

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Execution Application No.64900 of 2017
MCB Bank Limited V/S M/S MAZCO Industries Private
Limited etc.

JUDGMENT

Date of Hearing:	07.02.2023
Petitioner by:	Mr. Muhammad Shoaib Rashid, ASC and Ms. Minahil Khan, Advocates for the decree-holder bank.
Respondents by:	M/S Muhammad Imran Malik, ASC, Aqif Majeed, Fazal Mehmood, Bilal Mehmood and Rao Zahid, Advocates for the judgment-debtor.

C.M.No.3 of 2022

JAWAD HASSAN, J. Through this Application under Sections 19(7) and 2(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “***Ordinance***”), the Applicant/Judgment Debtor has sought transfer of the Execution Application bearing No.64900 of 2017 to the Banking Court while taking the plea of lack of pecuniary jurisdiction of this Court.

I. CONTEXT

2. The background against filing of this Application is that MCB Bank Limited (the “***decree-holder***”) filed a suit under Section 9 of the “***Ordinance***” against M/s. MAZCO industries Private Limited etc (the “***Applicant***”) for recovery of an amount of Rs.109.460 million during pendency of which, the parties arrived at the **Settlement Agreement** dated 04.03.2017 (**Mark-A**) and on the basis of the terms and conditions chalked out in it, both the parties made a joint Application (C.M.No.317-B of 2017) under Section XXIII Rules 1,2 and 3 of the CPC thereupon this Court with consent of the parties, decreed the suit in favour of the decree-holder bank, vide order dated 12.05.2017. On another joint Application (C.M.No.1 of 2021) made on behalf of the

decree-holder and Defendants No.1, 2, 3 and 5 for bringing on record the First Supplemental to the Settlement Agreement dated 04.03.2017 (termed to be First Supplemental Agreement by the Court) and seeking modification in the already passed consent decree in terms thereof. Thereupon, the aforesaid consent decree dated 12.05.2017 was modified by this Court, vide order dated 18.01.2021 and the decretal amount was further reduced to 64.900 million.

II. SUBMISSION OF PARTIES

3. It is contended by learned counsel for the Applicant/judgment-debtor that there is no denial that the decree holder bank filed suit for recovery of an amount of Rs.109.460 million against the judgment debtors but after passing of the consent decree, vide order dated 12.05.2017 and thereafter its modification vide order dated 18.01.2021, the decretal amount has become at Rs.64.900 million, which reads as under:-

“.....The decree-holder bank acceded to the said request where after the parties executed the First Supplemental agreement which contains the mode and manner for payment of the balance settlement amount of Rs.64.900 Million. The First Supplemental agreement also provides for the consequences of the default in payment of the balance settlement liability. According to learned counsel for the parties, the First Supplemental agreement is in continuation of and shall be read into settlement agreement dated 04.03.2017.

3. *In view of the contents of the application, it is allowed and the First Supplemental agreement is allowed to be brought on record as Mark-A. The terms of*

consent decree passed on 12.05.2017 shall stand modified to the extent of the stipulations contained in the First Supplemental agreement. ”

Mr. Muhammad Imran Malik, ASC further submitted that in view of the supra order dated 18.01.2021, this Court has modified the Consent Decree, therefore, this Court lacks jurisdiction thus, the suit is required to be transferred to the banking court. He added that there is no denial that the decree-holder bank filed suit for recovery of Rs.109.460 Million (above 100 million) but, as stated above, after passing of the supra decree, the amount claimed by the decree-holder bank had been reduced to 64.900 million from 109.460 million which falls within the pecuniary jurisdiction of the Banking Court instead of this Court. Therefore, the execution proceedings initiated against the judgment-debtor are liable to be transferred to the Banking Court due to lack of pecuniary jurisdiction of this Court in terms of Section 2(b) of the “*Ordinance*”. Learned counsel relied on the judgment reported as “**Habib Bank Limited through Attorneys v. Messrs Rehmania Textiles Mills (Pvt.) Limited Jhang Road, Faisalabad**” (2003 CLD 689).

4. Ms. Minahil Khan, Advocate for the decree-holder bank questioned maintainability of this Application by stating that it is a settled law that the Court which initially assumes the jurisdiction on the basis of the value fixed by a decree-holder in a plaint is the only forum which has the pecuniary jurisdiction to execute the decree and to decide all the ancillary matters relating to the same, therefore, this Court does not lack jurisdiction as claimed by the judgment-debtor. Places reliance on **Mashraq Bank versus Messrs Amtul Rehman Industries (Pvt.) Limited and others** (2002 CLD 336) and **MCB Bank Limited through Duly Authorized Attorney versus Eden Developers (Pvt.) Limited and others** (2019 CLD 219).

5. I have heard learned counsel for the parties and perused the record.

III. DETERMINATION BY THE COURT

6. The main grievance of the Applicant/judgment-debtor agitated through this Application revolves around the question of pecuniary jurisdiction of the Court, leaning upon which, he has sought transfer of the main Execution Application (EX.A.64900/2021) to the Banking Court, in view of the consent decree passed and subsequently modified by the supra orders by this Court, in view of the terms and conditions chalked out in Settlement Agreements arrived at between the parties with their mutual consent. The learned counsel for the Applicant while placing reliance upon the observations made in ***Habib Bank Limited Case***, supra took the stance that after decision of a suit by a Banking Court, it is the ***adjudicated claim*** as decreed by the Banking Court which becomes the subject matter of the case in execution proceedings for the purposes of determination of pecuniary jurisdiction of this Court.

7. The stance of learned counsel for the applicant is misconceived because a careful perusal of the record made it crystal clear that the original claim of the respondent Bank was and still is Rs.109.466 million which is also an admitted position in view of the original settlement agreement dated 04.03.2017 as well as the first supplemental agreement dated 12.11.2020. This is because the consent decree dated 12.05.2017 is only a conditional decree with the condition that the Respondent Bank's claim of Rs.109.466 million is still intact and revivable in case of breach of the settlement agreement dated 04.03.2017 by the instant applicant in view of clause 4.2 of the same which is reproduced under for better understanding:

“Notwithstanding anything contained, *any default by the Customers, of the terms and conditions of this Agreement executed by the Customer(s) in favor of the Bank shall be considered as default by the Customers under this Agreement, and as a consequence, such default will trigger the*

execution of the Consent Decree passed by the Honourable Court and all/any wavier of the amounts of Costs of Funds, charges, Markups, in addition to admitted and acknowledged outstanding amount of Rs.109.460 M as of 30.04.2016 which shall be recoverable through Execution of the Consent Decree against the Customers, Jointly and Severally”.

This clause clearly indicates that original claim of the Respondent Bank is still intact.

8. On the other hand, in **MCB BANK LIMITED through Duly Authorized Attorney Versus EDEN DEVELOPERS (PVT.) LIMITED and others (2019 CLD 219)**, the Court while interpreting and elaborating section 19 of the “Ordinance” observed that as per section 19 of the “Ordinance”, a banking suit on pronouncement of a judgment even in case of consent decree automatically stands converted into execution proceedings before the same court which decided the case as the tenor of section 19 is without equivocation and the conversion is statutorily mandated. The Court further observed as follows:

“One may also visualize a situation where the amount of decree ultimately passed by this Court may be much less than the amount claimed in the suit by a plaintiff and which amount may fall below the threshold of pecuniary limit for the High Court to exercise its jurisdiction. Can it be said in that case that the execution of the decree be transmitted to the Banking Court for further proceedings? Clearly the answer to this question is in the

negative and the proceedings will be held in the High Court which passed the decree in the first place.”

The Court further held that the Banking Court which initially assumed the jurisdiction on the basis of the value fixed by the decree-holder in the plaint was the only forum which had the pecuniary jurisdiction to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree.

9. This argument is further strengthened by the view taken in **MUHAMMAD KHALID alias KHALID MEHMOOD and others Versus MUHAMMAD YOUSAF and others** (2017 YLR 2347) wherein the court held that where a consent decree had been challenged, the pecuniary jurisdiction would be determined on the basis of the plaint of the original suit. It was further held in **MASHRAQ BANK Versus Messrs AMTUL REHMAN INDUSTRIES (PVT.) LIMITED and others** (2002 CLD 336) that it is settled law that the valuation of the suit, itself fixed by the plaintiff in the plaint, determines the jurisdiction of the Court and will subsequently be the basis for determination of the forum for the purposes of filing of the appeal etc. Similarly it has been held in **MUHAMMAD YOUSAF versus Mrs. MUHAMMAD MOHSIN and 5 another** (1986 MLD 342) that the valuation in the plaint normally determines the jurisdiction of Court, which is determined in accordance with the Suits Valuation Act, 1887. The Court can interfere to correct the valuation given in the plaint where, it is based upon misrepresentation or fraud. If during the pendency of the suit the value of subject-matter is increased, the Court will not lose jurisdiction because jurisdiction once obtained is not taken away by increase in the value of the subject-matter and the Court can proceed with the adjudication of the suit. This would mean by necessary implication that the court will also not lose jurisdiction by decrease in the value of the

suit once it rightly assumed pecuniary jurisdiction at the first place and passed a consent decree. On the other hand the judgment relied upon by the applicant does not hold the field as it has no binding force in view of *Mashraq Bank Case* and *Muhammad Yousaf Case* supra being earlier in time. The Hon'ble Supreme Court of Pakistan in the case of "Dr. PIR MUHAMMAD KHAN Versus KHUDA BUKHSH and others" (2015 SCMR 1243) has held that *"for the purposes of ascertaining the pecuniary jurisdiction, it will be the valuation shown in the plaint which will be material for this purpose"*.

10. Even otherwise, the conduct of the judgment-debtor shows that the instant objection to the pecuniary jurisdiction is just taken in order to unnecessarily linger on the execution proceedings to deprive the decree-holder bank of the timely fruits of the consent decree, as the judgment-debtor never took this plea at the time of filing of the instant suit and instead admitted the claim of the Respondent Bank of Rs.109.466 Million as is evident from the original agreement as well as the first supplemental agreement. It is also pertinent to mention here that the applicant never took such objection qua pecuniary jurisdiction despite the fact that originally in view of the settlement agreement the consent decree was initially passed for Rs.99.900 million as is evident from Clause "C" of final supplemental agreement and not for Rs.64.900 Million, as claimed by the applicant but despite that fact that the said amount was below Rs.100 million the applicant never objected to the same for his own benefit because the Respondent Bank conditionally waived off the claims regarding amounts of costs of funds, charges, markups etc. as evident from both said agreements, which would otherwise made the claim as Rs.109.466 Million.

11. Moreover the applicant while taking further concession under first supplemental agreement once again did not take any objection regarding the pecuniary jurisdiction of the court and took further concessions from the Respondent Bank while reducing the claim to Rs.64.900 million and it was only at this belated stage on 09.04.2022

when the applicant took such a plea for the first time after getting further relaxation and benefits in the form of rescheduling of the payment plan that this court lacks of pecuniary jurisdiction obviously to avoid or delay further timely payments under the said agreements between the parties. Hence at present stage, the applicant's plea is also hit by the Doctrine of approbate and reprobate and the applicant would be estopped from taking such position because as per the Doctrine of estoppel which though is described as a rule of evidence but may have effect of constituting substantive rights and this Doctrine of estoppel is founded on equity and justness with straightforward objective to prevent fraud and ensure justice. Reliance is placed upon **SARDAR ALI KHAN Versus STATE BANK OF PAKISTAN and others** (2022 SCMR 1454) wherein it was further held as follows:

“The maxim qui approbate non-reprobate (one who approbates cannot reprobate) is firmly embodied in English common law. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.”

12. The applicant on the one hand accepted concession of easy installments along with conditional waiving off the claims regarding amounts of costs of funds, charges, markups etc. while not objecting to the original decree despite the same being less than a 100 Million and not even at subsequent stage of modified agreement while taking further concessions but on the other hand took a totally different plea of lack of pecuniary jurisdiction at much belated stage apparently to avoid scheduled and agreed upon payments/installments. In these circumstances, if the stance of the applicant/judgment debtor is to be accepted as correct then as a necessary consequence the initial consent decree is also liable to be

set aside on the sole ground of being *coram non judice* and in that case the applicant/judgment debtor is admittedly bound to pay Rs.109.460 million claim of the respondent Bank.

13. Therefore, in view of the above, I am of the considered view that there is no substance in this Application seeking transfer of the execution proceedings to the banking court on the ground of pecuniary jurisdiction. This Application is, therefore, **dismissed**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

Manzoor