

IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

Present:

Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar

**Civil Review Petition No.35-K of 2020 in
Civil Petition No.146-K of 2019**

Review against the judgment of this Court dated 04.09.2020

State Bank of Pakistan

...Petitioner

Versus

Mohammad Naeem & others

...Respondents

For the Petitioner:

Mr. Faisal Siddiqi, ASC

For Respondent-1:

Mr. Arshad M. Tayebaly, ASC (video-link
from Karachi)
Mr. Tariq Aziz, AOR

For Respondent No.2 & 3

N.R

Date of Hearing:

10.11.2022

ORDER

Muhammad Ali Mazhar, J. This Civil Review Petition has been moved by the State Bank of Pakistan ("**SBP**") (Petitioner in CPLA No.146-K of 2019) for reviewing the consolidated Order dated 04.09.2020, rendered by the learned two Member Bench of this Court in CPLAs No.146-K and 411-K/2019. It is pertinent to point out that the Review petition has only been filed by the SBP in CPLA No.146-K/2019, and no Review petition has been filed by the petitioners in CPLA No.411-K/2019. In fact *Vide* aforesaid Civil Petitions, the judgment dated 11.12.2018 passed by the learned Division Bench of High Court of Sindh in High Court Appeals No. 226/2005 and 74/2006 was challenged but on 4.9.2020, the learned two members bench modified the High Court judgment in the following terms:

"4. After taking into consideration the above, we were inclined to grant leave to appeal only for the reason that the rate of 10% markup per annum on the value

of dollar seemed to us too excessive, however, learned counsel for the respondent No. 1 stated at the bar that this case may be disposed of at this stage as his client is ready to accept any reduced rate of markup which this Court may determine. In the circumstances, while rejecting the plea of limitation and after holding that the respondent No. 1 is entitled to get value of the disputed certificate from the State Bank of Pakistan in Pak Rupee the rate of markup awarded by the High Court is reduced from 10% to 2% (two percent) chargeable from the date when the suit was filed till its realization."

2. The learned counsel for the petitioner in support of the review petition argued that in the Civil Petition, the petitioner had raised various substantial grounds, *inter alia*, that the suit filed by the respondent No.1 at the original side of the High Court was time barred. It was further argued that the basic issue pertained to the Dollar Bearer Certificate No.F023255 of USD \$100,000/- ("**DBC**"), but the learned Single Judge of the High Court has failed to appreciate the *bona fide* ownership of the DBC claimed by the respondent No.1, which important aspect was also overlooked by the learned Division Bench in the High Court appeals. It was further contended that the learned two Member Bench of this Court seized of the matter on 04.09.2020, in Paragraph 4 of the judgment, allowed the respondent No.1 to get the value of the disputed certificate from the SBP, which creates an ambiguity for the reason that there is no clarity whether the directions contained in the judgment and decree passed in the suit with regard to the joint liability of the petitioner and the respondent No.2 to pay off the said amount has been amended or not. It was further averred that the judgment in review in fact amended the original decree by modifying the joint liability to the sole liability of the petitioner, which required hearing of both sides to reach a proper conclusion by this Court. Last but not least, he avowed that the Division Bench order passed by the learned High Court of Sindh in the appeals was in fact modified by this Court when the *lis* was fixed before a two Member Bench, hence the Order under review suffers from an error and is liable to be reviewed so that it may be re-fixed for hearing before a three Member Bench for further consideration.

3. The learned counsel for the respondent No.1 argued that the Order in review was passed by this Court on the basis of a consensual statement, however, he admitted that no leave was granted but the

Court was inclined to grant leave. However, on the statement of the learned counsel for the respondent No.1 at the bar, the judgment of the High Court was modified with certain directions. It was further contended that certificate presented for encashment was in order in all respects and the evidence led in the Trial Court fully supported the cause of the respondent No.1 and there was no question of mis-reading or non-reading of evidence by the learned Single Judge or Division Bench of the High Court, therefore, this Court had disposed of the Civil Petitions with some modification in the judgment and decrees of the lower *fora*.

4. The review petition was fixed in the Court on 10.1.2022, wherein it was pointed out that the order of the Division Bench of the High Court was modified by the two Member Bench of this Court with regard to the rate of mark-up, but leave was not granted. In order to thrash out this critical question of law, notice was issued with the direction to fix the matter before a three Member Bench and, in the meanwhile, the parties were also directed to maintain the status quo. Despite notice neither anybody appeared for respondent No.2 in Review Petition (Standard Chartered Bank, formerly Union Bank Limited, also the petitioner in CPLA No.411-K/2019), nor for respondent No.3 (Muslim Commercial Bank, formerly NIB Bank Limited), nor any review petition has been moved in CPLA No.411-K/2019 as aforementioned.

5. It is lucidly translucent without any shadow of doubt that while modifying the judgment of the High Court, no leave to appeal was granted by this Court, rather the judgment conspicuously reflects that this Court was inclined to grant leave to appeal only for the reason that the rate of 10% markup per annum on the value of dollar seemed to be excessive, but on the request of learned counsel for the respondent No. 1, that his client was willing to accept any reduced rate of mark-up, the judgment of the High Court was modified while rebuffing the plea of limitation.

6. The Supreme Court Rules, 1980 were framed in exercise of the powers conferred under Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") which forthrightly sanctions and empowers that, subject to the Constitution and law, the Supreme Court may make rules regulating the practice and procedure of the Court. The constitution of Benches has been defined in Order XI of the Supreme Court Rules, 1980, which reads as under:

"Save as otherwise provided by law or by these Rules every cause, appeal or matter shall be heard and disposed of by a Bench consisting of not less than three Judges to be nominated by the Chief Justice:

[Provided that

- (i) all petitions for leave to appeal,
- (ii) appeals from appellate and revisional judgments, and orders made by a Single Judge in the High Court, '[and]

(iii) Appeals from judgments/orders of the Service Tribunals or Administrative Courts, and appeals involving grant of bail/cancellation of bail,

may be heard and disposed of by a bench of two Judges, but the Chief Justice may, in a fit case, refer any cause or appeal as aforesaid to a larger Bench.] [Emphasis supplied]

Provided further that if the Judges hearing a petition or an appeal are equally divided in opinion, the petition or appeal, as the case may be, shall, in the discretion of the Chief Justice, be placed for hearing and disposal either before another Judge or before a larger Bench to be nominated by the Chief Justice."

7. The command and dominance of Order XI of the Supreme Court Rules, 1980, is germane to the constitution of Benches which unequivocally expounds and enlightens that every cause, appeal or matter shall be heard and disposed of by a Bench consisting of not less than three Judges to be nominated by the honourable Chief Justice but all petitions for leave to appeal, appeals from appellate and revisional judgments, and orders made by a Single Judge in the High Court, and appeals from judgments/orders of the Service Tribunals or Administrative Courts, and appeals involving grant of bail/cancellation of bail may be heard and disposed of by a bench of two Judges, but the Chief Justice may, in a fit case, refer any cause or appeal as aforesaid to a larger Bench.

8. In the instant case, albeit the Bench was inclined to grant leave to appeal to a limited extent *vis-à-vis* the rate of mark-up, but it is also a ground reality or if truth be told, no leave to appeal was granted by this Court against the impugned judgment of the High Court but it is evident from the Order of this Court that on the sole statement of the learned counsel for the respondent No.1, the alleged excessive rate of markup was simultaneously modified in the judgment without recording any consensual statement of the petitioner's counsel. With all humility to our command, we agree that the two Member Bench,

taking into consideration the assiduousness and exactitudes of Order XI of the Supreme Court Rules, 1980, could grant leave or dismiss the civil petition for leave to appeal, but could not modify, alter or amend the judgment of Divisional Bench of High Court for which the matter should have been fixed before a three Member Bench as per the aforesaid Rules.

9. In the wake of the above discussion, the Order dated 04.09.2020 is reviewed. Accordingly, CRP No.35-K/2020 is allowed and CPLA No.146-K/2019 is restored to its original number, which shall be fixed for hearing before a three Member Bench for leave to appeal.

Judge

Judge

Judge

ISLAMABAD

10th November, 2022

Mudassar/[☆]

Not approved for reporting