

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.D-112 of 2016

Date	Order with signature of Judge
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- 1.For hearing of CMA No.409/2016
- 2.For hearing of main case

11.05.2018

Mr. Sufiyan Zaman advocate for the petitioner.  
Mr. Faiz Khan Durrani advocate for the respondent No.1  
Mr. Asim Mansoor, DAG.

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Through this petition, the petitioner has basically challenged the legal notice dated 26.11.2015 tendered by the learned advocate of the respondent No.1 to the petitioner. The concluding paragraph of the notice is reproduced as under:-

“In view of the above, you are hereby called upon to pay a total sum of Rs.382,196,993.93/- (principal liability of Rs.248,477,376.96/- and mark up liability of Rs.133,719,616.97/-) outstanding as on 30.06.2015, within a period of 30 days from the date of this notice failing which the Bank shall be constrained to refer the matter to the Governor, State Bank of Pakistan for initiating proceedings against you under the provisions of NAB Ordinance, 1999 for you having committed willful default. THIS IS IN ADDITION AND WITHOUT PREJUDICE TO THE RIGHTS AND REMEDIES AVAILABLE TO THE BANK UNDER ANY OTHER LAW.”

The petitioners have come up with the plea that the banking suit No. 37/2015 is already pending which has been

filed by the respondent No.1. During pendency, this legal notice was issued under Section 5(r) of NAB Ordinance, 1999 through which the petitioners were called upon to make payment of principal liability within 30 days failing which the matter will be referred to the Governor, State Bank for initiating proceedings under NAO, 1999. While issuing notice to the respondents on 08.01.2016, learned counsel for the petitioners relied upon the case of Asim Textile Mills Ltd. reported in PLD 2004 Karachi 638 in which learned division bench held that amount of liability of a borrower has to be determined through judicial disposition by a civil court or a Banking Court and once such determination attains finality or is not disputed, the mechanism provided under the NAO, 1999 can be invoked.

Learned DAG as well as learned counsel for the respondent No.1 pointed out that the interim orders were passed by this court on 08.01.2016 but on 12.08.2016 Financial Institutions (Recovery of Finances) (Amendment) Act, 2016 was promulgated through which the certain amendments were made under Section 20 of the aforesaid Act. More particularly sub-sections 7 to 9 were added which are reproduced for the ease of reference as under:-

- (7). Notwithstanding anything to the contrary provided in any other law for the time being in force, action in respect of an offence of willful default shall be taken by an investigating agency, to be nominated in this behalf by the

Federal Government, on a complaint in writing filed by an authorized officer of a financial institution after it has served a thirty days notice upon the borrower demanding payment of the loan, advance or financial assistance.

- (8). An offence of willful default shall be cognizable, non-bailable and non-compoundable and punishable with imprisonment which may extend to seven years or fine not exceeding the amount of default or with both.
- (9) Any person convicted of the offence of willful default by a Banking Court shall not be eligible to receive any loan, advance or finance from any financial institution for a period of ten years and shall not be permitted to contest any election as member of the Majlis-e-Shoora (Parliament), any Provincial Assembly or a local body for a period of five years, after serving out a sentence after conviction.”

Learned counsel further argued that after insertion of sub-sections 7 to 9 through amendment made in the order 2016, the definition of willful default has also been incorporated in clause (g) of Section 2 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 which is reproduced as under:-

- “(g). “willful default” means—
  - (i) deliberate or intentional failure to repay any finance, loan, advance or any financial assistance received by any person from a financial institution after such payment has become due under the terms of any law or an

agreement, rules or regulations issued by the State Bank of Pakistan;

- (ii) utilization of finance, loan, advance or financial assistance or a substantial part thereof, obtained by any person from a financial institution for a purpose other than that for which such finance, loan, advance or financial assistance had been obtained and payment in part or full not made to the financial institution; or
- (iii) removal, transfer, misappropriation or sale of any assets collateralized to secure a finance, loan, advance or financial assistance obtained from a financial institution without permission of such institution.”

In view of the amendment made in the Act of 2016, the learned counsel for the Bank argued that now, in the latest situation and the change of law the respondent No.1 will take action strictly in view of the aforesaid amendments. He further argued that after insertion of this sub-section the cognizance against the willful default can be taken by the banking court and the respondent No.1 will avail the remedy as per letters of the law. Since the amendments have been made in the law and the banking suit is also pending, the cognizance of willful default, if any, can be taken by the banking court in accordance with the law. So the apprehension on which the instant petition has been filed no more exists. The petition is disposed of accordingly.

JUDGE  
JUDGE

