

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**R.A No.258 of 2002**

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| Date | Order with signature of Judge |
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**Hearing of Case**

For hearing of Mian Case.

**16.11.2016**

M/s M.G Dastagir and Muhammad Asif Mufti, Advocates for  
the applicant.  
None present for respondents.

Learned counsel for the applicant by order dated 02.5.2016 was directed to satisfy the court how the case against M/S Small Business Finance Corporation to challenge recovery of loan was maintainable before the ordinary civil court after promulgation of Banking Companies (Recovery of Loan, Credits and Finance) Act, 1997 (The Act of 1997). Firstly; he attempted to invite the attention of the court to the law for the creation of Small Business Finance Corporation in 1972. However, he concedes that after the promulgation of the aforesaid Act, 1997, all the cases for and against the Small Business Finance Corporation (Respondent No.2) were transferred to the Banking Courts in terms of **Sub-Section 6 of Section 7** of the Act of 1997 by operation of law. However, this particular case was left out and the trial Court decreed the suit by judgment dated **29.3.2001**. In Appeal, the said order was set aside and this Revision was preferred in 2002.

Neither of the two courts below have considered the effect of the operation of the aforesaid Act of 1997. Learned counsel for the applicant insisted that the case may be remanded to the trial Court for fresh decision on the question of jurisdiction of the trial Court to entertain this case. Since the learned counsel has already conceded

that by operation of law, this case should have been transferred to the Banking Court, I do not see any justification for fresh decision on the question of jurisdiction by the trial Court to entertain suit No.649/1995, however, the case is remanded to the trial Court for transfer to the Banking Court from the trial Court since the Record and Proceedings of suit are in trial Court.

In view of the above, legal and factual position and by consent of the learned counsel for the applicant, the impugned judgments of the courts below are set aside. The case is remanded to the Court of IIIrd Senior Civil Judge, (Central) Karachi with specific direction that the record and proceedings of suit No.649/1995 till the date of promulgation of the aforesaid Act of 1997 be transferred to the Banking Court. The date of gazette notification of the Act of 1997 should be verified from the proper Notification and proceeding beyond that date need not be sent to the Banking Court. The case shall be transferred to the Banking Court within one week from the date of receiving of this Order and the Banking Court will start proceedings from the stage the case has reached in 1997 in the trial Court and decide it in terms of the banking law applicable as today.

This Revision stands disposed of in the above terms.

**J U D G E**

*Ayaz Gul*