed out by the learned

counsel for the petitioner in the impugned Judgment dated 28.11.2012 in Writ Petition No. 85/2012, passed by the learned Chief Court Gilgit-Baltistan. Consequently, the petition is converted into an appeal and the same is dismissed. The impugned Judgment of the learned Chief Court Gilgit-Baltistan passed in Writ Petition No. 85/2012 on 28.11.2012 is maintained.

The appeal is dismissed.

Chief Judge.

Judge.

Whether the case if Fit to be reported or Not?