

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
**M.A No.07 of 2022**

Dated: Order with signature of Judge(s)

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1. For Hearing of CMA No. 1578 of 2020
2. For hearing of Main Case.

Date of Hearing : 19 May 2023.

Appellant No.1 : Samma TV through Mr. Abdul Moiz Jafri, Advocate.

Appellant No. 2 : Mrs. Sara Siddiqui through Mr. Abdul Moiz Jafri, Advocate.

Appellant No.3 : Mr. Naveed Siddiqi through Mr. Abdul Moiz Jafri, Advocate.

Appellant No.4 : Mr. Farhan Mallick through Mr. Abdul Moiz Jafri, Advocate.

Appellant No.5 : Jaag Broadcasting Systems (Private) Limited through Mr. Abdul Moiz Jafri, Advocate.

Respondent No.1 : Nemo.

Respondent No.2 : Mr. Anwar Mansoor Khan through Mr. Tahmasp Rahseed Razvi, Advocate

Respondent No.3 : Mr. Asim Mansoor Khan through Mr. Tahmasp Rahseed Razvi, Advocate

Respondent No.4 : Ms. Mansoor Ahmed Khan & Co through Mr. Tahmasp Rahseed Razvi, Advocate

Amicus Curiae : Mr. Hussain Ali Almani, Advocate

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**J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN, J.** The Appellants have maintained this Appeal under Section 15 of the Defamation Ordinance, 2002 against the order dated 11 February 2020 passed by the XIth Additional District Judge Karachi (South) that was passed in Civil Suit No. 34 of 2019 and by which the XIth Additional District Judge Karachi (South) had in effect failed

to decide an application under Order 7 Rule 10 of the Code of Civil Procedure, 1908 that had been filed by the Appellants.

**A. Civil Suit No. 34 of 2019**

2. The Appellant No. 5 holds a license to operate a television channel in Pakistan and which it operates in the name and style of "SAMMA TV." The Respondent No. 2 and the Respondent No. 3 are both Advocates and Partners of a firm i.e. the Respondent No. 4. It would seem that on 10 October 2018, the Appellant No. 4 had, on their television channel, broadcasted a news item which the Respondents Nos. 2 to 4 allege is defamatory. The broadcast prompted the Respondent No. 2 to 4 on 13 October 2018 to send a legal notice to the Appellants alleging therein that the news items that had been broadcast were defamatory and seeking certain relief as against the Appellants. The Appellants on 24 October 2018 replied to the legal notice issued by the Respondents No. 2 to 4 and justified the broadcast, giving the Respondents No. 2 to 4 the opportunity to appear on their television channel to put forward their point of view.

3. The Respondents No. 2 to 4 rejected both the explanation given by the Appellants justifying the broadcast and the opportunity to appear on the Appellants television channel to put forward their point of view and preferred to institute Civil Suit No. 34 of 2019, under Section 13 of the Defamation Ordinance, 2002 seeking the following relief:

- " ...
- i. *Declare that the Defendants have made defamatory, both liable and slander statements in and before print and electronic media, on 10.10. 2018, against the Plaintiffs*
  - ii. *Restrain the Defendants or any of their colleagues servants or subordinate or subordinates or any person that may make such comments on and under the influence of the Defendants from making any comments and/or give any remarks to the Press or the Electronic Media against the Plaintiff in any form what so ever ;*
  - iii. *to grant a judgement and decree against the Defendants for defamation in a sum of Rs. 90,000,000/- As compensation for causing loss of reputation, mental stress, anxiety to the Plaintiff No. 1*

*iv. to grant a judgement and decree against the Defendants for defamation in a sum of Rs. 30,000,000/- As compensation for causing loss of reputation, mental stress, anxiety to the Plaintiff No. 2*

*v. to grant a judgement and decree against the Defendants for defamation in a sum of Rs. 60,000,000/- As compensation for causing loss of reputation, mental stress, anxiety to the Plaintiff No. 3*

*vi. to grant a judgement and decree against the Defendants for defamation in a sum of Rs. 60,000,000/- As compensation for causing loss of future prospects*

*vii. Any other relief or reliefs, order or orders that this Hon'ble Court may on the facts and circumstances of the case may pass."*

4. The Appellants contested Civil Suit No. 34 of 2019 and maintained the following three applications:

- (i) An application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 seeking to strike out the names of the Appellants No. 1 and 2 from Civil Suit No. 34 of 2019;
- (ii) An application under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking the rejection of the plaint of Civil Suit No. 34 of 2019 as it did not disclose a cause of action as against the Appellants; and
- (iii) An Application under Order VII Rule 10 of the Code of Civil Procedure, 1908 seeking the return of the Plaint of Civil Suit No. 34 of 2019 arguing that as the quantum of damages sought by the Responent No. 2 to 4 in the *lis* brought it within the jurisdiction of the High Court under the provision of Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 the Plaint was liable to be returned.

Counter Affidavits and Rejoinders were exchanged as between the Appellants and the Respondent No. 2 to 4 on each of the Applications and

which were heard by the XIth Additional District Judge Karachi (South) and who by an order dated 11 February 2019 held that:

- (i) in respect of the application under Order VII Rule 10 of the Code of Civil Procedure, 1908 as there were various pronouncements of this Court and certain orders passed by the Supreme Court of Pakistan suspending a judgement of a Division Bench of this Court as the matter was “sub judice” he could not “comment on this proposition”;
- (ii) in respect of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 that the determination of the cause of action required evidence as such the application was not maintainable and was dismissed; and
- (iii) in respect of the application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 as the Respondents No. 2 to 4 were by virtue of Section 12 of the Defamation Ordinance, 2002 permitted to sue the “officer, servant or employee of the newspaper or broadcasting station”, the Application was not maintainable and was dismissed.

**B. Miscellaneous Appeal No. 7 of 2022**

**(i) The Initial Proceedings as an Application for Revision and the Conversion of the Revision Application into an Appeal**

5. Being aggrieved and dissatisfied by the order dated 11 February 2019 passed by the XIth Additional District Judge Karachi (South) in Civil Suit No. 34 of 2019, the Applicants had maintained this *lis* as an application under Section 115 of the Code of Civil Procedure, 1908 seeking to revise that order on each of the applications and which was numbered Revision Application No. 43 of 2020. However, on 11 February 2022, the Appellants

preferred not to pursue their remedy for revision as against the two applications filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 and under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 and had stated that they would only maintain the *lis* as against the findings of the XIth Additional District Judge Karachi (South) on the Application under Order VII Rule 10 of the Code of Civil Procedure, 1908 and sought an order to convert the Civil Revision into a Miscellaneous Appeal filed under Section 15 of the Defamation Ordinance, 2002. This Court was on 11 February 2022 pleased to allow such a request and Civil Revision Application No. 43 of 2020 was by an order of the same date converted into an Appeal under Section 15 of the Defamation Ordinance 2002 and renumbered as “M A No. 7 of 2022”.

***(ii) Arguments of the Appellant***

6. Mr. Abdul Moiz Jafri advanced arguments on behalf of the Appellant. He contented that a Suit under Section 13 of the Defamation Ordinance, 2002 would be read with Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 thereby confining the pecuniary jurisdiction of the District Court to an amount specified in those Section and consequentially requiring any *lis* under Section 13 of the Defamation Ordinance, 2002 in excess of the amount specified in Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962, to be instituted before this Court in its Original Civil Jurisdiction. In support of his contentions he relied on a decision of a Division Bench of this Court reported as **Pakistan Herald Publications (Private) Limited and 2 others vs. Karachi Building Control Authority**<sup>1</sup> wherein it was held that:

“ .... 6. It may be noted that for the purpose of trial of the cases under the Ordinance forum was provided that of District Judge which through amendment was substituted by District Court. There is no elaboration of term District Court in the Ordinance and it is obvious that Ordinance is a Federal law.

7. The case of *Rimpa Sunbeam Cooperative Housing Society (supra)* a three members bench of this Court on examining section 7 of West Pakistan Civil Courts Ordinance, 1962 as amended by Sindh Civil Courts (Amendment) Ordinance, 2002 has observed that jurisdiction of

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<sup>1</sup> 2012 CLD 453

*Sindh High Court to entertain suits is basically neither the ordinary nor the extraordinary original civil jurisdiction of High Court but simply a District Court jurisdiction which was conferred and regulated by provincial statutes. The Karachi Courts Order, 1956 which was not a law made by the Parliament in exercising the power under the concurrent legislative list of Constitution of Pakistan and there was no conflict between Federal and Provincial law in the above context and therefore in accordance with section 7 of Sindh Civil Courts Ordinance, 1962 the jurisdiction of Sindh High Court to try civil suits is confined to the matter where pecuniary value of subject matter exceeds Rs.30,00,000 and all other suits are liable to be tried by District Courts. It was also observed in the said judgement that where an Act of Provincial Legislature relating to a subject falling within the concurrent legislative list of Constitution was repugnant to an Act of Parliament whether enacted before or after the provincial law, the latter would invariably prevail.*

8. *The Defamation Ordinance, 2002 on its reading shows that it is a special law made by Federal Government on the subject of defamation creating special remedies and also provide for specific Court for trial of cases and appeal. It has conferred jurisdiction for trial of cases under the Ordinance on the District Court.*

9. *The Karachi Courts Order, 1956 so also the Sindh Civil Courts Ordinance, 1962 refer to establishment of the Court which, inter alia, provides for the Court of District Judge. The word District Court in itself is not used in both the laws. The Sindh Civil Courts Ordinance in section 7 as it reads today provides for original jurisdiction of the Court of District Judge and further says that subject to this Ordinance or any law for the time being in force the original jurisdiction of Court of District Judge in civil suits and proceedings shall be without limit of the value thereof except in the Karachi Districts where the original jurisdiction in civil suits and proceedings of the value exceeding Rs.15 million shall be exercised by the High Court.*

10. *The Defamation Ordinance, 2002 specifically confers jurisdiction for trial of cases on District Court. For its application it is not dependant on the pecuniary limits prescribed by the Sindh Civil Court Ordinance specially when it is read in the context that it is a Federal law and will hold the field on its own without being subordinated or subjected to the latter Ordinance which only is Provincial law. This is also made clear by section 15 of the Ordinance which has conferred jurisdiction on the High Court to hear the appeal under the Ordinance. It does not require that appeal will be heard by more than one member bench of the High Court. The appeal, therefore, in such state of law could very well be heard by one member bench of High Court. It cannot be that a case heard and decided by one member bench of High Court and then appeal against it is also heard by one member bench of High Court. This cannot be the situation that could have been visualized by framer of the Ordinance as in its mind the concept of District Court and High Court were altogether two different courts.*

11. *In such view of the matter, we do not think that jurisdiction with regard to District Court will have to be read as provided in Sindh Civil Courts Ordinance, 1962 where the High Court has been conferred now the jurisdiction to hear the suits exceeding value of Rs.15 million as a principal civil Court of original jurisdiction. The Ordinance has provided District Court as Court of trial of cases under it, it will be the District Court and no other Court including the High Court and it is the appeal against final decision and decree of that Court which will be heard by High Court. We, therefore, find no illegality in the impugned order and same is therefore maintained and appeal is dismissed."*

Mr. Abdul Moiz Jafri thereafter stated that an appeal had been preferred against the decision reported as **Pakistan Herald Publications (Private)**

**Limited and 2 others vs. Karachi Building Control Authority**<sup>2</sup> before the Supreme Court of Pakistan in CPLA No. 936-K of 2011 and on 23 December 2011, the Supreme Court of Pakistan had been pleased to “stay” the operation of that Judgement.

7. He further submitted that in a decision reported as **A. Khalid Ansari vs. Mir Shakil ur Rahman**,<sup>3</sup> on an application maintained by the Plaintiff under Order VII Rule 11 of the Code of Civil Procedure, 1908, in a suit filed before this Court for Defamation, while giving a finding on the issue as to the pecuniary jurisdiction of this court to deal with such a *lis* it was held that:

“ ... 11. It remains only to consider section 13 of the Ordinance. This section, as substituted in 2004, provides as follows:

*"The District Court shall have the jurisdiction to try the cases under this Ordinance."*

*On the basis of the foregoing section, a learned single Judge in the Azhar Chaudhry case ordered that the plaint be returned for presentation at the District Court. In the subsequent Raees Ghulam Sarwar case, another learned single Judge (who was not, it appears, referred to the Azhar Chaudhry case) concluded that since the law of defamation had been codified by the Ordinance, but without any specific ouster of the jurisdiction of the civil courts, the first limb of the well-known rule in *Wolverhampton New Waterworks Company v. Hawksford* (1859) 6 CB (NS) 336, 144 ER 486 applied, and therefore:--*

*"...any person aggrieved by any act of defamation has now two remedies. The aggrieved person may either pursue the statutory remedy under the 2002 Ordinance, or he may file a civil suit under general law under section 9 of the C.F.C. But the aggrieved person will have to choose, under the doctrine of election, one of the said two remedies. In case he opts to pursue the statutory remedy, the remedy under general law i.e. under section 9 of the C.P.C. would be barred; and vice versa." (at pg. 466, Para 11).*

*Since I do not, with the utmost respect, agree with either of the views that found favour in the two cited cases, it is only proper that I should state my reasons for having come to a different conclusion.*

*12. In my respectful view, the attention of the Court in the earlier cases was not drawn towards sections 3 and 7 of the Civil Courts Ordinance, 1962 ("the 1962 Ordinance") and section 15, C.P.C. Section 3 of the 1962 Ordinance lists the classes of civil courts, and at the apex of this hierarchy is the District Court. Section 7 provides (subject to the well-known exception in the case of the civil districts of Karachi) that the original jurisdiction of the District Court is without limitation. Now as is also well-known, there is a class of civil courts below the District Court, which also have original jurisdiction without limitation. Section 15, C.P.C. provides that "every suit shall be instituted in the Court of the lowest grade competent to try it". It is for this reason that suits in the ordinary course are filed in the courts of the concerned civil Judges, and not the District Court, notwithstanding its (unlimited) original*

<sup>2</sup> 2012 CLD 453

<sup>3</sup> PLD 2001 Karachi 484

*jurisdiction. In my view therefore, all that section 13 of the Ordinance has done is to create an exception to the rule contained in section 15, C.P.C., to the effect that now suits in respect of defamation shall be instituted in the District Court. However, insofar as the civil districts of Karachi are concerned, the jurisdiction of the District Court itself is limited by section 7 of the 1962 Ordinance, and beyond the stipulated limit, suits are to be filed in this Court on its original side. Thus, the combined effect of the foregoing is that if the pecuniary claim in a defamation suit is greater than the limit stipulated in section 7, the suit is, as before, to be brought in the High Court; otherwise, it is now to be instituted not in the court of the concerned Civil Judge, but in the District Court.*

*13. It follows from the foregoing that the decision to return the plaint in the Azhar Chaudhry case was, in my respectful view, incorrect (assuming [fiat the relief claimed in the suit was above the limit then stipulated in section 7]). Furthermore, if the view in the Raees Ghulam Sarwar case were adopted, that could lead to anomalous situations. For example, if the facts of a case came squarely within the scope of section 12, then Notwithstanding that the six-month period therein stipulated may have expired, the plaintiff may choose to "elect" to file his suit in the "civil courts", where the period of limitation is one year. The result could be, to in effect, render section 12 otiose. Equally, a plaintiff could, regardless of the quantum of the relief claimed, "elect" to bring his suit (in Karachi) either in the District Court, or this Court. This would be contrary to the provisions of section 7 of the 1962 Ordinance. At the very least therefore, the rule laid down in the Raees Ghulam Sarwar case would require putting a rather strained interpretation on the relevant provisions in more than one statute, when applied to a defamation suit. In my respectful view, the Ordinance does not create a "statutory remedy", as opposed to the "ordinary" remedy available with the "civil courts". As is clear from section 3 of the Ordinance, 1962 the District Court is as much a civil court as is the court of a Civil Judge. All that has happened is that section 13 has particularized one of the civil courts (namely, the District Court) as the appropriate forum for filing a suit under the Ordinance. There is no question of any "election": it is now not permissible or open to the plaintiff to file his defamation suit in any civil court other than the District Court. And of course, if the claim is over the limit stipulated in section 7, the suit must be instituted in this Court. I would therefore, with the utmost respect, conclude that the rule laid down in the Raees Ghulam Sarwar case ought not to be regarded as correct, and should not be followed or applied."*

Mr. Abdul Moiz Jafri, argued that as per this decision, the High Court of Sindh at Karachi continues to exercise its jurisdiction as a District Court in terms of Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 and which valuation at the time of the institution of Civil Suit No. 34 of 2021 was to entertain matters in excess of Rs. 15,000,000 (Rupees Fifteen Million). As the valuation that had been attributed by the Respondents No. 2 to 4 in Civil Suit No. 34 of 2021 was in excess of Rs. 15,000,000 (Rupees Fifteen Million) the Plaint in Civil Suit No. 34 of 2021 was liable to be returned for presentation before this Court.

8. Mr. Abdul Moiz Jafri, concluded his arguments by stating that the practice of this Court has been to admit matters that are instituted under



Section 13 of the Defamation Ordinance, 2002 by either expressing a tentative view as to this Court's jurisdiction by relying on either the order dated 23 December 2011 passed by the Supreme Court of Pakistan in CPLA No. 936-K of 2011 or on the decision reported in **A. Khalid Ansari vs. Mir Shakil ur Rahman**.<sup>4</sup>

**(ii) Arguments on behalf of the Respondents No. 2 to 4**

9. Mr. Tahmas Rasheed Razvi advanced arguments on behalf of the Respondents No. 2 to 4 and stated that the Respondents were willing to accept whatever decision this Court made as to jurisdiction and if the plaint of Civil Suit No. 34 of 2021 was returned they would thereafter present their Suit in a court of appropriate jurisdiction. Mr. Tahmas Rasheed Razvi did not rely on any caselaw in support of his submissions.

**(iii) Submissions of the Amicus Curiae**

10. During the arguments of the counsels appearing on behalf of the Appellants and the Respondent No. 2 to 4, I had inquired from Mr. Abdul Moiz Jafri and Mr. Tahmas Rasheed Razvi as to whether any appeal had been preferred as against the order passed in **A. Khalid Ansari vs. Mir Shakil ur Rahman**<sup>5</sup> on the finding in that order as to the jurisdiction of this Court to entertain a suit for defamation under Section 13 of the Defamation Ordinance, 2002 on the basis of Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 2002. When both the counsel replied that they did not have any knowledge of this fact, I noted that Mr. Hussain Ali Almani, who had represented the Defendant in that matter, was available in court and I had asked him as to whether such an appeal had been preferred or not. When he confirmed that no appeal had been preferred against the order, I had confronted all the counsels with the proposition that as this Court has been constituted under Sub-Article (1) of Article 175 of the

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<sup>4</sup> PLD 2001 Karachi 484

<sup>5</sup> *Ibid*

Constitution of the Islamic Republic of Pakistan, 1973 as a “High Court” would it be open for an interpretation to be made that this court would continue to be “District Court” keeping in mind the recent pronouncements of the Supreme Court of Pakistan on this issue. I at that time, appointed Mr. Hussain Ali Almani as an Amicus Curiae to assist the Court on this point and as the courts roster was ending he was directed to submit his submissions in writing.

(a) **The High Court and its Jurisdiction**

11. Mr. Hussain Ali Almani in his submissions began by explaining the entire legislative history regarding the establishment of this Court and its evolution under various statutes and constitutions up to date. I have taken the liberty to reproduce the entire written submission made by Mr. Hussain Ali Almani in this regard as an Annex to this Judgement and hope that by doing so I do not belittle the exceptional assistance that was provided to the Court and which I do believe is a correct statement of the the establishment and historical evolution of this Court from a “Chief Court” under the Sind Courts Act, 1926 to its status as a “High Court” under Sub- Article (1) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. After explaining the historical evolution of the Courts and the manner in which its jurisdiction has been determined, Mr. Hussain Ali Almani submissions can be summarised as follows :

- (i) That through the Sindh Courts Amending Act, 1906, the Bombay Act XII of 1866 was amended and a Court of the **Judicial Commissioner** was established for the Province of Sindh. Section 2 of that statute specifically providing that this Court would be the **District Court** for Karachi.

- (ii) The Sind Courts Act, 1926 Act established a **Chief Court** which, for the district of Karachi, was to be the principal civil court of original jurisdiction. This he contends marked a clear break from the past as the Chief Court was no longer the District Court for Karachi but the principal civil court of original jurisdiction. This was clarified in a series of judgements by the Chief Court holding that it could not be equated with the District Court.<sup>6</sup>
- (iii) After the promulgation of the Government of India Act, 1935, this Court in the decision reported as **Firdous Trading Corporation and others vs. Japan Cotton & General Trading Co. Limited**<sup>7</sup> while reaffirming the status of the Chief Court as a High Court under the Government of India Act, 1935 went on to hold that under the Sind Courts Act, 1926 it was exercising the jurisdiction of a “District Court” in contradistinction to the ordinary original civil jurisdiction of the High Court. He therefore submitted that this case, therefore, recognised that the **status** of the High Court was **distinct** from the **jurisdiction** it exercised when hearing civil suits at Karachi.
- (iv) In **Haji Razak vs Usman and others**<sup>8</sup> a Division Bench of this Court addressed the primary grounds which found favor in the **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>9</sup> and declined to follow that Judgement. In particular, the Division Bench addressed the meaning of the phrase “ordinary original civil jurisdiction” and

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<sup>6</sup> **Elias Dadla Khan vs Mahfooz Shah and another** AIR 1946 Sind 86 and **In Re Muhammad Osman Sumro Case** AIR 1948 Sind 89

<sup>7</sup> PLD 1961 (W.P.) Karachi 565.

<sup>8</sup> PLD 1975 Karachi 944.

<sup>9</sup> PLD 1961 (W.P.) Karachi 565.

observed that it could only refer to the jurisdiction of a court to decide a matter as a court of first instance and therefore, a suit decided by the High Court is decided in exercise of its original civil jurisdiction. According to the Division Bench, the original civil jurisdiction of the Karachi Bench of the High Court is, therefore, its own ordinary original civil jurisdiction and not the original civil jurisdiction of the District Court.

- (v) He contended that the **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>10</sup> was relied on and affirmed by the Supreme court of Pakistan in the **Province of Sindh vs. Haji Razak**,<sup>11</sup> in which it reversed the Division Bench judgement in **Haji Razak vs Usman and others**<sup>12</sup> and held that when entertaining and deciding civil suits, the High Court of Sindh at Karachi was not exercising its ordinary original civil jurisdiction but the original civil jurisdiction of the District Court.
- (vi) He maintained that at the time when the decision in **Province of Sindh vs. Haji Razak**<sup>13</sup> was rendered, the Sindh Civil Courts Ordinance, 1962 had been amended through Sindh Courts (Amendment) Ordinance, 1981 and the Sind Courts Act, 1926 and Karachi Courts Order, 1956 were repealed in their entirety and therefore the jurisdiction of the High Court of Sindh at Karachi was now derived from Sections 7 and 24 of the Sindh Civil Courts Ordinance, 1962. He clarified that the Supreme Court of Pakistan, however, did not address the effect of the Sindh Civil Courts Ordinance, 1962 at all. **The**

<sup>10</sup> PLD 1961 (W.P.) Karachi 565.

<sup>11</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of *Province of Sindh v Haji Razak* reported as 1991 SCMR 920.

<sup>12</sup> PLD 1975 Karachi 944.

<sup>13</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of *Province of Sindh v Haji Razak* reported as 1991 SCMR 920.

**entire Judgement is based on the Sind Courts Act, 1926.**  
**The judgement, therefore, does not address the law as it**  
**stood at the time and which barring minor amendments,**  
**is the law as it stands today.**

- (vii) In line with the judgements in **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>14</sup> and the **Province of Sindh vs. Haji Razak**<sup>15</sup>, therefore, in **Rimpa Sunbeam Co-operative Housing Society Limited vs. Karachi Metropolitan Corporation**<sup>16</sup> a Full Bench of this High Court also concluded that the jurisdiction of this court to entertain suits is that of District Court Original Civil Jurisdiction. He suggested that the majority judgement did not notice that neither the decision reported as **Firdous Trading Corporation and others vs. Japan Cotton & General Trading Co. Limited**<sup>17</sup> nor the *the decision reported as* **Province of Sindh vs. Haji Razak**<sup>18</sup> address the effect of the Sindh Civil Courts Ordinance, 1962. Instead, the majority Judgement simply followed the view taken in the **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>19</sup> as affirmed by the Supreme Court of Pakistan in **Province of Sindh vs. Haji Razak.**<sup>20</sup>

- (viii) While the concurring Judgement in the **Rimpa Sunbeam Co-operative Housing Society Limited v Karachi Metropolitan**

<sup>14</sup> PLD 1961 (W.P.) Karachi 565.

<sup>15</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** 1991 SCMR 920.

<sup>16</sup> PLD 2006 Karachi 444.

<sup>17</sup> PLD 1961 (W.P.) Karachi 565.

<sup>18</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** 1991 SCMR 920.

<sup>19</sup> PLD 1961 (W.P.) Karachi 565.

<sup>20</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** 1991 SCMR 920.

**Corporation**<sup>21</sup> does note that the original civil jurisdiction of the High Court and District Courts is governed by the Sindh Civil Courts Ordinance, 1962 alone – an observation which would have led to the conclusion that the High Court of Sindh at Karachi was exercising its own ordinary original civil jurisdiction and not District Court jurisdiction – it does not address this issue.

- (ix) The foregoing judgements were largely concerned with determining the type of jurisdiction being exercised by this Court when deciding civil suits. Finally, the decision of the Supreme Court of Pakistan in **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>22</sup> made the distinction between the status of a court and its jurisdiction explicit when it held that the view taken in **Haji Razak vs Usman and others**<sup>23</sup> was conclusive and, on this basis, has clarified “**that the High Court of Sindh, is a 'High Court'**” and **not a civil court.**
- (x) Even though it was not necessary for its conclusion in the **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>24</sup>, the Supreme Court of Pakistan reaffirmed the judgement in the **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>25</sup> and **Province of Sindh vs. Haji Razak**<sup>26</sup> wherein it was clarified that while exercising its jurisdiction under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962,

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<sup>21</sup> PLD 2006 Karachi 444.

<sup>22</sup> 2018 SCMR 1444.

<sup>23</sup> PLD 1975 Karachi 944.

<sup>24</sup> 2018 SCMR 1444.

<sup>25</sup> PLD 1961 (W.P.) Karachi 565.

<sup>26</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** 1991 SCMR 920.

notwithstanding its **status** as a High Court this Court is exercising its **jurisdiction** as a District Court.

13. On this basis Mr. Hussain Ali Almani, submitted that while the reasoning in **Haji Razak vs Usman and others**<sup>27</sup> is the most persuasive and is “bolstered” by the changes brought about by Sindh Courts (Amendment) Ordinance 1981. However, he concludes that at present the Supreme Court of Pakistan Judgements in **Province of Sindh vs. Haji Razak**<sup>28</sup> and **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>29</sup> are the judgments that remain to be applicable to this issue and which have concluded that the High Court of Sindh at Karachi, notwithstanding its status as a High Court, is exercising the jurisdiction of a District Court and which are binding on this Court under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

**(b) Jurisdiction under the Defamation Ordinance, 2002**

14. Regarding the jurisdiction of a court under the Defamation Ordinance, 2002, Mr. Hussain Ali Almani stated that two issues have arisen from the case law that require consideration:

- (i) Has the Defamation Ordinance 2002 codified the common law of tort in respect of Defamation or are the remedies available under that statute concurrent with the jurisdiction to claim a remedy under the common law of tort?
- (ii) If the remedies available are concurrent, then which court would have the requisite jurisdiction to determine such rights?

<sup>27</sup> PLD 1975 Karachi 944.

<sup>28</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** reported as 1991 SCMR 920.

<sup>29</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

- (i) **Has the Defamation Ordinance 2002 codified the Common Law of Tort in respect of Defamation or are the remedies available under that statute concurrent with the jurisdiction to claim a remedy under the common law of tort?**

15. Mr. Hussain Ali Almani has contended that there are a number of reported judgements that support the contention that the entire common law regarding defamation has been codified in the Defamation Ordinance, 2002.<sup>30</sup> He however clarified that a divergent view has been taken in certain judgments which contend that the jurisdiction under the provisions of the Defamation Ordinance, 2002 is concurrent with the jurisdiction of an ordinary Civil Court under Section 9 of the Code of Civil Procedure, 1908 to maintain a claim under the common law for the tort of defamation.<sup>31</sup> He stated that this issue has now been settled by the Supreme Court of Pakistan in the case reported as **Zulfiqar Cheema & 3 others v. Farhan Arshad Mir**<sup>32</sup> wherein it was clarified that:<sup>33</sup>

“ ... it may also be pertinent to mention here that from the reading of the Ordinance as a whole it does not again preclude a person from initiating an action for damages under the general law of the land i.e. under the law of Torts by filing a suit for damages C.P.C”

He submitted that by this decision of the Supreme Court of Pakistan, this issue has now been settled that an aggrieved party in an action for defamation has two alternate remedies i.e. to file a suit under the Defamation Ordinance, 2002 and to maintain a *lis* in the ordinary civil jurisdiction under Section 9 of the Code of Civil Procedure, 1908.

16. While accepting that this is the law that exists at present, Mr. Hussain Ali Almani submitted that in his opinion the law had in fact been

<sup>30</sup> See **Syed Mehmood Ali v. Network Television Marketing (Pvt.) Ltd. and another** PLD 2005, Karachi 399; **Azhar Chaudhary v. Residents Executive Committee** 2007 YLR 2231; **A. Khalid Ansari v. Shakil ur Rehman** PLD 2011 Karachi 484; **Pakistan Herald Publications (Pvt.) Ltd. v. Karachi Building Control Authority** 2012 CLD 453; **Khadim Hussain v. Gul Hassan Tiwano** 2013 CLD 981; **Independent Newspapers Corporation Private Limited v. Century Publications (Pvt.) Limited** 2016 CLC Note 94; **Shamsi Cooperative Housing Society Ltd. v. Chief Editor and Publisher** 2017 YLR Note 397; **Abdul Jabbar Khatak v. IInd Senior Civil Judge** PLD 2017 Sindh 438

<sup>31</sup> See **Ghulam Sarwar v. Mansoor Sadig Zaidi** PLD 2008 Karachi 458; **Zafar Ali v. Additional District Judge, Pakpattan** 2017 CLC 45; **Dr. Faiza Asghar v. Nighat Nasir Sheikh** PLD 2017 Lahore 884; **Fact Finders (Pvt.) Ltd. v. CNBC Pakistan** 2022 CLC 1397

<sup>32</sup> PLD 2015 SC 314.

<sup>33</sup> *Ibid* at 137.



codified in the Defamation Ordinance, 2002 and that after its promulgation there was only one civil remedy available to an aggrieved party in an action for defamation i.e. to file a suit under the Defamation Ordinance, 2002. In support of his contentions, he pointed out that the remedies available to a party under Section 9 of the Defamation Ordinance, 2002 provides three possible remedies:

- (i) tendering of an apology;
- (ii) claiming general damages;
- (iii) claiming special damages.

He points out that as Section 9 does not provide for any “statutory damages” and only provides for general damages and special damages and that the same are also available under the common law of tort and which would again reinforce the position that the common law of Defamation that existed has been codified under the Defamation Ordinance, 2002.

***(ii) If the remedies available are concurrent, then which court would have the requisite jurisdiction to determine such rights?***

17. In respect of this issue Mr. Hussain Ali Almani contended that clearly as the jurisdiction to institute a Suit under Section 9 of the Code of Civil Procedure, 1908 would be regulated by Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962, if an action is maintained under the tort of defamation under the common law, the jurisdiction of such a *lis* would be regulated by the pecuniary jurisdiction of the District Court and this Court as mentioned in that statute.

18. However, in respect of the jurisdiction of this Court to act as a District Court, under the provisions of the Defamation Ordinance, 2002, according to him the law is less clear. While accepting that the decisions in ***Province of Sindh vs. Haji Razak***<sup>34</sup> and the ***Searle IV Solution (Pvt.) Limited v***

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<sup>34</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of ***Province of Sindh v Haji Razak*** reported as 1991 SCMR 920.

**Federation of Pakistan**<sup>35</sup> have concluded that the High Court of Sindh at Karachi is exercising the jurisdiction of a District Court and hence the jurisdiction to institute a Suit under Section 13 of the Defamation Ordinance, 2002 would be regulated by Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 i.e. by the pecuniary jurisdiction of the District Court and of the High Court of Sindh at Karachi; he contended that this would lead to an anomalous situation.

19. In deciding this issue, he states that a critical aspect that does not appear to have been considered in any of the foregoing judgments, is the effect of the amendment made in 2004 to Section 13 of the 2002 Ordinance. Prior to its amendment, Section 13 read as follows:

“ ... 13. Trial of cases. No court inferior to that of the District Judge shall have jurisdiction to try cases under this Ordinance.”

He impresses that the foregoing provision does not designate a specific court to hear suits for defamation rather it only barred a court inferior to that of the District Judge from hearing them. He elaborates by stating that in accordance with Section 15 of the Code of Civil Procedure, 1908, where concurrent jurisdictions exists, a suit must be instituted in the court of the lowest grade competent to try it and it is for this reason that civil suits are filed before the Court of Civil Judges and not directly in the Court of the District Judge. He summarises that therefore, prior to the amendment to Section 13 of the Defamation Ordinance, 2002, an exception to Section 15 of the CPC was therefore created so as to permit suits for defamation to be instituted in the Court of the District Judge or any superior court exercising original civil jurisdiction. Correspondingly for the District of Karachi, this meant that in accordance with Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962, a suit for defamation could be filed in the High

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<sup>35</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan.**

Court of Sindh if its value exceeded the pecuniary threshold prescribed for the District Court. The reason being that for the District of Karachi, the High Court and not the District Court exercised original civil jurisdiction in suits above the prescribed pecuniary threshold and as per the decisions in the **Province of Sindh vs. Haji Razak**<sup>36</sup> and **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>37</sup> this Court would continue to exercise such a jurisdiction as a District Court.

20. Post the amendment to Section 13 of the Defamation Ordinance 2002, he states that the District Court has now specifically been conferred jurisdiction as opposed to the earlier provision when the jurisdiction of courts inferior to it had been barred. He contended that while in practice the result may often be the same, in law there is a material difference between provisions barring jurisdiction and provisions conferring jurisdiction. He contended that:

- (a) A provision barring jurisdiction excludes the jurisdiction of a specific forum which it would otherwise have. Forums other than the excluded forum may still exercise jurisdiction if they otherwise possess such jurisdiction; and
- (b) A provision conferring jurisdiction grants a specific forum jurisdiction which it would otherwise not have. Forums other than the specified forum may no longer exercise jurisdiction, even if they otherwise possess such jurisdiction.

On this basis he submits that as Section 13 of the Defamation Ordinance, 2002 in its former shape was a provision barring jurisdiction by contrast Section 13 of the Defamation Ordinance, 2002, as amended, is a provision conferring jurisdiction only on the District Court. He then submitted that as it is settled law that an amendment in law signifies a change in the intent of

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<sup>36</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** reported as 1991 SCMR 920.

<sup>37</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

the legislature,<sup>38</sup> Hence the intention of the legislature was to grant exclusive jurisdiction to the District Court under the Defamation Ordinance, 2002.

21. Mr. Hussain Ali Almani summarised all his arguments on the law by stating that:

- (i) Starting with the pre-partition judgments of the Chief Court in the **Elias Dadla Khan v Mahfooz Shah and another**<sup>39</sup> and **In Re Muhammad Osman Sumro Case**<sup>40</sup> to the latest judgment of the SCP in the **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>41</sup>, the Superior Courts have consistently held that the High Court cannot be equated with a District Court and even when it entertains suits in its original civil jurisdiction, it remains a High Court.
- (ii) As discussed above, Section 13 of the Defamation Ordinance, 2002 in its present form is a provision that confers jurisdiction on a specific court i.e. the District Court.
- (iii) In the **A.Khalid Ansari vs. Mir Shakil ur Rahman**<sup>42</sup> this Court effectively interpreted the reference to the District Court in Section 13 of the Defamation Ordinance, 2002 as a reference to the jurisdiction of a District Court. The Court held that Section 13 only created an exception to Section 15 of the Code of Civil Procedure, 1908 in accordance with which every

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<sup>38</sup> See **Pakistan Tobacco Company Limited v. Karachi Municipal Corporation**, PLD 1967 SC 241 at 248 C; **Rabnawaz v. Jahana**, PLD 1974 SC 210 at 218 E and 219 F; **Mehar Khan v. Yaqub Khan**, 1981 SCMR 267; **State Life Insurance Corporation of Pakistan v. Mercantile Mutual Insurance Company Limited**, 1993 SCMR 1394 at 1403 E; **S. Zafar Ejaz v. Chairman Pakistan Steel Mills Corporation**, 1998 PLC (C.S.) 777 at 782 A; and **Kohinoor Sugar Mills v. Federation of Pakistan**, 2018 PTD 821 at 836 A.

<sup>39</sup> AIR 1946 Sind 86

<sup>40</sup> AIR 1948 Sind 89

<sup>41</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

<sup>42</sup> PLD 2001 Karachi 484;

civil suit must be filed in the court of the lowest grade competent to entertain it. This interpretation, however, he submitted does not account for the legislative intent of the effect of the amendment in Section 13 of the Defamation Ordinance 2002 and in fact, renders it redundant.

- (iv) Further, as held by this Court in the **Firdous Trading Corporation and others vs Japan Cotton & General Trading Co. Limited**<sup>43</sup> and affirmed by the Supreme Court of Pakistan in the **Province of Sindh vs. Haji Razak**.<sup>44</sup> and in **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>45</sup>, the District Court jurisdiction is synonymous with the original jurisdiction of civil courts (as opposed to the ordinary original civil jurisdiction of the High Court). If Section 13 refers to the District Court's jurisdiction (as opposed to the status of the court as a District Court), then suits under the 2002 Ordinance should be filed in the civil court, like any other civil suit. In that case, the legislative intent of the effect of the amendment in Section 13 of the Defamation Ordinance 2002 is again rendered redundant.
- (v) Finally, this interpretation also renders Section 15 of Defamation Ordinance, 2002 providing an appeal from the judgment to the High Court as otiose, as Section 17 of the Sindh Civil Courts Ordinance, 1962 already provides that an appeal from an order of a District Judge exercising original jurisdiction shall lie to the High Court.

<sup>43</sup> PLD 1961 (W.P.) Karachi 565.

<sup>44</sup> PLD 2017 Supreme Court 207. This case was decided on 25.02.1991 and short order passed in the case of **Province of Sindh v Haji Razak** 1991 SCMR 920.

<sup>45</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

- (vi) The view of the Division Bench of this Court in **Pakistan Herald Publications (Private) Limited and 2 others vs. Karachi Building Control Authority**<sup>46</sup> and the **Abdul Jabbar Khatak v. IInd Senior Civil Judge**<sup>47</sup> is, therefore, to his mind the correct view.

**C. The Judgement on Miscellaneous Appeal No. 7 of 2022**

**(i) The legality of the order dated 11 February 2020**

22. As per the order dated 11 February 2022, the Appellants have conceded that they are only pressing this Appeal to the extent of the order passed by the XIth Additional District Judge Karachi (South) on 11 February 2020 in Civil Suit No. 34 of 2019 in respect of the Application under Order VII Rule 10 of the Code of Civil Procedure, 1908 that had been filed by them. In this regard I have perused the order dated 11 February 2020 passed by the XIth Additional District Judge Karachi (South) that was passed by that court in Civil Suit No. 34 of 2019 on the application under Order VII Rule 10 of the Code of Civil Procedure, 1908 and note that the XIth Additional District Judge Karachi (South) has made no finding on this application and has simply stated that on account of the pendency of the appeal against the decision reported as **Pakistan Herald Publications (Private) Limited and 2 others vs. Karachi Building Control Authority**<sup>48</sup> before the Supreme Court of Pakistan and wherein on 23 December 2011 in CPLA No. 936-K of 2011 the Supreme Court of Pakistan had been pleased to “stay” the operation of that Judgement, as that matter was sub-judice he could not “comment on this proposition” and therefore failed to give a finding on this issue.

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<sup>46</sup> 2012 CLD 453

<sup>47</sup> PLD 2017 Sindh 438

<sup>48</sup> 2012 CLD 453

23. The Supreme Court of Pakistan in the decision reported as **Mollah Ejahar Ali vs. Government of East Pakistan and others**<sup>49</sup> has held that:

“ ... To deal with the second contention first, there is no doubt that the High Court’s order which is unfortunately perfunctory gives the impression of a hasty off-hand decision which, although found to be correct in its result, is most deficient in its content. If a summary order of rejection can be made in such terms, there is no reason why a similar order of acceptance, saying “there is considerable substance in the petition which is accepted” should not be equally blessed. This will reduce the whole judicial process to authoritarian decrees without the need for logic and reasoning which have always been the traditional pillars of judicial pronouncements investing them with their primary excellence of propriety and judicial balance. Litigants who bring their dispute to the law Courts with the incidental hardships and expenses involved do expect a patient and a judicious treatment of their cases and their determination by proper orders. **A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication.** The ultimate result may be reached by a laborious effort, but if the final order does not bear an imprint of that effort and on the contrary discloses arbitrariness of thought and action, the feeling with the painful results, that just has neither been done nor seems to have been done is inescapable. When the order of a lower Court contains no reasons, the appellate court is deprived of the benefit of the views of the lower Court and is unable to appreciate the process by which the decision has been reached.”

(Emphasis is added)

It is apparent that in the order dated 11 February 2020 passed by the XIth Additional District Judge Karachi (South) in Civil Suit No. 34 of 2019, there is no finding on the application under Order VII Rule 10 of the Code of Civil Procedure, 1908 that has been maintained by the Appellant, to the extent that the application has neither been allowed or even dismissed – it apparently therefore remains pending. This is patently illegal as it was incumbent on the XIth Additional District Judge Karachi (South) in Civil Suit No. 34 of 2019 to pass an order on the application under Order VII Rule 10 of the Code of Civil Procedure, 1908 “manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication.” I have no hesitation in saying that to this extent there is a clear irregularity in the Order dated 11 February 2022 passed by the XIth Additional District Judge Karachi (South) and which cannot be sustained.

(ii) **The Jurisdiction of the District Court and the High Court of Sindh at Karachi under Section 13 of the Defamation Ordinance, 2002**

(a) **The Common Law and its Justiciability under Section 9 of the Code of Civil Procedure, 1908**

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<sup>49</sup> PLD 1970 Sc 173

24. Regulation 26 of Sind Regulation IV of 1827 (this is para material the same as Section 6 of the Punjab Laws Act (Act IV of 1872), The Khyber Pakhtunkhwa, Law and Justice Regulation VII of 1901 and British-Baluchistan Civil Justice Regulation IX of 1896) reads as follows:

“ *The law to be observed in the trial of suits shall be Act of Parliament and Pakistan Laws applicable to the case, in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and, in the absence of specific law and usage, justice, equity and good conscience alone.*

The Regulation still finds itself on the statute books<sup>50</sup> and governs the manner in which the trials of suits are to take place in the Province of Sindh. A literal interpretation of this regulation indicates that where there is a statute which governs the subject matter of the case, the law “to be observed” must be as contained in that statute. It is only in the absence of such an statute that the residual powers to try a suit i.e., the usage of the country in which the suit arose (customs or customary law) or if that does not exist then the law of the defendant and only in the absence of any specific law and usage, the courts power to adjudicate on the issue as against the perimeters of justice, equity and good conscience can be exercised. To clarify, a Courts power to make “law” in accordance with the principles of “justice, equity and good conscience” is only available as a residual power.

25. Such an interpretation has been made by the Lahore High Court, Lahore in Haji Nizam Khan v Additional District Judge, Lyallpur<sup>51</sup> wherein it was held:

“ ... *In case it is assumed that a particular field of law is neither covered by statute law as generally understood, nor custom as it remained applicable to certain subjects and up to a period of time, nor personal law as applied by statutes to some specified subjects, the all important question would then arise as to what would be the rule of decision in Pakistan. The aforementioned Punjab Laws Act (Act IV of 1872), in section 6 thereof, furnished*

<sup>50</sup> See The Sindh Code Volume 1

<sup>51</sup> PLD 1976 Lah 930



the answer, namely, that "in cases not otherwise specially provided for the Judges shall decide according to justice, equity and good conscience".

26. Initially the interpretations of the words "justice, equity and good conscience" came to be interpreted to mean the "Common Law of England". However, in the same decision the matter was re-examined post partition and where it was opined that the words should be interpreted to mean Muslim Common Law i.e. the Islamic Law of Sharia. The Judgment to this extents clarifies that:

" ... *In the next section 7, all local customs and mercantile usages were also made subservient to the rules of justice, equity and good conscience. Similar provisions existed for other provinces/regions of undivided India from nineteenth century [For N.-W. F. P., Law and Justice Regulation VII of 1901; for Bombay and Sind, see section 26 of Regulation IV of 1827; for British Baluchistan, see British-Baluchistan Civil Justice Regulation IX of 1896; and for Bengal, Agra and Assam, see section 37(2) of the Bengal, Agra and Assam Civil Courts Act, 1887]. Earlier thereto, during the eighteenth century, we find the Governor-General's Regulations of 1781 and 1793 whereby, amongst other matters, it was provided that Judges were to act according to justice, equity and good conscience in cases for which no specific rule existed. There was no such condition in these laws so as to indicate that the rules of equity, justice and good conscience as they prevailed in England were to apply in the sub-continent. On the other hand, the expression "justice, equity and good conscience" remained undefined and was left to be interpreted and applied by the Judges in accordance with their own understanding thereof. This omission, in my view, was intentional because in some other almost contemporaneous laws, where it was intended that the general law of England shall govern a certain situation, the same was provided in statutory form. For example, section 7 of the Indian Divorce Act (IV), 1869 laid down that the Courts shall in all proceedings under the said Act follow the principles and rules which "are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief".*

*The above conclusion is further strengthened by reference to still earlier period of the British advent in the sub-continent. The King of England, by various Charters, authorised the East India Company to govern its servants on the ships as also in the trading settlements on the coasts of India. The laws applied in aid of such governance were to be purely British. More specific provision was made in the Charter of 1661 where under the Company was empowered to "judge all persons . . . . under them, in all causes, whether civil or criminal, according to the laws of this Kingdom, and to execute judgment accordingly". This shows that the substantive and procedural laws to be applied by the company were all those which were then in force in England. Thus, the British law, including all its branches, statute, common law and equity were applicable to all persons, whether servants of the Company or living under it, in the trading settlements and they were, under the Charter of 1661, subject to those laws. The Charter of 1668, under which Bombay was transferred to the Company, empowered the latter to make laws, Ordinances and Constitutions for the good government of the island. If this Charter were to be treated as the then Constitution, it provided that the laws authorised by it had to be in accord with reason and further they could not be repugnant, but be as near as might be agreeable, to the laws of England. The procedures followed by the Courts established by the company were similarly those of the Courts of England. Similar but fluid situation with regard to substantive and procedural laws prevailed till the early part of eighteenth century; where after, it appears, various Acts*

and Regulations, earlier referred to, made provisions for equity, justice and good conscience as sources of residuary law when a situation was not provided for through other branches of law -statute and customary. This would show that during the early period it was provided through Charters that Courts shall follow British substantive and procedural laws and further that the new laws to be made for Indian settlements could not be contrary to the laws of England. During the later period, i.e., eighteenth and nineteenth century, however, the residuary law in the absence of statutory provisions was to be found in equity, justice and good conscience without any specific rider to emphasize that this branch of law was to be developed on the same pattern as that of England. In other words, for the purpose of finding the residuary law, the choice was left to the good conscience and sense of justice as also the standards of equity known to the Judges, serving in India.

This was a turning point for the development of jurisprudence in India, The Judges were at liberty to follow the philosophy underlying the Muslim Law which was applicable in the sub-continent for centuries or to follow the general principles of British Jurisprudence with particular reference to common law and equity prevailing in England. For various reasons including psychological, the Judges of Indian origin also, by and large, preferred and followed English rules till the advent of Independence but this submission and surrender was not, without raising of substantial controversies by some of them. Mahmood, J. of Allahabad was one of them. His thought process on this question is discernible in his dissenting judgment in *Queen-Empress v. Pohpi and others* ((1891) 13 All. 171) which will be presently analysed in another connection. The above analysis has been made to show that even during the pre-Independence period, in so far as the then prevalent enforceable law since the middle of eighteenth century is concerned, it did not require the Judges specifically, to follow the British rules of equity, justice and good conscience as residuary law, if general Muslim Law, or, to put it differently, the Muslim Common Law would have been applied through its own principles of equity and justice as residuary law, strictly legally speaking, they (the Judges) would not have contravened any law determining their jurisdictions and governing and controlling their functions. I would revert to this subject again when dealing with the question whether, even after Independence and under the present constitutional arrangements, the Judges are to follow any other law than Muslim Common Law as residuary source of law in Pakistan.”

27. This decision was reaffirmed by the Supreme Court of Pakistan reported as **A.M Qureshi v Union of Soviet Socialist Republics**<sup>52</sup> wherein it was reiterated that:

“ ... I am in respectful agreement with the views and the judgement proposed to be delivered by my learned brother Karam Elahee Chauhan J., and with the views expressed by my learned brother Nasim Hassan Shah J., on the questions relating to customary international law and the law in Pakistan on state immunity as also on rule of law in Pakistan when vacuum exists in statutory field. However, I would make some observations on the question raised by Mr. Sharifuddin Pirzada with regard to the application of Islamic Law and juridical norms, in cases like the present one. He contended that precedents and rules are not lacking in that system of law to resolve similar controversies. In this behalf he also cited and relied on my judgement in *Haj Nizam Khan's case* (PLD 1976 Lah 930) ; wherein, inter alia, it was held that it is no more good law to interpret expresses ‘justice, equity and good conscience’ to mean the rules of English law, as in any way applicable in Pakistan. Instead, accepted and fundamental principles and juridical norms of Islam, its philosophy, jurisprudence and its common law shall govern the application of the rules of justice and equity as also would control the discretion of the Judges when their questions of good conscience and fairplay are involved.”

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<sup>52</sup> PLD 1981 SC 377

28. The position of the law was settled by the Honourable Supreme Court of Pakistan in the case reported as **Hitachi Limited v Rupali Polyester**<sup>53</sup> wherein while considering the provisions of Sub-article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973

“ 7. *In Indo-Pak, under the Letters Patent under which High Courts were created, inter alia provided that the High Courts were competent to apply inter alia the principles of equity and rule of good conscience ( as an example, reference may be made to clauses 12 and 13 of the Letters Patent High Court Judicature Lahore). We may also refer to the cases of Azim Khan v. State of Pakistan and another (PLD 1957 (W.P.) Karachi 892), Nizam Khan v. Additional District Judge, Lyallpur (PLD 1976 Lahore 930), and A.M. Qureshi v. Union of Soviet Socialist Republics (PLD 1981 SC 377). In the first case it was contended by the counsel for the State that common law principles prevalent in England and equally applicable in Pakistan permitted a lessor to eject his lessee by use of minimum force necessary for the purpose. Reliance was placed on Halsbury's Laws of England, Third Edition, Volume 20, page 280. The above contention was repelled by observing as under:--*

*"The basis of this para. appears to be that if a tenant is ejected by force, no civil remedy is available to him for getting redressed. That may be the position in England but is not so in Pakistan. Section 9 of the Specific Relief Act provides a remedy in such cases."*

*In the second case, Muhammad Afzal Zullah, J. (as his Lordship then was) held that it was not permissible for Courts in Pakistan to apply and import any Rules of English law relating to equity, justice and good conscience but the Courts could invoke the Rules of equity, justice, good conscience and public policy as contained in the Muslim Jurisprudence. In the third case, Muhammad Afzal Zullah, as a Judge of this Court (as his Lordship then was), reiterated his above Lahore view that for filling gap where law is not available, the principles of justice, equity and good conscience as given in Islamic Jurisprudence and as enunciated in the fundamental principles and judicial norms of Islam are to be pressed into service and not English common law or principles of equity and good conscience."*

*The principles of common law or equity and good conscience cannot confer jurisdiction on the Courts in Pakistan which has not been vested in them by law. In this regard reference may be made to clause (2) of Article 175 of the Constitution of Pakistan, which provides that no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The High Courts derive their jurisdiction under the Constitution and the statutes. In view of the above Constitutional provision and the case-law the principles of English common law or equity or good conscience cannot be pressed into service in Pakistan as having **statutory** force. But a Court may adopt a procedure, which is not prohibited by any law if the dictates of justice so demand."*

29. To summarise, the jurisdiction of this Court stems from Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 which when read with Regulation 26 of Sind Regulation IV of 1827 would state that the right of the High Courts to develop the law would occur

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<sup>53</sup> 1998 SCMR 1618

as a residual power where no statute is in the field and at which stage the Court can “**adopt a procedure, which is not prohibited by any law if the dictates of justice so demand.**”

30. Prior to the promulgation of the Defamation Ordinance, 2002, as there was no statute that regulated the law, defamation was absorbed into this Courts jurisprudence from the English Common law of Tort.<sup>54</sup> I would have thought that after the promulgation of the Defamation Ordinance, 2002 as a statute had occupied the area of law, the resort to the common law under the principles of “justice, equity and good conscience” would no longer be justiciable under Section 9 of the Code of Civil Procedure, 1908. Such an interpretation would derive force from the interpretation given by the superior courts that where the power of a judge to adjudicate on the basis of the principles of “justice, equity and good conscience” is exercised it can be done so as per the decision of the Lahore High Court Lahore in **Haji Nizam Khan vs. Additional District Judge, Lyallpur**<sup>55</sup> as a “residuary” power and as per the decision of the Supreme Court of Pakistan in reported as **A.M Qureshi v Union of Soviet Socialist Republics**<sup>56</sup> to be applicable where a “vacuum exists in [the] statutory field”.

31. The preamble of the Defamation Ordinance, 2002 reads as under:

“ ... WHEREAS it is expedient to make provisions in respect of defamation and for matters connected therewith or incidental thereto”

The only interpretation that one can ascertain from the preamble is that there is no **express** intention that can be ascertained on the part of the legislature to codify the common law of defamation. That being said the provisions of Section 3 codifying the action for defamation and including therein the common law actions of slander and libel and the defences

<sup>54</sup> See **Mukimilla vs. Sukmur Bhattacharyya** PLD 1952 Dacca 292; **M. Moosa vs Mahomed** PLD 1959 (W.P.) Karachi 378;

<sup>55</sup> PLD 1976 Lah 930

<sup>56</sup> **PLD 1981 SC 377**

available in an action to defamation also having been codified in Section 5 of the Defamation Ordinance, 2002 and, as correctly pointed out by Mr. Hussain Ali Almani, the remedies available to the action also having been codified in Section 9 of the Defamation Ordinance, 2002 –would to my mind, lead to the conclusion that it was the intention of the legislature to codify the common law of Defamation in the Defamation Ordinance, 2002. I therefore would be inclined to agree with the decisions that the legislature by the promulgation of the Defamation Ordinance, 2002 has codified the common law and would add that as per the decision of the Supreme Court of Pakistan in **A.M Qureshi v Union of Soviet Socialist Republics**<sup>57</sup> there being no vacuum that exists in the statutory field, resort could not thereafter be made to the common law.<sup>58</sup>

32. I am in particular agreement with the decision passed by Muneeb Akhtar, J. in **A. Khalid Ansari vs. Mir Shakil ur Rahman**,<sup>59</sup> wherein it was held that:

“ ... *Furthermore, if the view in the Raees Ghulam Sarwar case were adopted, that could lead to anomalous situations. For example, if the facts of a case came squarely within the scope of section 12, then Notwithstanding that the six-month period therein stipulated may have expired, the plaintiff may choose to "elect" to file his suit in the "civil courts", where the period of limitation is one year. The result could be, to in effect, render section 12 otiose. Equally, a plaintiff could, regardless of the quantum of the relief claimed, "elect" to bring his suit (in Karachi) either in the District Court, or this Court. This would be contrary to the provisions of section 7 of the 1962 Ordinance. At the very least therefore, the rule laid down in the Raees Ghulam Sarwar case would require putting a rather strained interpretation on the relevant provisions in more than one statute, when applied to a defamation suit.*”

This is to my mind quite clearly correct. To take an example if one is to interpret that the common law of defamation continues to be actionable under Section 9 of the Code of Civil Procedure, 1908 a Plaintiff who being denied relief on the grounds of having instituted a claim after the statutory period of six months (as provided under the provisions of the Defamation

<sup>57</sup> PLD 1981 SC 377

<sup>58</sup> See **Syed Mehmood Ali v. Network Television Marketing (Pvt.) Ltd. and another** PLD 2005, Karachi 399; **Azhar Chaudhary v. Residents Executive Committee** 2007 YLR 2231; **A. Khalid Ansari v. Shakil ur Rehman** PLD 2011 Karachi 484; **Pakistan Herald Publications (Pvt.) Ltd. v. Karachi Building Control Authority** 2012 CLD 453; **Khadim Hussain v. Gul Hassan Tiwano** 2013 CLD 981; **Independent Newspapers Corporation Private Limited v. Century Publications (Pvt.) Limited** 2016 CLC Note 94; **Shamsi Cooperative Housing Society Ltd. v. Chief Editor and Publisher** 2017 YLR Note 397; **Abdul Jabbar Khatak v. IInd Senior Civil Judge** PLD 2017 Sindh 438

<sup>59</sup> PLD 2001 Karachi 484

Ordinance, 2002) could thereafter within a further period of 6 months be able to seek the identical relief in a suit under Section 9 of the Code of Civil Procedure, 1908. This is indeed an anomalous situation. One would only then sympathise with a Defendant who having received a decision that the *lis* having been rejected under the Defamation Ordinance, 2002 for limitation would thereafter be subjected to in effect the same *lis* being instituted under Section 9 of the Code of Civil Procedure, 1908 only to find that the Court holds that *lis* to be maintainable!

33. The Supreme Court of Pakistan in the case reported as **Zulfiqar Cheema & 3 others v. Farhan Arshad Mir**<sup>60</sup> has clarified that:<sup>61</sup>

“ ... it may also be pertinent to mention here that from the reading of the Ordinance as a whole it does not again preclude a person from initiating an action for damages under the general law of the land i.e. under the law of Torts by filing a suit for damages C.P.C”

It is apparent that there there is now a finding of the Supreme Court of Pakistan that the rights to institute an action under the Defamation Ordinance, 2002 are concurrent to the right to institute the same action under Section 9 of the Code of Civil Procedure, 1908 under the common law of tort for defamation. This decision is, aside from having been adjudicated on the same subject matter, under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 binding on this court and therefore must be followed notwithstanding the decision in **A.M Qureshi vs Union of Soviet Socialist Republics**<sup>62</sup>. If any court is to reconcile those two decisions it must be the Supreme Court of Pakistan and not this Court. It would therefore seem that to the extent of their being a concurrent remedy available to a litigant to institute proceedings under the Defamation Ordinance, 2002 or under the common law of tort under Section 9 of the Code of Civil Procedure, 1908, the decisions reported as **Ghulam Sarwar vs. Mansoor Sadiq Zaidi**<sup>63</sup>; **Zafar Ali vs. Additional District**

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<sup>60</sup> PLD 2015 SC 314.

<sup>61</sup> *Ibid* at 137.

<sup>62</sup> **PLD 1981 SC 377**

<sup>63</sup> PLD 2008 Karachi 458

**Judge, Pakpattan<sup>64</sup>, Dr. Faiza Asghar vs. Nighat Nasir Sheikh<sup>65</sup>, Fact Finders (Pvt.) Ltd. vs. CNBC Pakistan<sup>66</sup>** have been approved by the Supreme Court of Pakistan and the decisions of this Court stating that the law of Defamation has been codified and which are reported as **Syed Mehmood Ali vs. Network Television Marketing (Pvt.) Ltd. and another<sup>67</sup>, Azhar Chaudhary vs. Residents Executive Committee<sup>68</sup>, A. Khalid Ansari vs. Shakil ur Rehman,<sup>69</sup> Pakistan Herald Publications (Pvt.) Ltd. vs. Karachi Building Control Authority,<sup>70</sup> Khadim Hussain vs. Gul Hassan Tiwano,<sup>71</sup> Independent Newspapers Corporation Private Limited vs. Century Publications (Pvt.) Limited,<sup>72</sup> Shamsi Cooperative Housing Society Ltd. vs. Chief Editor and Publisher,<sup>73</sup>; Abdul Jabbar Khatak v. IInd Senior Civil Judge<sup>74</sup>** while not specifically having been overruled cannot now be followed.

34. As such when examining a *lis* for defamation a Court would first have to see whether or not the claim that is being made by the Plaintiff has been made under the provisions of the Defamation Ordinance, 2002 or under Section 9 of the Code of Civil Procedure, 1908 and then:

- (i) if the *lis* has been instituted under Section 13 of the Defamation Ordinance, 2002 it would prima facie be incumbent on the Plaintiff, subject to the issue of pecuniary jurisdiction that would be relevant to the High Court of Sindh at Karachi, to institute such a *lis* before the District Judge; and

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<sup>64</sup> 2017 CLC 45

<sup>65</sup> PLD 2017 Lahore 884

<sup>66</sup> 2022 CLC 1397

<sup>67</sup> PLD 2005 Karachi 399

<sup>68</sup> 2007 YLR 2231

<sup>69</sup> PLD 2011 Karachi 484

<sup>70</sup> 2012 CLD 453

<sup>71</sup> 2013 CLD 981

<sup>72</sup> 2016 CLC Note 94

<sup>73</sup> 2017 YLR Note 397

<sup>74</sup> PLD 2017 Sindh 438

- (ii) if the *lis* has been instituted under the common law of tort under Section 9 of the Code of Civil Procedure, 1908, then to institute the suit before the Civil Court having original civil jurisdiction.

**(b) The Jurisdiction of the High Court as a District Court for the Purposes of Section 13 of the Defamation Ordinance, 2002.**

35. The right of a court to try a case under the provisions of the Defamation Ordinance, 2002 is regulated by Section 13 of the Defamation Ordinance, 2002. The right of an appeal from an order of the Court is conferred under Section 15 of the Defamation Ordinance, 2002. Both these sections were amended by the Defamation (Amendment) Act, 2004 on 30 November 2004. For convenience they are reproduced in the table below:

The Defamation Ordinance, 2002 as originally promulgated on 1 October 2002	The Defamation Ordinance 2002 post the amendment under the Defamation (Amendment) Act, 2004 on 30 November 2004
<p>13. <i>Trial of cases.</i></p> <p><i>No court inferior to that of the District Judge shall have jurisdiction to try cases under this Ordinance.</i></p>	<p>13. <i>Trial of cases.</i></p> <p><i>The District Court shall have the jurisdiction to try the cases under this Ordinance</i></p>
<p>15. <i>Appeal. An appeal against the final order of the District Judge shall lie to the High Court within thirty days of the passing of such order.</i></p> <p><i>Provided that no appeal shall lie against an interlocutory order of the court</i></p>	<p>15. <i>An appeal against the final decision and decree of the Court shall lie to the High Court within thirty days and the High Court shall decide the appeal within sixty days.</i></p> <p><i>Provided that no appeal shall lie against an interlocutory order of the Court</i></p>

36. It is apparent as was held by Muneeb Akhtar J. in the decision reported as **A. Khalid Ansari vs. Mir Shakil ur Rahman**,<sup>75</sup> that by making an amendment to Section 13 of the Defamation Act, 2002, the intention of Parliament was to designate a specific court to hear a *lis* instituted under the Defamation Ordinance 2002 i.e. the District Court. In that decision it was held that:

<sup>75</sup> PLD 2001 Karachi 484



“ ... 12. In my respectful view, the attention of the Court in the earlier cases was not drawn towards sections 3 and 7 of the Civil Courts Ordinance, 1962 ("the 1962 Ordinance") and section 15, C.P.C. Section 3 of the 1962 Ordinance lists the classes of civil courts, and at the apex of this hierarchy is the District Court. Section 7 provides (subject to the well-known exception in the case of the civil districts of Karachi) that the original jurisdiction of the District Court is without limitation. Now as is also well-known, there is a class of civil courts below the District Court, which also have original jurisdiction without limitation. Section 15, C.P.C. provides that "every suit shall be instituted in the Court of the lowest grade competent to try it". It is for this reason that suits in the ordinary course are filed in the courts of the concerned civil Judges, and not the District Court, notwithstanding its (unlimited) original jurisdiction. In my view therefore, all that section 13 of the Ordinance has done is to create an exception to the rule contained in section 15, C.P.C., to the effect that now suits in respect of defamation shall be instituted in the District Court. However, insofar as the civil districts of Karachi are concerned, the jurisdiction of the District Court itself is limited by section 7 of the 1962 Ordinance, and beyond the stipulated limit, suits are to be filed in this Court on its original side. Thus, the combined effect of the foregoing is that if the pecuniary claim in a defamation suit is greater than the limit stipulated in section 7, the suit is, as before, to be brought in the High Court; otherwise, it is now to be instituted not in the court of the concerned Civil Judge, but in the District Court...

... As is clear from section 3 of the Ordinance, 1962 the District Court is as much a civil court as is the court of a Civil Judge. All that has happened is that section 13 has particularized one of the civil courts (namely, the District Court) as the appropriate forum for filing a suit under the Ordinance. There is no question of any "election": it is now not permissible or open to the plaintiff to file his defamation suit in any civil court other than the District Court. And of course, if the claim is over the limit stipulated in section 7, the suit must be instituted in this Court. I would therefore, with the utmost respect, conclude that the rule laid down in the *Raees Ghulam Sarwar* case ought not to be regarded as correct, and should not be followed or applied."

I don't think that the logic applied in this decision can be faulted. While Mr. Hussain Ali Almani, the learned Amicus Curiae, had submitted that such an interpretation does not account for the obvious legislative intent of the effect of the amendment in Section 13 of the Defamation Ordinance 2002 i.e. to clearly exclude any courts superior to the District Court in the judicial hierarchy, and in fact, renders it redundant. To this contention, I must disagree. While, I am comfortable to accept the proposition that while interpreting a statute the court should give effect to the intent of the legislature as can be understood from the statute at the time when it was incorporated, the Court must also accept that while making such an amendment the legislature was aware about the unique jurisdiction of the High Court of Sindh at Karachi under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 and hence the intention of the legislature was that the jurisdiction should remain unaffected. If the

legislative intent was otherwise an exception could have specifically been made in the statute so as to say that the High Court under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 does not have jurisdiction. As no exception was made and following the decision in **A. Khalid Ansari vs. Mir Shakil ur Rahman**,<sup>76</sup> I am also of the opinion that the amendment made in Section 13 of the Defamation Ordinance, 2002 has only created an exception to the rule contained in Section 15 of the Code of Civil Procedure, 1908 to the effect that now suits in respect of defamation shall be instituted in the District Court and in respect of the city of Karachi when Section 13 of the Defamation Ordinance, 2002 is read with Sections 7 and 24 of the Sindh Civil Courts Ordinance, 1962 then such *lis* will either be instituted before the District Judge or before this Court in its original civil jurisdiction on the basis of their respective pecuniary jurisdictions.

37. A further submission that was made by Mr. Hussain Ali Almani was that as per the provisions of Section 15 of the Defamation Ordinance, 2002, an appeal would lie from a decision of the District Court to the High Court and clearly a discernible difference having been made in that Statute must lead one to the interpretation that the legislative intent was to make a distinction between these two courts and as such the jurisdiction of this Court under the Defamation Ordinance, 2002 stands excluded. On the same line of argument he contended that if the interpretation is made that the District Court was for all practical purposes the High Court, an appeal would therefore in effect lie from the “High Court” to the “High Court”. Prima facie, this is indeed a compelling submission. I believe however that the answer to this submission lies in the decision of **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>77</sup> where the Supreme Court of Pakistan made a distinction between the status of a court and its jurisdiction

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<sup>76</sup> PLD 2001 Karachi 484

<sup>77</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

explicit when it held that the view taken in **Haji Razak vs Usman and others**<sup>78</sup> on this issue to be conclusive and wherein it was held that:

“ ... *Therefore, even prior to the Order of 1955, this Court, in light of section 14 of the Act of 1926, was a "High Court" merely exercising the original civil jurisdiction for the District of Karachi. As insisted upon by the learned counsel for the appellants, we are convinced by the argument that in light of the above, the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court, therefore the two cannot be equated by any stretch of imagination.*”

The Status of this Court as being a “High Court” constituted under Sub-Article(1) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 and not a District Court having been clearly articulated by the Supreme Court of Pakistan, the secondary question is as to whether when exercising its original jurisdiction, the High Court of Sindh at Karachi exercises its jurisdiction as a High Court or that of a District Court? This question was also unequivocally answered by the Supreme Court of Pakistan in **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**<sup>79</sup> wherein it was held that:

“ ... The question of the status of the Single Bench of the Sindh High Court at Karachi, stands conclusively decided in the judgment of Province of Sindh v. Haji Razaq judgment (supra) which relies almost entirely on Justice Waheeduddin Ahmed, J's judgment in Firdous Trading Corporation v. Japan Cotton and General Co. Ltd. (supra) wherein he had in unequivocal words stated that:

*"I have not the slightest doubt on the language of section 3 of Sindh Act, 1926 and the definition of "District" in section 2(4) of the Civil Procedure Code, **that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court.** In my opinion the mere fact that the Sindh Chief Court later on was included within the definition of High Court under section 219 of the Government of India Act, did not change the nature of this jurisdiction."*

This view, being the conclusive view of this Court ever since Haji Razzaq's case (supra) as the settled law on the matter shall prevail.”

<sup>78</sup> PLD 1975 Karachi 944.

<sup>79</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan.**

By this decision the Supreme Court of Pakistan has clarified that while this Court continues to be a “High Court” constituted under Sub-Article (1) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 it has the capacity to exercise jurisdictions conferred on it in accordance with Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 by “the Constitution or by or under any law.”

38. It is accepted that the High Court has jurisdiction conferred on it under numerous statutes; examples of which can be the jurisdiction conferred on the High Court under the Companies Act, 2017, the Trademarks Ordinance 2001 and the Financial Institutions (Recovery of Finances) Ordinance, 2001. It would naturally follow that under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 it can also be conferred with the jurisdiction of the District Court. That having been done, wherever a statute confers the jurisdiction on the District Court as per the decision in **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**,<sup>80</sup> such a jurisdiction for the District of Karachi must be read in conjunction with Section 7 and 24 of the Sindh Civil Courts Ordinance, 1962 and which would therefore confer the jurisdiction of the District Court on the High Court of Sindh at Karachi as per the pecuniary jurisdiction that has been mentioned therein. As such this Court must also accept that while making such a distinction as between the High Court and the District Court in the Defamation Ordinance, 2002 the legislature was aware about the unique jurisdiction of the High Court of Sindh at Karachi under Section 7 of the Civil Courts Ordinance, 1962 and by making the reference to each of the courts in the Defamation Ordinance, 2002 they were referring to the “jurisdiction” and not as to the “status” of the Court.

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<sup>80</sup> 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan**.

39. Regarding the second limb of Mr. Hussain Ali Almani contention that by interpreting the expression District Court in Section 13 of the Defamation Ordinance, 2002, to mean that the High Court was exercising the jurisdiction of a District Court, would therefore lead to the anomalous situation that Section 15 of the Defamation Ordinance, 2002 would in effect be read to mean that a decision would lie from the High Court (exercising its jurisdiction as a District Court under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962) to the High Court (exercising its jurisdiction as an Appellate court under the Sub-Section (1) of Section 3 of the Law Reforms Ordinance 1972). While, it is interesting to note that the language of Section 13 of the Defamation Ordinance, 2002 refers to only to the expression "District Court" by contrast the language of Section 15 of the Defamation Ordinance, 2002 does not refer to an appeal lying from the "District Court" to the "High Court" rather it refers to an appeal lying from a **"Court"** to the "High Court". This however must be further be considered as against the interpretation of the expression "Court" as defined in Sub-Section (bb) of Section 2 of the Defamation Ordinance, 2002 which states that the expression "Court" is to mean a "District Court". Needless to say, the circularity of such a definition clearly leads to my mind leads to an element of repugnancy in relying the on the definition of the expression "Court" as existing in Sub-Section (bb) of Section 2 of the Defamation Ordinance, 2002. I would therefore be inclined to reconcile such as discrepancy as permissible under Section 2 of the Defamation Ordinance, 2002 wherein it is clarified that if the definition of a word prescribed within that section would lead to repugnancy the definition given in the section must yield to the ordinary meaning of the word "Court" and which leads to me the conclusion that the expression "Court" as used in Section 15 of the Defamation Ordinance, 2002 could therefore include the High Court (exercising its jurisdiction as a "District Court" under Section 7 of the Sindh Civil Courts Ordinance, 1962) and the expression "High Court" used in Section 15 of the Defamation Ordinance, 2002 must be referring to the

jurisdiction of the High Court (exercising its jurisdiction as an appellate court under the Sub-Section (1) of Section 3 of the Law Reforms Ordinance 1972). The language of the section therefore is consistent with the interpretation that the section would refer to the “jurisdiction” of the courts and not to their “status” and which I would consider resolves the anomaly identified by Mr. Hussain Ali Almani.

40. To summarise a court while examining a *lis* maintained either under Section 13 of the Defamation Ordinance, 2002 or under the common law of tort under Section 9 of the Code of Civil Procedure, 1908 would therefore have to only consider as to whether the *lis* came within the pecuniary jurisdiction of the High Court or of the District Court under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 and on that basis either entertain or return the *lis*.

**(c) The Application under Order 7 Rule 10 of the Code of Civil Procedure, 1908**

41. The Plaintiffs have clearly maintained the *lis* under Section 13 of the Defamation Ordinance, 2002. The pecuniary jurisdiction that has been prescribed of District Court in Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 on the date of the institution of the *lis* was for matters equal to or less than Rs. 15,000,000 (Rupees Fifteen Million). The valuation of Civil Suit No 34 of 2021 being clearly in excess of the pecuniary jurisdiction, as prescribed by Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962, on the date of the institution of Civil Suit No. 34 of 2021 would lead to the conclusion that the *lis* was presented in excess of the jurisdiction of the court of the IXth Additional District Judge Karachi (South). I am aware that by the Sindh Civil Courts (Amendment) Act, 2021 (Sindh Act No. XXXIX Of 2021) the pecuniary jurisdiction of the District Court had been enhanced to Rs. 65,000,000 (Rupees Sixty Five Million). However even if the valuation of Civil Suit No. 34 of 2021 is compared as against the revised pecuniary jurisdiction of the District Court it is outside of

the jurisdiction of that Court. The Application under Order VII Rule 10 of the Code of Civil Procedure, 1908 must therefore be allowed and the Plaint returned to the Respondents No. 2 to 4 and which can thereafter be presented before this Court in the exercise of its jurisdiction as a District Court.

42. For the foregoing reasons, this Appeal is therefore allowed, the Application under Order VII Rule 10 of the Code of Civil Procedure, 1908 that was maintained by the Appellants in Civil Suit No. 34 of 2021 before the XIth Additional District Judge Karachi South is granted with no order as to costs and with directions to XIth Additional District Judge Karachi South to return the Plaint of Civil Suit No. 34 of 2021 to the Plaintiffs and would while concluding this judgment, like to appreciate the invaluable assistance that was provided by the learned Amicus Curiae, Mr. Hussain Ali Almani to this Court.

JUDGE

Krachi dated 21 August 2023

## ANNEX

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### Legislative History of the establishment of High Court of Sindh and the Jurisdiction exercised by the Karachi Bench of the High Court of Sindh

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1. Sindh was annexed by the British in 1843 and governed as a Commissionerate of the Bombay Presidency. The Bombay Act XII of 1866 established a Saddar Court for Sindh ("**1866 Act**").<sup>81</sup> Subsequently, through the High Courts Jurisdiction (Sind) Act 1872, it was clarified that "[t]he High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sind"<sup>82</sup>.
2. The 1866 Act was amended through Sindh Courts Amending Act, 1906 and the Saddar Court was converted into the Court of the Judicial Commissioner of Sindh.<sup>83</sup> This court was the highest court of appeal for Sindh in civil and criminal matters and functioned as the District Court and the Court of Session in Karachi.<sup>84</sup> Section 2 of this Act provided that:
 

*"There shall be for the Province a Court of the Judicial Commissioner of Sindh (hereinafter called the Court of the Judicial Commissioner) which shall be the highest Court of Appeal in civil and criminal matters in the said Province and **which shall be the District Court** and Court of Session of Karachi" (emphasis supplied)*
3. Consequently, for the District of Karachi, the Court of the Judicial Commissioner was the District Court.
4. The Government of India Act, 1935 ("**1935 Act**") was enacted by the British Parliament on 02.08.1935. Through Section 289(1) of the 1935 Act, Sindh was separated from the Bombay Presidency and constituted as a separate Governor's Province. Section 289 was to come into force on such date as the King may by Order in Council notify. This was done in 1936 and the first Governor of Sindh was appointed on 01.04.1936.

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<sup>81</sup> See the case of *Haji Razak v. Usman and others*, PLD 1975 Karachi 944 at 957 para 20.

<sup>82</sup> Section 1 of High Courts Jurisdiction (Sind) Act 1872.

<sup>83</sup> See the case of *Haji Razak v. Usman and others*, PLD 1975 Karachi 944 at 958 para 23.

<sup>84</sup> See the case of *Firdous Trading Corporation v. Japan Cotton & General Trading Co. Ltd*, PLD 1961 (W.P.) Karachi 565 at 577.



5. Section 219 of the 1935 Act stated that the Court of the Judicial Commissioner in Sindh would be deemed to be a High Court for the purposes of the Act. It is important to note that the 1935 Act deemed the Court of the Judicial Commissioner in Sindh to be a High Court for the purposes of the Act alone; the Court of the Judicial Commissioner in Sindh was not converted to a High Court and in accordance with Section 2 of the Sindh Courts Amending Act 1906 it remained a District Court.
6. On 21.08.1926 the Sind Courts Act, 1926 ('**1926 Act**') was enacted by the Governor of the Bombay Presidency with the sanction of the Governor General under the Government of India Act 1919.
7. The 1926 Act did not, however, come into force till 15.04.1940<sup>85</sup>, that is, a full five years after the Government of India Act 1935 was enacted. Section 3 of the 1926 Act provided:

*"3. On and from the commencement of this Act, there shall be established for Sind a Chief Court hereinafter referred to as "the Chief Court"."*

8. Through the foregoing provision, a Chief Court for Sindh was established for Sindh ('**Chief Court**'). The jurisdiction of the Chief Court was prescribed in Section 8 of the 1926 Act which read as:

*"8. The Chief Court shall be the highest civil court of appeal and revision and the highest court of criminal appeal and revision for Sind and the **principal civil court of original jurisdiction for the civil district of Karachi** and shall be the court of Session and shall exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi. (Emphasis supplied)"*

9. In accordance with this provision, the Chief Court to the extent of its civil jurisdiction was established as (i) the highest civil court of appeal and revision for the Province of Sindh; and (ii) the principal civil court of original jurisdiction for the District of Karachi.
10. While ostensibly similar to Section 2 of the 1866 Act, this provision in fact marked a significant departure. Under the former provision, the Court of the Judicial Commissioner was the District Court for the

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<sup>85</sup> See the case of *Province of Sindh v. Haji Razzaq*, **PLD 2017 Supreme Court 2017 at 214**.

District of Karachi. Under the new dispensation, the Chief Court was the principal civil court of original jurisdiction for the District of Karachi.

11. The phrase "*principal civil court of original jurisdiction*" was borrowed from Section 2(4) of the CPC which defined a district in the following terms:

*"(4) "district" means the local limits of the jurisdiction of a principal civil Court of original jurisdiction (hereinafter called a "District Court") and includes the local limits of the ordinary original civil jurisdiction of a High Court"*

12. This section envisages the grant of original civil jurisdiction to both Districts Court and High Courts. The Chief Court was the principal civil court of original jurisdiction for the District of Karachi. It, therefore, exercised the same jurisdiction as a District Court in other districts. At the same time, by virtue of Section 219 of the 1935 Act it was deemed be a High Court. The result was that while the Chief Court had the status of a High Court, for the District of Karachi it exercised the same jurisdiction as that of a District Court in other districts of the province, that is, it had jurisdiction to entertain and decide civil suits as a court of first instance.
13. In this aspect, it was in the same position as High Courts in other major port cities such as Bombay, Calcutta and Madras – all of which were established through Letters Patent granting them "*ordinary original civil jurisdiction*" to entertain and decide civil suits as courts of first instance. The primary difference being that those courts were conferred such jurisdiction through the Letters Patent establishing them as High Courts, while the Chief Court was conferred such jurisdiction through the 1926 Act establishing it as a Chief Court. In practical terms, however, there is no difference between the two jurisdictions, which is why they are both used in Section 2(4) of the CPC to refer to the jurisdiction to entertain and decide civil suits as a court of first instance.
14. The reason that Section 8 of the 1926 Act uses the phrase "*principal civil court of original jurisdiction*", which referred to the jurisdiction granted to district courts, rather than "*ordinary original civil jurisdiction*", which referred to jurisdiction granted to High Courts, is obvious. Under the 1926 Act, the Chief Court was established as a

civil court and not a High Court. It was only granted the status of a High Court through the 1935 Act.

15. Once the Chief Court was granted the status of a High Court, the language in Section 8 of the 1926 Act should have been suitably amended and harmonise it with the jurisdiction conferred on other similar High Courts to avoid any potential ambiguity. This was not, unfortunately, not done. This would lead to significant jurisprudential confusion in the future.
16. Section 14 of the 1926 Act provided that an appeal from an original decree issued by a Single Judge of the Chief Court would lie to a two-member Bench of the same court:

*“14(I) Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree or from any order against which an appeal is permitted by any law for the time being in force made by a single judge of the Chief Court, shall lie to a Bench consisting of two other judges of the Chief Court...”*

17. In essence this provision created a right of intra-court appeal.
18. Sections 21 and 22 of the 1926 Act then established district courts for all districts of Sindh except for the District of Karachi. These district courts would be the principal courts of original civil jurisdiction in their districts. These provisions read as:

*“21(1) For the purposes of this Act the Provincial Government may by notification divide Sind into civil districts and fix the limits of such civil districts and determine the headquarters of each such district.*

*(2) The districts existing for the purposes of civil justice when this Act comes into force shall be deemed to have been made under this Act.*

*22(1) There shall be in each civil district other than that of Karachi a district court and the Provincial Government shall appoint a district judge to each such court.*

*(2) The district court shall be the principal court of original civil jurisdiction in the civil district. (Emphasis supplied)”*

19. The Sindh Court's (Supplementary) Act 1926 was passed, and the Chief Court was included in the courts specified in Section 122 of the

CPC which were competent to make rules for themselves.<sup>86</sup> Pursuant to this provision, the Chief Court issued the Sindh Chief Court Rules. These Rules came into force on 12.10.1944. The Registrar's preface to the Rules provides that:

*"As the Chief Court of Sind, like the Bombay, Calcutta and Madras High Courts, possess both original civil and criminal and appellate civil and criminal jurisdictions, in making rules for the Chief Court, the practice and procedure of those Courts have been taken as a guide in the formation of the new rules for the Chief Court."*

20. The Rules were, therefore, formulated keeping in view the rules for other courts in British India which exercised both original civil and appellate civil jurisdictions – all courts established in major port cities in British India. This was another indication of the similar status and jurisdiction of the Chief Court as the High Courts in other major port cities in British India. The Chief Court clearly saw itself as having the same status and jurisdiction as these High Court.
21. After the partition of British India and establishment of Pakistan on 14.08.1947, however, Karachi became the de-facto capital of the newly formed State. On 22.07.1948, the Governor General issued Governor General Order No. 14 of 1948 ("**Order 14**") in exercise of the power conferred by Section 9 of the Indian Independence Act 1947. Through this Order, Section 290-A was inserted in the Government of India Act 1935. Section 290-A(2)(d) empowered the Governor General to make, for the capital of Pakistan, such provisions "*with respect to the jurisdiction...of any court theretofore exercising the jurisdiction of a High Court in the area*".
22. On 23.07.1948, the Pakistan (Establishment of the Federal Capital) Order of 1948 also known as Governor General's Order No. 15 of 1948 ("**Order 15**") was issued and the areas forming Karachi ceased to be part of the Province of Sindh and officially became the capital of Pakistan under federal control.
23. Article 9 of Order 15 provided the Chief Court of Sindh would continue to be the High Court for Karachi and would retain such jurisdiction as it had immediately before the coming into force of Order 15. The status and jurisdiction of the Chief Court, therefore, remained the same as it did prior to partition.

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<sup>86</sup> See the case of *Haji Razak v. Usman and others*, PLD 1975 Karachi 944 at 959 para 24.

24. On 03.10.1955, the Establishment of West Pakistan Act, 1955 ('**1955 Act**') was enacted by the Constituent Assembly of Pakistan. Section 2 of the 1955 Act provided that from such date as notified by the Governor General, various territories including the Province of Sindh would be incorporated into a single province – Province of West Pakistan. Section 7(1) empowered the Governor General to establish by order a unified High Court of West Pakistan. Section 7(3) provided that, from the date of establishment of the High Court of West Pakistan, the judges of the High Court of Lahore, judges of the Chief Court of Sindh and the judges of the Judicial Commissioner's Court of the North-West Frontier Province and Balochistan became judges of the High Court of West Pakistan.

25. Section 7 of the 1955 Act read as:

*"7. High Court. (1) Notwithstanding anything to the contrary contained in any law, including the Government of India Act, 1935, the Governor-General may by order establish a High Court for the Province of West Pakistan to replace the High Court in Lahore, the Chief Court of Sindh and the Judicial Commissioners Court in North-West Frontier Province and Balochistan and any other Court functioning as High Court for any other specified territories, and the High Court so established and the Judges thereof shall exercise jurisdiction in relation to the whole of the Province of West Pakistan, and the powers and authority exercisable by the High Court in Lahore and the Judges thereof, immediately before the date on which the order under this subsection comes into force, shall be exercisable by the High Court of West Pakistan and the Judges thereof in the whole of West Pakistan, and Section 223 of the Government of India Act, 1935, shall be construed accordingly.*

*(2) As from the date of establishment of the High Court of West Pakistan under subsection (1) of this section, Section 219 of the Government of India Act, 1935, shall be omitted and the following shall be substituted thereof:-*

*"219. The following Courts shall in relation to Pakistan, be deemed to be the High Courts for the purpose of this Act, that is to say, the High Court of East Bengal, and the High Court of West Pakistan".*

....

*(4) An order under subsection (1) of this section shall make such provision as seems to the Governor-General to be necessary or expedient for determining the places within the Provinces of West Pakistan at which the High Court or any Judge or division thereof may sit. (Emphasis supplied)"*

26. Under Section 10 of the 1955 Act, the Government of India Act 1935 was amended, and Section 290-A, which empowered the Governor General to make provisions relating to the jurisdiction of the High Court in the capital of Pakistan, was omitted. Karachi was declared to be a Chief Commissioner's Province.
27. On 13.10.1955, the Government of India (Second Amendment) Act was enacted. Under Section 9 of this Act, Section 290-A was once again inserted in the Government of India Act 1935 but with one critical difference. The power of the Governor General to make provisions relating to the jurisdiction of the High Court in the capital was taken away and this power was vested exclusively in the Provincial Legislature.
28. The result was that except for the brief period from 22.07.1948 (when Order 14 was issued and Section 290-A was inserted in the Government of India Act 1935) to 03.10.1955 (when the 1955 Act was enacted and Section 290-A of the 1935 Act omitted), matters relating to the jurisdiction of the principal civil court for the District of Karachi (by whichever name it was called – Court of the Judicial Commissioner, Chief Court or High Court) have been a provincial subject.
29. Pursuant to Section 7 of the 1955 Act, on 09.10.1955, the Governor General established a High Court for the Province of West Pakistan through the High Court of West Pakistan (Establishment) Order, 1955, which through Section 1(2) came into force on 14.10.1955, and the Chief Court ceased to exist. Clause 3 of the 1955 Order read as:

*“3. Establishment of the High Court of West Pakistan. (1) As from the commencement of this Order there shall be established a High Court of Judicature for the Province of West Pakistan, to be called the High Court of West Pakistan (hereinafter referred to as the High Court), and the High Court of Judicature at Lahore, the Chief Court of Sindh, the Judicial Commissioner Court in the North-West Frontier Province and Balochistan, and any other Court functioning as High Court in relation to the territories of areas now included in the Province of West Pakistan shall cease to exist.*

*(2) The High Court shall have such original, appellate and other jurisdiction and such powers and authority in respect*

*of the territories included in the Province of West Pakistan as the High Court of Judicature at Lahore had immediately before the commencement of this Order, in respect of the territories in relation to which it exercised appellate jurisdiction.*

*(3) The High Court and the Judges and divisional Courts thereof shall sit at Lahore, but the High Court shall have Benches at Karachi and Peshawar and Circuit Courts at other places within the Province of West Pakistan, consisting of such of the Judges as may from time to time be nominated by the Chief Justice."*

30. While the Chief Court ceased to exist and became a part of the West Pakistan High Court, through Clause 5 of the West Pakistan through the High Court of West Pakistan (Establishment) Order, 1955, special provision was made for the Karachi Bench of the West Pakistan High Court. It was provided that the Karachi Bench of the West Pakistan High Court would have the same original civil jurisdiction for the District of Karachi as was exercised by the Chief Court under 1926 Act. Clause 5 read as follows:

*"5. Original Civil and Criminal Jurisdiction of the Bench at Karachi. Notwithstanding anything in this Order or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original civil jurisdiction for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Sessions for the Sessions Divisions of Karachi, as were exercisable immediately before the commencement of this Order, by the Chief Court of Sindh under Section 8 of the Sindh Courts Act, 1926 (Sindh Act VII of 1926);*

*Provided that the Governor-General may by notification in the Official Gazette direct that, as from a specified date such jurisdiction and powers as are mentioned therein shall cease to be exercisable by the Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers. (Emphasis supplied)"*

31. By virtue of this provision, the District of Karachi no longer had a Chief Court as the principal civil court of original jurisdiction which was *deemed* to be a High Court. The District of Karachi now had a High Court which was granted same the jurisdiction as the former Chief Court.

32. It is interesting to note that this provision does not use the phrase “*principal civil court of original jurisdiction*” or “*ordinary original civil jurisdiction*“. Rather it uses an amalgamation of the two – “*original civil jurisdiction*“. This suggests that the executive was of the view that there is no substantive difference between these two phrases. This understanding is supported by the use of both terms in Section 2(4) in CPC to refer to the jurisdiction to entertain and decide civil suits as a court of first instance.
33. On the same date, the West Pakistan (Adaptation of Courts Act) Order, 1955 was promulgated by the Governor of West Pakistan. Clause 5 read:

*“5. The laws mentioned in the Schedule annexed to this Order shall be deemed to have been adapted to the extent and in the manner mentioned in column No. 5 thereof:*

<i>Year</i>	<i>No. of Act</i>	<i>Short title</i>	<i>Provision adapted</i>	<i>Provision made</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
1926	VII	<i>The Sindh Courts Act</i>	<p>Section 3, 4, 7, 9, 10, 11, 12, 14, 16, 19 and 20</p> <p>Section 28</p>	<p>Omit</p> <p>For subsection (1) substitute the following:--</p> <p>“(1) (i) save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or a Joint Judge exercising original jurisdiction shall lie to the High Court;</p> <p>(ii) an appeal shall not lie to the High Court from a decree or order of Joint Judge-in any case in which if the decree or order had been made by the District Judge, an appeal would not lie to the High Court.</p> <p>(iii) save as aforesaid an appeal from a decree or order of a subordinate Court shall lie (a) to the District Judge where the value of the original suit, in which the decree or order was made did not exceed five thousand rupees; and (b) to the High Court in any other case.</p>



34. On 29.02.1956, the Constitution of the Islamic Republic of Pakistan ('**1956 Constitution**') was enacted. Articles 165(1) and (2) of the 1956 Constitution read:

*"165. (1) There shall be a High Court for each Province.*

*(2) The High Courts for the Provinces of East Bengal and West Pakistan functioning immediately before the Constitution Day shall be deemed to be High Courts, under the Constitution, for the Provinces of East Pakistan and West Pakistan, respectively."*

35. Article 211(2) of the 1956 Constitution was similar to the initial Section 290-A inserted in the Government of India Act 1935 through Order 14. It empowered the President to make such provision, as he may deem necessary, or proper with respect to the jurisdiction of the High Court in the capital of Pakistan.

36. In exercise of this power, on 20.04.1956, the Karachi Courts Order, 1956 ("**1956 Order**") was issued by the President. Clause 3 of the 1956 Order established, for the first time, a separate District Court for the District of Karachi. Clause 4 provided that unless the Federal Government by order under the proviso to Section 22(2) of 1926 Act directed otherwise, the District Court in Karachi shall not have jurisdiction in original civil suits where the subject-matter exceeds Rs. 25,000 in value. These sections read as follows:

37. Clause 3 read:

*"3. Establishment of the Court of the District Judge etc. on and from the appointed day, there shall be deemed to have been established in the Federal Capital the following classes of Civil Courts, namely:-*

- (1) the Court of the District Judge; and  
(2) the Courts of Subordinate Judge."*

38. Clause 4 read:

*"4. Appointment of District Judge. (1) The Central Government shall appoint a person to be the District Judge for the Federal Capital.*

*(2) Unless the Central Government by order under the proviso to subsection 2 of section 22 of the Sind Courts Act, 1926 (Bom. Act VII of 1926), otherwise directs, the Court of the District Judge shall not have jurisdiction in original civil suits and proceedings wherein the subject-matter exceeds twenty-five thousand rupees in amount or value."*

39. The following relevant amendments were made in the 1926 Act through Part A of the Schedule to 1956 Order:

*"1. In Section 8, for the words "and shall be the Court of Session and shall exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi", the words "in respect of suits and proceedings wherein the subject-matter amount or value exceeds twenty-five thousand rupees or such sum as the Central Government may, by order under the proviso to subsection (2) of Section 22 prescribe" shall be substituted.*

*2. Section 9 shall be omitted.*

...

*5. In Section 22,--*

- (i) in subsection (1) the words, "other than that of Karachi" shall be omitted; and*
- (ii) to subsection (2) the following proviso shall be added, namely:-*

*Provided that, unless the Central Government by order otherwise directs, the District Court of Karachi shall not have jurisdiction in original civil suits and proceedings wherein the subject-matter exceed twenty-five thousand rupees in amount or value."*

40. As a result of these amendments, Section 8 of the Sindh Courts Act 1926 now read as:

*"8. The Chief Court shall be the highest civil court of appeal and revision and the highest court of criminal appeal and revision for Sind and the principal civil court of original jurisdiction for the civil district of Karachi in respect of suits and proceedings wherein the subject-matter to amount or value exceeds twenty-five thousand rupees or such sum as the Central Government may, by order under the proviso to subsection (2) of Section 22 prescribe" (emphasis supplied)*

41. Section 22 of the Sindh Courts Act 1926 now read as:

*22(1) There shall be in each civil district a district court and the Provincial Government shall appoint a district judge to each such court.*

*(2) The district court shall be the principal court of original civil jurisdiction in the civil district.*

*Provided that, unless the Central Government by order otherwise directs, the District Court of Karachi shall not have jurisdiction in original civil suits and proceedings wherein the subject-matter exceed twenty-five thousand rupees in amount or value.*

42. These amendments to the 1926 Act were necessitated by the enactment of the 1956 Order establishing, for the first time, separate district courts for the District of Karachi. The term “Chief Court” in Section 8, however, was not substituted with Karachi Bench of the West Pakistan High Court.
43. Reading Article 5 of the West Pakistan through the High Court of West Pakistan (Establishment) Order, 1955 in light of Section 8 of the 1926 Act, the Karachi Bench of the West Pakistan High Court was exercising the original civil jurisdiction for the District of Karachi – an original civil jurisdiction that had been conferred on the Chief Court under Section 8 of the 1926 Act as the principal civil court of original jurisdiction for the District of Karachi. The Karachi Bench of the West Pakistan High Court was now the principal civil court of original jurisdiction as the Chief Court had been.
44. On 01.07.1961, West Pakistan Administration (Merger of Federal Territory of Karachi) Order, 1961 came into effect and Karachi was merged into the province of West Pakistan. It ceased to be the capital of Pakistan.<sup>87</sup> Clause 5 of this Order saved all laws applicable to the courts at Karachi until they were varied by the legislature.
45. On 08.01.1962, the West Pakistan Civil Courts Ordinance, 1962 (**‘WP 1962 Ordinance’**) was promulgated. Section 7 conferred jurisdiction on the District Courts in original civil suits without any pecuniary limit. Section 28(1) repealed the entire 1926 Act as applicable to the District of Karachi, except Section 8, and the entire 1956 Order, except Clause 4(2).
46. Consequently, by virtue of the continued existence of Section 8 of 1926 Act and Clause 4(2) of 1956 Order, the unlimited pecuniary jurisdiction conferred on District Courts in original civil suits through

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<sup>87</sup> Rawalpindi became the interim capital of Pakistan until 14.08.1967 when the construction of Islamabad was completed, and it was designated as the new capital of Pakistan. Through Clause 2 of the President’s Order No. 20 of 1960 issued by the President on 15.07.1960, Rawalpindi was designated as the principal seat of the Government of Pakistan.

Section 7 of WP 1962 Ordinance, was limited to Rs. 25,000 in so far as the District of Karachi was concerned.

47. Section 7 reads as follows:

*"7. Original jurisdiction of District Judges in suits. Except as otherwise provided by any enactment for the time being in force, the Court of District Judge shall have jurisdiction in original civil suits without limit as regard the value."*

48. Section 28(1) stated that "[t]he enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof." The relevant parts of the Schedule read:

Year	No.	Short title	Extent of Repeal
1	2	3	4
1926	VII	The Sindh Courts Act, 1926	The whole
1926	VII	The Sindh Courts Act. 1926, as applicable to the District of Karachi	The whole, except Section 8
1956	II	The Karachi Courts Order, 1956	The whole, except clause 4(2)

49. On 01.03.1962, the Constitution of the Islamic Republic of Pakistan, 1962 was enacted. Article 91 established a High Court for each Province.<sup>88</sup> The seat of the High Courts was set out in Article 97 which read:

*"97 (2) There shall be a permanent seat of the High Court of the Province of West Pakistan at Lahore, which shall be the principal seat of that Court, and there shall also be permanent seats of that Court at Karachi and Peshawar, but the Court may from time to time sit in such other places as the Chief Justice of the Court, with the approval of the Governor of the Province, may appoint."*

50. On 27.05.1964, the President issued President's Order No. 1 of 1964 under Article 225 of the Constitution amending the 1956 Order to substitute "Federal Capital" with Karachi Division and "Central Government" with Provincial Government. As a consequence, the surviving Clause 4(2) of the 1956 Order now read as:

*(2) Unless the Provincial Government by order under the proviso to subsection 2 of section 22 of the Sind Courts Act,*

<sup>88</sup> "91 (1) There shall be a High Court of each Province."

*1926 (Bom. Act VII of 1926), otherwise directs, the Court of the District Judge shall not have jurisdiction in original civil suits and proceedings wherein the subject-matter exceeds twenty-five thousand rupees in amount or value."*

51. Thereafter, on 18.07.1963, the West Pakistan Civil Courts (Amendment) Act 1963 was passed by the Provincial Assembly of West Pakistan. The following sub-section (2A) was inserted in Section 24 of the WP 1962 Ordinance:

*"(2-A) Notwithstanding anything contained in Sub-sections (1) and (2) in the Karachi district any such suit, if the value thereof does not exceed twenty-five thousand rupees, may be instituted in and be tried by the Court of the District Judge or Civil Judge of the First Class, and where the value of the suit exceeds twenty-five thousand rupees it shall be instituted in and be tried by the High Court."*

52. As a result of this amendment, the jurisdiction to decide suits where value exceeds Rs. 25,000 was directly conferred on the Karachi Bench of the West Pakistan High Court by the WP 1962 Ordinance rather than through the continued existence of Section 8 of the 1926 Act and Clause 4(2) of the 1956 Order, though these provisions continued to remain in force.
53. The Province of West Pakistan was dissolved on 30.03.1970 through the Province of West Pakistan (Dissolution) Order. Subsequently, the High Courts Establishment Order, 1970 was issued on 16.06.1970. Through Section 3 several new High Courts were established, including one for the Provinces of Sindh and Balochistan called the Sindh and Balochistan High Court with its principal seat at Karachi. Sub-section (2) provided that each new High Court shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories for which it was established as the High Court of West Pakistan, immediately before the appointed day, had in respect of the territories in relation to which it exercised appellate jurisdiction.
54. On 21.12.1970, the Governor of Sindh enacted the Civil Courts (Sindh Amendment) Ordinance 1970 amending Clause 4(2) of the 1956 Order and Section 24 of the WP 1962 Ordinance. In both provisions, the phrase "twenty-five thousand" was substituted by "fifty thousand". A similar amendment was, however, not made in Section 8 of the 1926 Act.

55. As consequence, while the 1956 Order and WP 1962 Ordinance provided that, for the District of Karachi, suits where the value did not exceed Rs. 50,000 could be instituted in the Court of the District Judge or Civil Judge and where it did exceed this value, then in the High Court, under Section 8 of the 1926 Act the High Court continued to be the principal civil court of original jurisdiction for the District of Karachi for suits where the value exceeded Rs. 25,000. The result was that the Court of the District Judge and the High Court of Sindh at Karachi had concurrent jurisdiction over suits where the value was between Rs. 25,000 and 50,000.
56. On 08.12.1971, the West Pakistan Civil Courts (Sindh Amendment) Ordinance 1971 was enacted by the Governor of Sindh. Through this Ordinance, the entirety of Section 24 of the Sindh Civil Courts Ordinance, 1962 was substituted with the following:

*“(1) (a) No civil Court not having jurisdiction in original suits without limit as regards value;*

*(b) no Court of Small Causes;*

*(c) no civil court lower than the Court of the District Judge or the Additional District Judge in a suit sought to be filed by a Government servant relating to his service or matters pertaining thereto;*

*shall receive, entertain or register, any suit in which Pakistan or any of its provinces or any public officer as defined in clause (17) of Section 2 of the Code of Civil Procedure 1908 (Act V of 1908) in his official capacity is a party;*

*Provided that in the Karachi District*

*(a) any such suit not being a suit specified in clause (c), if the value thereof does not exceed fifty thousand rupees, may be instituted in the Court of the District Judge, the Additional District Judge or a Civil Judge of the First Class, and in the High Court where the value of the suit exceeds fifty thousand rupees;*

*(b) a suit as specified in clause (c) may be instituted in the Court of the District Judge or the Additional District Judge if the value thereof does not exceed fifty thousand rupees, and in the High Court where the value exceeds fifty thousand rupees.*

*(2) (a) In every such case except a suit as specified in clause (c) of Sub-section (1), the plaintiff shall be referred to the Court of the Civil Judge having jurisdiction in original suits without limit as regards value and such suit shall be instituted only in the Court of such Civil Judge and shall be heard at the headquarters of the district.*

*(b) In every such case as specified in clause (c) of Sub-section (1), the plaintiff shall be referred to the Court of the District Judge having jurisdiction and such suit shall be instituted only in the Court of such District Judge.*

*(2-A) Notwithstanding anything contained in Sub-sections (1) and (2) in the Karachi District*

*(a) any such suit not being a suit specified in clause (c) of Sub-section (1), the value whereof does not exceed fifty thousand rupees may be instituted in and tried by the Court of the District Judge, the Additional District Judge, or the Civil Judge of the First Class, and where the value of the suit exceeds fifty thousand rupees, it shall be instituted in and be tried by the High Court;*

*(b) a suit as specified in clause (c) of Sub-section (1) the value whereof does not exceed fifty thousand rupees may be instituted in and tried by the Court of the District Judge or the Additional District Judge, and where the value of the suit exceeds fifty thousand rupees, it shall be instituted in and be tried by the High Court"*

57. The substituted Section 24 did not fundamentally alter the jurisdiction of the High Court of Sindh at Karachi. It simply prescribed the pecuniary limits for instituting and trying cases in the Court of the District Judge and the Karachi Bench of the High Court of Sindh.

58. On 12.04.1973 the Constitution of the Islamic Republic of Pakistan, 1973 was enacted. Article 175 established the SCP and the High Courts:

*“(1) There shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for the Islamabad Capital Territory and such other courts as may be established by law.*

*[Explanation. – The word “High Court” wherever occurring in the Constitution shall include the High Court for the Islamabad Capital Territory.]*

*(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.”*

59. In 1976, thereafter, through the Balochistan and Sindh (High Court) Order, 1976 Sindh and Balochistan High Court was separated into the High Court of Sindh and the High Court of Balochistan.
60. The anomaly discussed in paragraph 62 above was corrected through the Sindh Courts (Amendment) Ordinance 1981 which repealed the entire 1926 Act and 1956 Order. From this point onwards, the original civil jurisdiction of the Court of the District Judge and the High Court of Sindh at Karachi is dealt with under a single law, the WP 1962 Ordinance (known as the Sindh Civil Courts Ordinance, 1962 after the dissolution of the Province of West Pakistan). Through this Ordinance, Section 7 of the Sindh Civil Courts Ordinance, 1962 was substituted as follows:

*“Subject to any law for the time being in force, the original jurisdiction of the District Judge in civil suits and proceedings shall be without limit or the value thereof excepting in Karachi District where the original jurisdiction in civil suits and proceedings of the value exceeding one lac of rupees shall be exercised by the High Court.”*

61. For the first time original civil jurisdiction was directly and expressly conferred on the High Court of Sindh at Karachi rather than through another law (e.g., the 1926 Act and 1956 Order) or by reference to another court (e.g., the Chief Court under Section 8 of the 1926 Act).
62. The figure of “fifty thousand” in Section 24 of the Sindh Civil Courts Ordinance, 1962 was also substituted with “one lac”.



63. Sections 7 and 24 have, thereafter, been amended from time to time to change the pecuniary threshold of civil suits and proceedings filed in the District Court in Karachi and the High Court of Sindh at Karachi. The fundamental character of the provisions has, however, remained the same. The last such amendment was made through the Sindh Civil Courts (Amendment) Act 2021 on 17.12.2021 when the pecuniary jurisdiction of the Court of the District Judge was raised to Rs. 65 Million and of the High Court of Sindh at Karachi to civil suits and proceedings of a value exceeding Rs. 65 Million.