

IN THE HIGH COURT OF SINDH AT KARACHI

Execution No. 12 / 1999

Committee of Administration
Fauji Foundation ----- Decree Holder / Applicant

Versus

Inamur Rehman
Through Legal Heirs ----- Judgment Debtor / Respondents

- 1) **For hearing of CMA No. 1563/1999.**
- 2) **For hearing of CMA No. 1332/2002.**

Date of hearing: 18.10.2017.

Date of order: 13.11.2017.

Decree Holder: Through Mr. Usman Shaikh Advocate.

Judgment Debtor: Through Mr. H. A. Rehmani along with Ms. Naheed Akhtar Advocates.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Both these applications have been filed by the Judgment Debtor under Order 21 Rule 23(2) and Order 21 Rule 1(a) read with Section 151 CPC, wherein, precisely the contention is to the effect that if at all the Decree Holder is liable to pay the decretal amount, the same is to be calculated at the rate of exchange prevailing at the time when the amount became due and not at the time when the payment is actually made.

2. Learned Counsel for the Judgment Debtor submits that the Decree in this matter was passed in **£ Pound** sterling, however, the claim in the Suit was set up by the Plaintiff in rupees by converting the amount of **£ Pound** sterling at the rate of exchange then prevailing and therefore, the Decree can only be satisfied if an order is passed for its payment at the same rate of exchange and not at the rate of exchange when this Execution was filed or for that matter when such payment is

made. He has further contended that even otherwise, this Execution Application has not been filed by the Decree Holder and by someone else. He has also read out the counter affidavit filed in response to one of his applications, wherein, the amount of Rs.157,224/- has been admitted as the liability of the Decree Holder. Insofar as the claim of interest is concerned, learned Counsel has submitted that if it is permissible in law then the Decree Holder would be liable to pay the same. In support of his contention he has relied upon *Terni S.P.A. V. PECO (Pakistan Engineering Company) Ltd (1992 SCMR 2238)*.

3. On the other hand, learned Counsel for the Decree Holder has contended that this Court being an Executing Court cannot go beyond the Judgment and Decree which according to the learned Counsel has been passed in **£ Pound** sterling and therefore, as and when the Decree Holder makes payment, the same is required to be converted at the rate of exchange which is prevailing on such date. In these circumstances, he has prayed for dismissal of both these applications.

4. I have heard both the learned Counsel and perused the record including the Suit file. Very briefly the facts which are relevant for discussion and to arrive at a just conclusion are that the Decree Holder filed a Suit for Recovery of Rs. 64,78,341.39 (as per amended plaint) against the Judgment Debtor, wherein, there were certain claims against the Judgment Debtor on the ground that when the Mill of Decree Holder was being set up he represented himself on behalf of the said Mill and entered into negotiations for purchase of plant and machinery for the Mill with the foreign supplier and obtained certain commissions as well as received payments which were given by the foreign supplier as reimbursement of the money paid by the Mill on account of certain debts, demurrage charges, bill of lading and short shipments as these amounts were illegally retained by the Judgment Debtor. It was also claimed by the Decree Holder that the Judgment Debtor imported a Mercedes car through the foreign supplier and used the same therefore; he was also liable for the amount of said car. When this Suit was filed on 13.9.1974 a total amount of **£ Pound** sterling 1,70,000 being the 10% commission was not claimed and was excluded from the Suit as at the relevant time the Decree Holder had filed the claim before the authorized officer under the Foreign Exchange (Prevention of Payments) Act, 1972. Thereafter, through an order dated 11.3.1992 the Decree Holder was permitted to amend its plaint and to

include this claim as well. In the Suit the following claims were made through the amended plaint:-

"(a) Decree for Rs.24,29,657.13 with interest at the rate of 9% per annum from the date of suit till payment.

(a-1) Declaration that the plaintiff is the real and true owner of the repatriated foreign exchange and its rupee equivalent together with the amount of bonus totalling Rs.40,48,684.26 and interest accrued thereon, lying in deposit with the State Bank of Pakistan and is entitled to receive its payment.

(a-2) Permanent injunction restraining the defendant from obtaining, recovering and receiving the said amount mentioned in clause (a-1) above from the State Bank of Pakistan.

(a-3) Decree for Rs.40,45,685.26 with interest/mark up at the rate of 9% per annum from 1-2-1971 till payment.

(b) Costs of the suit.

(c)"

5. After filing of amended written statement the following issues were settled for adjudication:-

"(1) Whether the defendant had negotiated and concluded the purchase of plant and machinery of the Sugar Mill on behalf of Rehmania Fauji Sugar Mills Ltd from A & W Smith & Co Ltd. Glasgow and obtained a secret commission of 10% F.O.B. price, amounting to ₹ 2,00,000.00

(2) Whether the defendant had received the sums of ₹ 6,655 and ₹ 5,000.00 from A. & W. Smith & Co Ltd as stated in para. 8 of the plaint. If so is the defendant liable to pay the said sums to the Fauji Foundation with interest at 9 % p. a.?

(3) Whether the defendant had imported a Mercedes car with the funds of the Company, Rahmania Fauji Sugar Mills Ltd? If so is the defendant, liable to pay the value thereof i.e. ₹ 1447.00 to the plaintiff with interest at 9 % p-a?

(4) Whether this Honourable Court has no jurisdiction to grant any relief in the nature of the pleas raised in the written statement and whether the claims in suit are maintainable at law.

(5) Whether the suit is bad for non-joinder of necessary parties? If so to what effect?

- (6) Whether the claim for interest is illegal and unauthorised?
- (7) Whether the plaint has not been signed by a proper and competent person?
- (8) Was the claim of the plaintiff in relation to the foreign exchange bonus which had accrued to the defendant under M.L.R. 104 pending on the date when the amendment plaint was filed by the plaintiff?
- (9)- Was or is the plaintiff in fact and in law otherwise the real and true owner of the amount of Rs.40,45,684.26 or any part thereof lying deposited in the State Bank of Pakistan or to the interest accruing thereon or is the plaintiff entitled to receive or recover the above sum or any part of it?
- (10) Does the plea raised in para. 7-c of the amended plaint travel beyond the parameters of the orders of this Honourable Court allowing amendments and is otherwise not maintainable?
- (11) Is the amended relief claimed by the plaintiff in the suit hit by the Law of Limitation and otherwise time-barred?
- (12) What should the decree be?"

6. Through Judgment dated 20.05.1998 also reported as (*Treasurer of Charitable Endowment for Pakistan V. Inamur Rehman Alvi* (2000 CLC 135), the Suit was partly decreed in respect of Issues No. 2 and 3 and was dismissed partly in respect of Issues No. 1 and 9, whereas, it was held that the Decree Holder would be entitled to proportionate cost as well as interest at the rate of 12% per annum on the decretal amount till its realization. The present Execution Application has been filed in respect of Issues No. 2 and 3 for a total amount of **£ Pound** sterling 13,102/- plus interest of **£ Pound** sterling 42,805/- making it a total of **£ Pound** sterling 55,907/- and was converted at the open market rate of Rs. 97.20 for 1**£ Pound** sterling as prevailing on 12.9.1998. In the Execution Application the mode of Execution was stated by attachment of the amount lying deposited in the State Bank of Pakistan by calling upon to remit the amount to the High Court under Order 21 CPC. In short, it appears to be the case of the Decree Holder that though the transaction of the alleged amount claimed was in **£ Pound** sterling, but at the time of filing of Suit the claim was made in rupees and so also at the time of filing of the Execution Application. Notwithstanding this fact, however, when Judgment was passed, the Suit was decreed in

respect of Issues No. 2 and 3, wherein, the amount claimed was stated in **£ Pound** sterling; therefore, now the question before the Executing Court is perhaps, only to the effect that what rate of exchange is to be applied for payment of the decretal amount. Whether the rate of exchange prevailing at the time when the transaction took place, or the rate when the Suit was filed or when the Judgment and Decree was passed or the rate when the actual payment is made would be applicable. This is the moot question which is to be decided in this Execution Application. The Judgment Debtor claims that the rate which was prevailing at the time when the transaction took place would be applicable and i.e. Rs. 12 to a **£ Pound** sterling. The Judgment Debtor has also relied upon the counter affidavit to its application and the admission of the Decree Holder to such proposal. It is further case of the Judgment Debtor that since there was another amount of **£ Pound** sterling 1,70,000 which was though not decreed in favour of the Plaintiff, but it was repatriated under Martial Law Regulation Order No.104 from abroad and was credited to the State Bank of Pakistan at the rate of Rs.12, and therefore, this rate of exchange shall prevail. On the other hand, the case of Decree Holder is that since the Decree is in **£ Pound** sterling, whereas, admittedly, the Judgment Debtor has failed to make payment within time, therefore, the rate of exchange prevailing on the date of payment would apply.

7. Insofar as the claim and the Decree granted in favour of the Decree Holder is concerned, it is not a case of interpreting any written agreement or contract between the parties. The claim has been made on the basis of certain transactions entered into by the Judgment Debtor with the supplier of machinery and on the basis of evidence as well as the replies of the supplier, through interrogatories, the trial Court has come to the conclusion that certain payments as mentioned in Issues No. 2 and 3 were made to the Judgment Debtor by the supplier and for that he was bound to reimburse the said amount to the Decree Holder. Admittedly to that effect there was no written agreement between the parties. In such circumstances, it is not a case, wherein, it could be clearly spelt out as to what was agreed and what is to be paid. It is only the amount in **£ Pound** sterling which was apparently paid to the Judgment Debtor and for which a Decree has been passed against him for repaying the same to the Decree Holder. It is further noted that all

along the claim of the Plaintiff / Decree Holder has been set up in rupees and not in **£ Pound** sterling. When the Suit was filed the amount was claimed in rupees and thereafter even through amended plaint, when the amount of claim was enhanced with the additional claim of **£ Pound** 170,000/- it was again in Rupees. The Plaintiff being well apprised that a Suit for recovery in this country could only be filed in rupee terms, and for such purposes, the amount of **£ Pound** sterling as claimed was converted into rupees. Not only at the time of filing of Suit but so also at the time of filing of the Execution Application. The claim *stricto sensu* has never been in **£ Pound** sterling, except mentioning the same at the time of settlement of issues. Moreover, in terms Forms of Decree in money Suits as provided in item 2 under Appendix "D" to Civil Procedure Code, it is also required that the Decree has to be prepared in rupee terms. This is for the reason that a Decree must be drawn in a manner in which it is executable. The same could only have been done in rupees terms as otherwise, it could not be executed. A somewhat similar controversy came for discussion before a learned Single Judge of this Court in the case reported as *Pakistan Industrial Credit & Investment Corporation Ltd., Karachi V. Mehboob Industries Ltd., Karachi and 10 others* (1980 CLC 249), in which though there was a contract between the parties but when the issue was brought before the Court the controversy was jot down to the effect that at what rate of foreign exchange the debt amount is repayable. The learned Single Judge after a very detailed discussion and scanning of the local as well as foreign jurisdiction cases came to the conclusion that the debt is to be calculated at the rate of exchange prevailing on the date when each installment became due. The learned Judge was of the opinion that in an action in whatever form in Court in this country for the recovery of a debt payable in foreign currency the amount of judgment and order must be expressed in Pakistani Rupees, and, unless the relative values of the respective currencies are fixed by statute or some authority binding the Pakistani Court, the order of Court must be based on the quantity of Pakistani Rupees which one would have to pay here to obtain in the market the amount of the debt payable in foreign currency. This judgment was appealed by the plaintiff through High Court Appeal No.51 of 1979, and there was a difference of opinion amongst two learned Judges of this Court, (*Saeeduzzaman Siddiqui, as his lordship then was*), agreeing and concurring with the findings of the

learned Single Judge, on this issue, whereas, (*Abdul Hayee Qureshi, the then Hon'ble Chief Justice*) disagreeing, whereafter, the matter was placed before a Referee Judge, and (*Sajjad Ali Shah, as his lordship then was*), concurred with the findings of the learned Single Judge, through his judgment dated 28.12.1991. The relevant finding of the learned Single Judge reads as under:-

“On the basis of the opinion expressed by the jurists and the cases noticed herein above it seems clear that in an action in whatever form in court in this country for the recovery of a debt payable in foreign currency the amount of judgment and order must be expressed in Pakistani Rupees, and, that, unless the relative values of the respective currencies are fixed by statute or some authority binding the Pakistani Court or by the agreement of the litigants, the amount of the judgment or the order of Court in this country must be based on the quantity of Pakistani Rupees which one would have to pay here to obtain in the market the amount of the debt payable in foreign currency delivered at the appointed place of payment, i. e. the amount payable according to the rate of exchange. It seems plain that this mode of computing the value of foreign currency in Pakistani Rupee, and thus converting the one currency into the other, is based upon damages for the breach of contract to deliver the commodity bargained for the appointed time and place, and if this is so, it follows that the date as of which that value must be ascertained is the date of the breach, and not the date of the judgment.”

8. A somewhat similar proposition was under consideration in the case reported as *Mst. Khurshid Jamal V. Muhammad Asghar Qureshi* (**PLD 1956 Sindh 47**), a learned Single Judge of this Court went on to hold that the rate of exchange applicable would be the rate prevailing on the date when the debt became due and not the rate prevailing on the date of judgment.

9. Thereafter similar issue came before another learned Single Judge of this Court (*Ajmal Mian, as his lordship then was*), in the case reported as *Industrial Development Bank of Pakistan v. Messrs William Son & Co Ltd., & 2 Others* (**PLD 1980 Karachi 576**), wherein the controversy was more or less in similar terms as contained in the case the case of *PICIC (Supra)* and that is what rate of exchange will be applicable on repayment of foreign currency loans /debts owed to the financial institutions. The learned Single Judge after a detailed discussion on the local and foreign jurisdiction cases has deduced certain principles from the cases decided

for conversion of foreign currency in Suit for recovery of money. In this case it is interesting to note that all along the Suit as well as all claims set up on behalf of the claimant were in Pak Rupees after converting the debts from foreign currency. The following observations are important to consider by this Court.

10. (a) From the above quoted and discussed Indian and Pakistani cases referred to hereinabove in paras. 6 and 7 the following principles are deducible

(i) In an execution application for the recovery of costs awarded by the Privy Council in sterling during the pre-partition days, the Indian Courts on the basis of the provisions of the C. P. C. permitted conversion of sterling into Indian rupee on the basis of the rate of exchange prevalent on the date of the order and not at the rate obtaining on the date of filing of the execution application or the date of payment.

(ii) In a case for enforcing a foreign judgment in foreign currency, the rate of exchange would be the rate prevalent on the date when the foreign judgment is sued in Pakistan and not the rate prevalent on the date of the foreign judgment.

(iii) In a case of winding up of a company, the rate of exchange for converting foreign currency into local currency or vice versa would be the rate of exchange prevalent on the date of order of the winding up.

(iv) In a case of a breach of a contract, the material rate of exchange for the purpose of converting foreign currency into Pakistani rupee or vice versa, would be the rate of [exchange] prevalent on the date of the breach of the contract and not at the rate of exchange obtaining on the date of the suit or the date of the decree.

(v) In a case for the recovery of an amount due under a contract, the material rate of exchange for converting foreign currency into Pakistani rupee, or a Pakistani rupee into foreign currency, would be the rate of exchange prevalent on the due date and not the rate obtaining on the date of the filing of the suit or the date of the decree, as default in payment on the due date would constitute a breach of the contract.

(vi) In a case for the recovery of damages for the commission of a tort the rate of exchange for the purpose of computing the amount into foreign currency or vice versa would be the rate of exchange prevalent on the date of the commission of the tort and not the rate obtaining on the date of the filing of the suit or the date of the decree.

(vii) In a case of the recovery of an amount under a foreign exchange bill the material rate of exchange for the purpose of converting foreign currency into Pakistani rupee would be the rate prevalent on the date when the bill of exchange was matured date for the payment or the date of the suit or the date of the decree.

From the aforesaid observations it is reflected that for the present purposes the observations at Serial No.(iv) could be applied in this case as it is after all a matter of contract or terms and conditions between the parties breach of which has resulted in filing of the Suit, which provides that material rate of exchange for the purposes of converting foreign currency into Pakistani rupees would be the rate of exchange prevalent on the date of breach of the contract and not at the rate of exchange obtaining on the date of the Suit or the date of the decree.

10. The same learned Judge had once again an occasion to deal with the same issue, however, in a different scenario as by that time, to nullify the effect of **PICIC** and **IDBP** cases supra, an enactment was made through Presidents Order No.3 of 1982, Foreign Currency Loans (Rate of Exchange) Order, 1982, by amending the law as to the rate of exchange applicable to foreign currency loans and section 3 provided that notwithstanding anything contained in any other law for the time being in force, the judgment of any Court or any agreement, contract or other instrument, the rate of exchange, for the purposes of conversions into Pakistan currency for repayment in respect of an outstanding foreign currency loan or part thereof or interest in respect is thereof payable to a financial institution on the day of commencement of this Order, shall be deemed at all material times to have been, the rate of exchange in force under section 23 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), on the day on which the loan, part or interest is actually repaid or paid to the financial institution: and all parties by whom the loan, part or interest is repayable or payable shall make the repayment or payment accordingly. Since the law was promulgated and the earlier judgments of this Court were practically nullified, the learned Judge went on to hold that the rate of exchange applicable would be the rate as provided in the Presidents Order *ibid*. However, the passage below from the judgment is important and needs to be considered while deciding the issue in hand. The same is reported as

Industrial Development Bank of Pakistan v Maida Ltd., & Others (**1984 CLC 2987**) and reads as under:

11. It may be observed that in England the old view was that the Court can grant decree in terms of Sterling Pound and not in any other foreign currency. It seems that the English Courts have departed from the above old view and have granted decree in foreign currency but convertible into sterling on the basis of the rate prevalent on the relevant date according to the circumstances of the case. My learned brother Naimuddin, J in the above Karachi case has clearly held that in Pakistan a decree can be granted only in terms of Pakistani currency. In the above quoted section 3 of the Order, it has not been provided that a decree of the Court should be in foreign currency but what has been provided is that notwithstanding anything contained in any other law for the time being in force, the judgment of any Court or any agreement, contract or other instrument, the rate of exchange for the purpose of conversion into Pakistani currency for repayment in respect of an outstanding foreign currency loan or any part thereof or interest in respect thereof payable to the financial institution on the day of commencement of the Order shall be deemed at all martial times to have been the rate of exchange in force under section 23 of the State Bank of Pakistan Act, 1956 on the day on which the loan, part or interest is actually repaid or paid to the financial institution and all parties by whom the loan, part or interest is repayable or payables shall make the repayment or payment accordingly.

I am, therefore, of the view that in order to give full effect to the above section 3 of the Order, it is not necessary that a decree should be in foreign currency, but it should be couched in such way that a judgment debtor is made to pay Pakistani rupees equivalent to the foreign currency concerned to be worked out on the basis of the rate of foreign exchange prevalent in terms of the above section on the date of payment or on the date of realization of the loan.

11. It is also of pivotal importance to observe that a decree as passed by a Civil Court is defined in Section 2(2) of the Civil Procedure Code and means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the Suit. Now in this matter admittedly the decree has been passed in respect of Issue Nos. 2 & 3 and not in respect of the prayer clauses in the plaint. These 2 issues were regarding the claim of the Decree Holder as discussed earlier in respect of certain sum of amounts received by the Judgment Debtor from the foreign supplier. Now the conclusive

amount determined is in **£ Pound** sterling but it can only be executed if this amount is paid by the decree holder in **£ Pound sterling** and failing which the amount is to be recovered and executed by any one of the modes of execution which may include attachment and sale of property. Therefore, when the decree was passed by the Court, though it was in **£ Pound** sterling but for all practical and legal purposes the amount was final on that date and that could only be on the basis of claim made in the plaint by the plaintiff. Merely for the fact that an issue was framed by mentioning amount in foreign currency, and grant of decree accordingly, could not in any manner grant any premium to the Decree Holder in that it would be contrary to the usual rule of passing a decree in money claims if the said amount due under a decree were to be left uncertain, and indeed, if it were left to the option of the Decree Holder to determine the rate of exchange favorable to him, then, certainly the intention of the Decree Holder will always be to obtain a larger amount of rupees than would be due under the order as originally passed. In fact it cannot be presumed that the Court ever desired that the amount which the Decree Holder receive should depend on the particular date on which the Court gives judgment, a date which depends on varying circumstances, which must include the delay on the part of the Decree Holder in pursuing the claim. It is but settled position that a decree cannot be passed for an uncertain amount which otherwise is not executable ordinarily and the subsequent variations in the rate of exchange would be immaterial as there could be a variation in either terms, low or high. In fact what would have been the stance of the Decree Holder if the rate of exchange had gone downwards instead? For the sake of repetition it must be observed that in a case of claim for breach of contract (though strictly there hasn't been any contract on record in this case) as per the case of the Decree Holder, the day on which such claim is lodge through filing of a Suit, the sum certain or specie of transaction has to be crystallized. And this is what the plaintiff / Decree Holder had done in this case. The problem arose only when the decree was passed in **£ Pound** sterling. The Decree Holder at the time of filing of Suit had already quantified the amount to be paid by the Judgment Debtor if the Suit was to be decreed later on and such amount was calculated in Rupee terms which could at most be the entire claim of the Decree Holder. In such circumstances it becomes immaterial as to what rate of exchange was prevailing on the date of judgment, whereas, it could

never be a case for claiming the rate of exchange prevailing at the time of actual payment. This is further fortified with the fact that at time of passing of decree the Decree Holder was also awarded interest at the rate of 12% per anum and this finding has gone unchallenged, whereas, the learned Counsel for Judgment Debtor has made a statement that if it is a matter of law, then the same cannot be disturbed or challenged. In fact adequate compensation has been awarded in the shape of interest for which there is no further challenge insofar as the Judgment Debtor is concerned. The Court has consciously awarded interest on the outstanding amount by keeping in view the fact that there will necessarily be a delay in payment by the Judgment Debtor and for that appropriate compensation was incorporated in the decree. After this the Decree Holder cannot ask for any more due to devaluation of currency or change in the rate of exchange.

12. In the case reported as *Terni S.P.A. V. PECO (Pakistan Engineering Company) Ltd (1992 SCMR 2238)*, a three member bench (by a decision of two is to one) has also dealt with a more or less similar controversy and has been pleased to decide the same that the amount so claimed in a foreign currency is to be paid either in the foreign currency or the Pak rupees equivalent thereof at the rate of exchange payable on the date of Suit and not at the rate prevailing at the time of passing of Judgment and Decree or for that matter the date when the actual payment is made. This was a case wherein the plaintiff had though made claim in US Dollars, but at the time of filing the Suit had claimed the amount in Rupees by converting the US Dollars into rupees at the rate of exchange prevalent on the date of filing of Suit. Thereafter no steps were taken to amend the claim so as to keep it alive in US dollars. The Hon'ble Supreme Court was of the view that in these circumstances the date which this Court should impose for converting the US Dollars into Pak Rupees should be the date which the petitioner itself chose, namely, the date of Suit. The facts in the present case in hand are almost identical in facts. The Decree Holder had though set up the claim in **£ Pound** sterling, but had converted the same at the rate of exchange prevailing at the time of filing of Suit. Hence no further premium could be asked for. The relevant observations are contained in Para Nos. 34 & 35 which read as under:-

34. We now turn to the review petition in hand. Both the learned Civil Judge and the learned Judges of the High Court on the basis of documentary and oral evidence, held the claim to be payable in US dollars. The Civil Judge granted the decree in Pak rupees at the rate of exchange payable on the date of suit, as was pleaded in the plaint and relief para. The learned Judges of the High Court however reduced the petitioner's claim by granting the decree in Pak rupees at the rate of exchange payable when the debt was payable, which this Court accepted. One thing is certain that the suit claim in any case was one which was payable in US dollars by the respondent, and to this extent figuratively the money of account and the money of payment in respect of the suit claim may be treated as US dollars. It is correct that the petitioner at one time, on the proposal of a representative of the respondent, agreed to receive payment in Pak rupees under its counsel's letter Exh. P29, but the matter aborted as the respondent showed no interest in living up to its proposal, but just kept quiet and slept over the matter. In this view of the matter, the petitioner cannot be held bound down to their fetter, which even otherwise stated that if there was no response thereto, the respondent would have to pay in US dollars. The petitioner therefore has the right to demand the suit claim in US dollars."

35. The next question for determination is what should be treated as the date which this Court should impose, for converting into rupees the foreign currency claim. In *Schorsch Meir GmbH's case* (supra), the plaintiff had claimed the foreign currency or its equivalent at the exchange rate at the time of payment. Likewise, in *Milliangos' case* (supra), the plaintiff had applied for amendment to claim the foreign currency or the pounds sterling equivalent thereof at the time of payment. In these circumstances, the Court in those two cases allowed the pounds sterling equivalent of the foreign claim as on the date of payment. In the instant case, the petitioner itself claimed the foreign currency or the Pak rupees equivalent thereof as on the date of institution of suit. No steps were later taken so as to amend the plaint to substitute the Pak rupees equivalent as on the date of payment. In these circumstances, the date which this Court should impose for converting the US dollars into Pak rupees should be the (date which the petitioner itself chose, namely, the date of suit. At the date when the suit was instituted the exchange rate was roughly US \$ 1.00 equal to Pak Rs.10. We would, therefore, grant judgment to the petitioner for US \$ 155,574.34 or the Pak rupees equivalent thereof on the date of suit.

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37. For the foregoing reasons, this review petition is accepted, the judgment of this Court, dated 24-11-1991 passed in civil appeal CA. No.154 of 1989 is modified to the extent that the present petitioner shall recover US \$155,574.34 from the present respondent, together with interest at the rate of 12 per cent. per annum from the date of institution of the suit till the recovery of the decretal amount, or the Pak rupees equivalent thereof at the rate of exchange payable on the date of suit i.e.

US \$1.00 equal to Pak Rs.10.00 as claimed by it in the suit. The present petitioner will get its costs of the appeal.

13. Insofar as the objection regarding competency of instant Execution Application as raised by the learned Counsel for the Judgment Debtor is concerned, the same does not seem to be an appealing argument for the reason that on the one hand the Judgment Debtor has relied upon the Counter Affidavit to CMA No 1563/1999 as according to the Judgment Debtor there is some admission regarding the contention of the Judgment Debtor, whereas, on the other hand the very filing of the Execution is being disputed. Even otherwise the objection on perusal of the Execution Application appears to be misconceived inasmuch as the Suit was filed by and on behalf of Fauji Foundation and the Execution Application has also been filed by and on behalf of Fauji Foundation. Mere change in the nomenclature of administrators of the Trust will not make any difference so as to make the Execution Application as incompetently filed. In the circumstances this objection is misconceived and is hereby dismissed.

14. In view of hereinabove discussion, both the applications filed on behalf of the Judgment Debtor bearing CMA Nos. 1563/1999 & 1332/2002 are allowed to the extent by holding that the Judgment Debtor is liable to make payment of the decretal amount of **£ Pound** 13,102/- by converting the same at the rate of exchange prevailing at the time of filing of Suit i.e. Rs12 to a **£ Pound**, (Total Rupees 157,224/-) plus interest at the rate of 12% per annum on the decretal amount till its realization and proportionate costs of the Suit as taxed and shown in the decree.

Dated: 13.11.2017

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