IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal**, **JJ**.

Special High Court Appeal No.05 of 2017

Syed Wajahat Hussain Zaidi and Another
Versus
United Bank Limited

For the Appellants	:	Mr. Sami Ahsan, Advocate
For the Respondent	:	Mr. Aijaz Ahmed Sheerazi Advocate
Date of Hearing	:	18.05.2018

JUDGMENT

Agha Faisal, J: This judgment shall determine whether this Court has jurisdiction to interfere with an interlocutory order passed by a learned Single Judge of this Court exercising jurisdiction under the Financial Institution (Recovery of Finances) Ordinance, 2001 (**"Ordinance"**).

2. The brief facts leading to the present appeal may be summarized in chronological order and presented herein below:

i. The respondent had filed the suit for recovery against the appellant, being Suit No. B-82 of 2013 (**"Suit"**) and the leave to defend applications filed by the respective appellants came up for hearing on 16.04.2014 and the same were dismissed by the learned Single Judge of this Court exercising jurisdiction under the Ordinance on 16.04.2014 (**"Dismissal Order"**).

ii. It is pertinent to record that the Dismissal Order was rendered in the presence of learned counsel for the respective plaintiff and defendants (appellants and respondent herein) and dismissal was, *inter alia*, predicated upon the refusal of learned counsel for the appellants (defendants therein) to proceed with the matter. The relevant portion of the Dismissal Order is reproduced herein below:

"As despite repeated directions of the Court to proceed with this case, Mr. Sami Ahsan advocate has flatly refused to argue the listed applications without any plausible justification, C.M.A Nos.8512 of 2013 and 8513 of 2013 are dismissed…."

iii. The Dismissal Order also recorded that the counsel for the appellants (defendants therein) indulged in behavior prima facie contumacious in the face of the Court.

iv. The Dismissal Order was assailed by the appellants before a learned Division Bench of this Court in Special High Court Appeal No. 252 of 2014 and the said appeal was dismissed with observations vide order dated 03.12.2014 (**"Appellate Order"**) particularized as follows:

"2-5. After making submissions, learned counsel for the appellant submits that he will not press the instant appeal and will seek remedy before the learned Single Judge seeking restoration of two C.M.As No.8512 of 2013 and 8513 of 2013 (leave to defend applications), which according to learned counsel have been dismissed on account of non-prosecution. However, it has been contended by the learned counsel that since the appellant has impugned the order dated 16.04.2014 by filing the instant High Court Appeal, therefore, the time consumed during pendency of instant High Court Appeal may be condoned and the learned Single Judge may be directed to hear the application of the appellant which may be filed in the aforesaid terms as in time and the delay in this regard may be condoned.

Accordingly instant High Court Appeal is dismissed as not pressed. However, the appellant will be at liberty to seek the remedy, including filing an application seeking restoration of the aforesaid two C.M.As which have been dismissed on account of non-prosecution without deciding the same on

merits, whereas, the time consumed during pendency of instant High Court Appeal may be condoned provided the application may be filed within one week from the date of this order.

Appeal stand disposed of in the aforesaid terms."

v. The learned counsel for the appellant then preferred CMA No.16725 of 2014, seeking the recall of the Dismissal Order and the restoration of the original leave to defend application (**"Restoration Application"**). The learned Single Judge of this Court was pleased to hear the Restoration Application and the same was dismissed vide order dated 16.12.2016 (**"Impugned Order"**).

vi. Per learned counsel for the appellants, the Impugned Order is not sustainable in law and is violative of the principle of natural justice, hence, the subject appeal was preferred.

3. The arguments advanced by the learned counsel in this regard are encapsulated herein below:

i. It was contended that the Impugned Order also imposed costs of Rs.10,000/- (Rupees Ten Thousand Only) upon the appellants and hence the same could be deemed to be a decree, liable to be assailed in appeal.

ii. The learned counsel contended that the Restoration Application was dismissed without taking into the account that the Dismissal Order was not rendered upon merits of the case.

iii. The learned counsel placed reliance upon a case of the Division Bench Judgment of this Court in the case of *Messrs Baghpotee Services (Private) Ltd and others v. Messrs Allied Bank of Pakistan Ltd* reported as *2001 CLC 1363*

(“***Baghpotee***”) and submitted that pursuant to the ratio therein, this Court is duly empowered to grant the present appeal in terms prayed therein.

4. In response the learned counsel for respondent submitted that the present appeal was not maintainable as it amounted to an appeal against an interlocutory order rendered in the exercise of jurisdiction pursuant to the Ordinance. It was also submitted that the facts pleaded in the memorandum of appeal disentitle the appellant from any relief. The contentions of the learned counsel may be submitted as follows:

i. It was submitted that the Impugned Order is an interlocutory order and hence no appeal is maintainable there against as provided under Section 22(6) of the Ordinance.

ii. Notwithstanding the arguments it was contended that even otherwise the subject appeal was hopelessly time barred.

iii. It was contended by the learned counsel that the Judgment in the case of *Bank Alfalah Limited v. Interglobe Commerce Pakistan (Pvt) Ltd and 5 others as reported 2017 CLD 1428 [Sindh]* (“***Interglobe***”) augments the contentions of the respondent that the present appeal merits immediate dismissal.

5. We have heard the learned counsel and have also had the benefit of reviewing the record available on file. The primary question before this Court is whether it has the jurisdiction to entertain the present appeal against the Dismissal Order.

6. It may be prudent to initiate this discussion by adverting to the fountainhead in respect hereof, being Section 22 of the Ordinance and the same reads as follows:

> "22. Appeal. (1) Subject to subsection (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.
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> (2) The appellant shall give notice of the filing of the appeal in accordance with the provisions of Order XLIII, Rule 3 of the Code of Civil Procedure (Act V of 1908) to the respondent who may appear before the Banking Court to contest admission of the appeal on the date fixed for hearing.
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> (3) The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant:
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> Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant deposits in cash with the High Court an amount equivalent to the decretal amount inclusive of costs, or in the case of an appeal other than an appeal against an interim decree, at the discretion of the High Court furnishes security equal in value to such amount; and in the event of a stay being granted for a part of the decretal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.
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> (4) An appeal under subsection (1) shall be heard by a bench of not less than two Judges of the High Court and, in case the appeal is admitted, it shall be decided within 90 days from the date of admission.
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> (5) An appeal may be preferred under this section from a decree passed ex parte.
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> (6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under subsection (11) of section 15 or subsection (7) of section 19.
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> (Underline added for emphasis.)
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> (7) Any order of stay of execution of a decree passed under subsection (2) shall automatically lapse on the expiry of six months from the date of the order whereupon the amount

> deposited in Court shall be paid over to the decree-holder or the decree-holder may enforce the security furnished by the judgment-debtor."

7. It is prima facie apparent that there is a statutory bar upon preferring any appeal against an order rejecting a leave to defend application and / or any interlocutory order passed by the Court. The reference to *interlocutory order* is qualified as being an order of the Court which does not dispose of the entire case.

8. It is obvious that the cited statutory provision specifically precludes the possibility of any appeal being preferred against an order rejecting a leave to defend application, in addition to the other apparently disjunctive proscriptions contained in the said provision.

9. The law in such regard was considered by the Superior Courts on numerous occasions and an illuminating Division Bench judgment of this Court, in the case of *Nadeem Athar and another v. Messrs Dubai Islamic Bank (Pakistan) Ltd* reported as *2013 CLD 805*, maintained as follows:

> "11. From perusal of the provisions of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 it appears that no appeal lie against an interlocutory order passed by the Banking Court. Undoubtedly. Order passed by the learned single Judge, for all intents and purposes, is an interlocutory order as lis is still pending before the learned single Judge who has still to render its final verdict. The legislature has made such order passed by single Judge, as non-appealable by specifically making provisions in that respect by virtue of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.
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> 12. Under the circumstances, when the legislature has specifically prohibited the filing of an appeal against the interlocutory order no exception can be drawn from such legislative intent, which otherwise would amount to defeating the clear intent of the legislature. After having examined the provisions of subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 we do not find any merit in this appeal and the same was accordingly dismissed vide our short order dated 20.11.2012 and these are the reasons for such order."

10. A similar view was expounded by the honorable Lahore High Court in the case of *Muhammad Khan v. Zarai Tarakiati Bank Limited through President* reported as *2014 CLD 1596*, wherein it was maintained as follows:

> "7. While subsection (1) of section 22 (supra) confers an absolute right upon an aggrieved person to assail the validity of a judgment, decree, sentence or final order (emphasis added), subsection (6) circumscribes it and hedges it respecting interlocutory orders. It is noteworthy that while subsection (1) uses the word "may" implying the permission to file an appeal, subsection (6), in contradistinction, opens with the imperative language, employing the words "No appeal, review or revision shall lie against....any interlocutory order of the Banking Court". The choice phraseology used by the legislature to emphasize two facets of the same coin leaves no room for doubt that it intended to stonewall a challenge to interim or intermediate or interlocutory orders, with the underlying object to let the suits/cases tried by the Banking Court conclude within the shortest possible time. In other words, the law on the subject is so designed as to allow the matters proceed apace, without any hiccup.
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> 8. Black's Law Dictionary (Sixth Edition) defines final order as under:--
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>> "One which terminates the litigation between the parties and the merits of the case and leaves nothing to be done but to enforce by execution what has been determined."
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> 9. The words "final order" and "an interlocutory order" have repeatedly come up for consideration before the superior Courts in the subcontinent. In (10 Rang.335). It was held as under:--
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>> "A final order means an order which finally disposes of the rights of the parties. (54 all 401). The real test for determining whether the order is final ought to be this: "Does the judgment or order, as made, finally dispose of the rights of the parties"? If it, does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order. Whether an order is final or not depends on the facts of each case."
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>> Similarly in AIR 1933 P.C. 58, Sir George Lowndes observed:
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>> The finality must be a finality in relation to the suit. If, after the order the suit is still alive in which rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself not material. If the

decision on an issue puts an end to the suit, the order will undoubtedly be a final one."

(10) In order to constitute a final order, it is necessary that the order should be one by which the suit or the proceeding is finally disposed of whichever way the decision went. The decision of an important and vital issue which may ultimately affect the fate of the proceeding is by itself not enough. The test to be applied is, whether the proceeding is disposed of completely and the case is not kept alive for being dealt within the ordinary way.

It is then necessary for determining whether the order is a final order, to note what its effect will be, if it were decided the other way. If the order is such as would dispose of the proceeding if decided one way, but would not have that effect, if it were decided the other way, the order would not be a final order. The final order must contain a final adjudication of the matter in contest between the parties to the action.

11. From the facts set out in the preceding paragraphs, it is pretty clear that the suit instituted by the appellant is still pending adjudication, and the controversy raised therein is yet to be disposed of by the banking Court seized with it. As and when it washes its hands off, the appellant, if felt dissatisfied with the final outcome, may bring it under challenge, by filing an appeal before this Court in terms of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. Should things come to this pass, the appellant would be at liberty to challenge all the intermediate/interim/interlocutory orders in the main appeal."

11. The judgment relied upon by the learned counsel for the respondent, *Interglobe*, is the most recent Division Bench authority in such matters and is an exhaustive treatise upon the issue. It may be prudent to reproduce the relevant passages therefrom herein below:

"8. Perusal of above provisions reveals, that in terms of subsection (1) of section 22 of F.I.O., 2001, an appeal can be filed by a person aggrieved by any 'judgment, decree, sentence, or final order passed by a Banking Court', within thirty days of such judgment, decree, sentence or final order, to the High Court. However, subsection (6) of section 22 of F.I.O., 2001, clearly bars filing of any 'appeal, review or revision against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court, which does not dispose of the entire case before the Banking Court, other than an order passed under subsection (11) of section 15 or subsection (7) of section 19.

9. The rationale behind above provisions seems to be expeditious disposal of cases under the F.I.O., 2001 and to avoid unnecessary delay, which is caused by filing frivolous interlocutory which are subjected to frivolous appeals as well. If the interlocutory orders are allowed to be challenged before the High Court by filing appeals, the very object for which the F.I.O., 2001 was enacted would be frustrated. The appellate power conferred on the High Court under F.I.O., 2001 in terms of section 22 is therefore, restricted, only to the extent of entertaining an appeal against the final order and judgment of the Special Court.

10. Black's Law Dictionary (Sixth Edition) defines final order as under:

"One which terminates the litigation between the parties and the merits of the case and leaves nothing to be done but to enforce by execution what has been determined."

The words 'final order' and 'an interlocutory order' have now been settled from various pronouncements of the apex Court viz. "A final order means an order which finally disposes of the rights of the parties. The real test for determining whether the order is final ought to be this: 'Does the judgment or order, as made, finally disposes of the rights of the parties'? If it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order. Similarly, in AIR 1933 PC 58, Sir George Lowndes observed:-

"The finality must be finality in relation to the suit. If, after the order the suit is still alive in which rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one."

Furthermore, in order to constitute a final order, it is necessary that the order should be one by which the suit or the proceeding in either way is finally disposed of. The decision of an important and vital issue which may ultimately affect the fate of the proceeding is by itself not enough. The test to be applied is, whether the proceeding is disposed of completely and the case is not kept alive for being dealt within the ordinary way. The final order must contain a final adjudication of the matter in contest between the parties to the action.

11. Though the word 'interlocutory order' has not been defined anywhere either in the C.P.C. or in the F.I.O., 2001, but the appeals were made competent under C.P.C. against orders covered by Order XLIII but the legislature under subsection (6) of section 22 of F.I.O., 2001 clearly mentioned that no appeal shall lie against an interlocutory order which does not dispose of the entire case. It is thus clear that the word 'interlocutory order' has been used in contradistinction to the term "order". The legislature, in order to achieve the object that appeal shall lie only against the final order, did not stop after legislating that no appeal shall lie against interlocutory order but further

qualified the interlocutory order, which does not dispose of the entire case. The intention of the legislature is crystal clear from the language employed in the provision that appeal can only be maintained against last or final order.

……….

13. From the above facts, it is clear that the suit instituted by the appellant is still pending adjudication, and the controversy raised therein is yet to be finally decided by the Banking Court, which is still seized of the matter. As and when the said suit is finally disposed of, the appellant, if felt dissatisfied with the final outcome will be at liberty to bring it under challenge, by filing an appeal before this Court in terms of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. In that event, the appellant would be at liberty to challenge the legality of all intermediate/interim/interlocutory orders in the main appeal."

12. A review of the judgments cited supra clearly determines that perhaps the present appeal is not maintainable. However, the learned counsel has relied upon a judgment of the Division Bench of this very Court in the case of *Baghpotee*, wherein it was held as follows:

"6. The position if we may say so with respect stands clarified from a relatively recent pronouncement of the Honourable Supreme Court in Haji Khuda-e-Nazar v. Haji Abdul Bari 1997 SCMR 1986 which was not cited at the bar before us and was indeed not brought to the notice of the learned Single Judge deciding Allied Bank's case referred to in paras. 3 and 4 above. It may be pertinent to reproduce the following observations of Saleem Akhtar, J. speaking for a three members Bench of the Honourable Supreme Court of Pakistan:---

"It is now well-settled that in proceedings before Court or Tribunal of quasi-judicial nature, even if there is no provision for setting aside an ex parte order, the Court/Tribunal would be empowered to exercise such power by applying principles of natural justice, Such provisions which enshrine principles of natural justice have to be read in the statute which do not specifically debar such a remedy.

Therefore, even without applying the provisions of C.P.C. in terms, the procedure provided under Order IX, Rules 9 and 13 and Order XLI, Rule 17, C.P.C. can be applied by the Controller or the High Court in rent proceedings. In such cases the Court is not required to consider and decide it on merits, but it is to see whether the defaulting party was prevented from appearing in

Court due to sufficient reasons. It would, therefore not amount for reviewing its own judgment which surely a Controller is not empowered to do."

(Underlining is ours)

7. In view of the above discussion, we are of the considered opinion that there is a clear distinction between review of an earlier order and recalling one passed on account of non-appearance of a party. In the former the merits of an earlier order are considered but in the latter only the cause of non-appearance is to be taken into consideration. In the former case the power must be conferred by statute but in the latter it stems from the principles of natural justice required to be read into every law. The former is excluded by section 27 but the latter continues to remain available.

8. As regards the alternate contention of Mr. Asim Mansoor Khan premised on the specific provision of section 27 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 and the observations made in Allied Bank's case 2000 CLC 1153 we are constrained to express our inability to subscribe to the view canvassed. The observations in the above judgment, if we may say so with respect, arise from the assumption that some inherent power of review is deemed to exist in the Rent Laws or the Industrial Dispute Act, 1947 referred to in the aforesaid judgment which has been taken away from a Banking Court by the express mandate of section 27 of the 1997, Act. Nevertheless once it is acknowledged that the power to review must be expressly conferred by law no question of any such implied power can possibly arise. We are clearly of the view that the power to recall an ex parte order is an altogether different rower than one of review and emanates from a different source, therefore, nothing turns on section 27 in the present context.

9. The learned Banking Court had decided the application on the question of jurisdiction without considering the merits i.e. sufficiency of the cause of non-appearance of the appellant. We have also not heard, any arguments in this respect. We would, therefore, allow this appeal, set aside the impugned order and remand the case to the learned Banking Court to decide the application on merits without unnecessary delay. Proceedings in Execution, however, shall remain stayed till the decision of the application. Let the R and P be sent to the learned Banking Court immediately."

13. It was argued by the learned counsel for the appellants that even though *Baghpotee* dealt with the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997 ("**Act**"), and not the Ordinance, however, the provisions barring the

institution of appeals in respect of interlocutory orders was identical in the Act and the Ordinance and therefore, the ratio of *Baghpotee* was squarely applicable herein.

14. There is yet another judgment of a Division Bench of this Court, in the case of *Asif Kudia v. Messrs KASB Bank Limited and others* reported as *2014 CLD 1548* ("***Asif Kudia***"), wherein the challenge to an order interlocutory passed by a Banking Court was entertained. The relevant portion of the judgment read as follows:

> "16. It has been held time and again by the Hon'ble Supreme Court and High Courts that the Superior Courts have inherent and Constitutional powers to remedy and correct the wrongs committed by subordinate courts, and the High Court has vast powers in its inherent jurisdiction not only to mould the relief, but also to convert an Appeal, Constitutional Petition or Revision to any other remedy. The law cited on this point by the learned counsel for the appellant is fully applicable in the instant appeals. In this context, reference may be made to the case of Syed Ghazanfar Hussain through Legal Heirs and others v. Nooruddin and others, 2011 CLC 1303, decided by a learned Division Bench of this Court which has a binding effect on us. We may also refer to Mst. Mubarak Salman and others v. The State, PLD 2006 Karachi 678, which is also binding on us, where in it was held inter alia by a learned Division Bench of this Court that once it has been found that Presiding Officers of the Courts have abused the process of the Court, then it is incumbent upon the Superior Courts, and it is one of the duties of the Superior Courts, to correct such wrongs of the subordinate courts by exercising whichever powers available with them either inherent, supervisory, revisional or Constitutional powers, either on the application of any party or under its suo motu jurisdiction; the reason being that it was the act of the Court done in the abuse of process of Court, that is to be corrected by the Court itself or by the Superior Court as soon as it is brought to its notice through any source; and, except for the superior Courts, there is no other authority which can correct such act of the subordinate courts.
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> 17. Regarding the objection as to the maintainability of these appeals, we have already held that the learned Banking Court failed to exercise the jurisdiction that was vested in it by law, and the modes of service adopted by it were not in accordance with the mandatory provisions of section 9(5) ibid. Therefore, the ex parte order passed against the appellant and the order dated 7-8-2010 impugned in Ist Appeal No.121 of 2010 are liable to be set aside. In Habib Bank Limited (2011 CLD 1571) supra, a learned Division Bench of this Court was pleased to allow the Constitutional Petition against an interlocutory order passed by the Banking Court, by holding

that no appeal or Constitutional Petition is provided in the Ordinance against an interlocutory order, but this Court in its extraordinary jurisdiction has power to correct the wrong, particularly where no efficacious remedy is available to the aggrieved party. In Messrs United Bank Limited (2012 CLD 1556) supra, wherein an interlocutory order passed by the Banking Court for consolidation of two Suits was challenged, a Division Bench of this Court held that Constitutional jurisdiction of this Court can be invoked by an aggrieved party who has no other remedy, and Constitutional Petition was maintainable as the Banking Court had failed to exercise the jurisdiction which was vested in it by the Ordinance. Both the above cases decided by the Division Benches of this Court are binding on us. In Bank of Punjab (PLD 2013 Lahore 487) supra, it was held by a learned Division Bench of the Lahore High Court that Constitutional Petition would be maintainable in exceptional circumstances in order to meet the ends of justice where the petitioner could show a blatant illegality in the impugned order, such as the Banking Court had not followed the express mandate of law or had exercised its powers outside the jurisdiction conferred upon it.

18. We deem it necessary to clarify that Constitutional jurisdiction of the High Court cannot be invoked against every interlocutory order passed by the Banking Court, nor can every appeal against such orders be converted into a Constitutional Petition. Such discretion and inherent powers are to be exercised by the High Court keeping in view the facts and circumstances of each case, and particularly in cases where gross and blatant violation of any of the provisions of the Ordinance is apparent in the impugned order for which no remedy is available to the aggrieved party, or where the impugned order is passed by the Banking Court by exercising such jurisdiction which was not vested in it by law, or where the Banking Court fails to exercise the jurisdiction which was vested in it by law.

19. As a result of above discussion, these appeals are converted into Constitutional Petitions; the ex parte order dated 2-12-2009 passed by the Banking Court in Suit No.121 of 2009 against the appellant is hereby declared as illegal and without jurisdiction; and, the order dated 7-8-2010 impugned in Ist Appeal No.121 of 2010 is hereby set aside. Regarding Ist Appeal No.3 of 2011, since we have held that the application for leave to defend filed by the appellant was within time and the same has not yet been heard or decided by the Banking Court, the learned Banking Court is directed to decide the said application strictly in accordance with law as expeditiously as possible after affording full opportunity of hearing to the parties. Accordingly, C.M.A. No.1778 of 2013 is allowed, and C.M.A. No.30 of 2011 stands disposed of in the above terms. Let the R&P be returned to the Banking Court for further proceedings in terms of this judgment."

15. Even though *Asif Kudia* has not been relied upon by the learned counsel for the appellants, it is imperative for the same to be

considered in order appropriately address the issue before us as *Asif Kudia* does recognize an exception whereby an interlocutory order rendered pursuant to the Ordinance could be assailed.

16. There is one major factor that *inter alia* distinguishes *Baghpotee* and *Asif Kudia* from the case before us and that factor is that the interlocutory orders impugned in each of the two cases were rendered by the learned Banking Courts, whereas, the Impugned Order under consideration herein has been delivered by a learned Single Judge of this Court exercising jurisdiction under the Ordinance.

17. The issue of an interlocutory order of a learned single judge of this Court being assailed, in the same manner as in the present case, has come before the Division Bench of this Court in the past also and it was held, in the case of *Bank of Punjab through Authorized Attorney v. Messrs AMZ Ventures Limited and another* reported as *2013 CLD 2033*, as follows:

> "23. As regards contention regarding conversion of appeal into constitution petition is concerned, we have no doubt that this Court has wide powers to treat an appeal as petition under Article 199 and, likewise, a petition can be converted into appeal subject to limitation and jurisdiction. But this appeal cannot be converted into Constitution petition because the statute excluding a right of appeal from the interim order cannot be bypassed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.....
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> 28. In view of the above discussion and the case-law cited at the Bar, we are of the considered opinion that the bar provided under subsection (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, cannot be circumvented by filing revision under section 115 or an appeal under Order XLIII, C.P.C. or a constitutional petition under Article 199 of the Constitution. We, therefore, hold that this appeal is not maintainable and is accordingly dismissed in limine."

18. *Baghpotee* pertained to issues emanating from the Act and it is the considered view of this Court that the provisions of Section 27 of the Act and Section 22(6) of the Ordinance are not synonymous. The specific statutory bar contained in the relevant provision of the Ordinance is not expressed in the Act. Even otherwise *Baghpotee* pertained to a post judgment and decree challenge to execution proceedings vide an application under the CPC, whereas, in the present circumstances the ultimate challenge is to an order dismissing the leave to defend application, in respect whereof there is a specific bar in the Ordinance.

19. Even otherwise, in the present circumstances the option of an appeal remains available to the appellants in the event that a judgment is rendered there against.

20. *Asif Kudia* provide sanction for the conversion of an appeal into a Constitution Petition while assailing an interlocutory order issued by a Banking Court. However, in the present case the Impugned Order has been rendered by a Single Judge of this Court and the law would not sanction the issuance of a writ by a High Court against another bench of the High Court.

21. It is well settled law that no writ could be issued by one bench of a high Court to another bench of the same (or another) High Court. Reliance is placed in such regard upon the judgments of the honorable Supreme Court in the cases of *Abrar Hassan vs. Government of Pakistan and Another* reported as *PLD 1976 SC 315* and *Muhammad Iqbal vs. Lahore High Court and Others* reported as 2010 SCMR 632 and of a Division Bench of this Court in the cases of *Syed Qasim Hasan vs. Syed Mehdi Hasan* reported as *PLD 2015*

Sindh 441 and *Shahab Mazhar Bhalli vs. Pakistan Railways and Others* reported as 2014 PLC 356.

22. It is for the reasons stated supra that the ratio of *Baghpotee* and *Asif Kudia* are duly distinguishable in the facts and circumstances of the present case.

23. Prior to parting with this judgment it may also be germane to advert to the appellants' contentions on a factual plane. A bare perusal of the affidavit accompanying the Restoration Application demonstrates that not a single ground has been pleaded / stated therein in support of the application it seeks to support. It is inconceivable to argue infringement of the principles of natural justice and other enshrined maxims of law when admittedly the appellants' counsel was present in Court and yet refused to afford the opportunities granted thereto to proceed with the case.

24. The Appellate Order, although dismissed the appeal filed by the appellants, provided some respite in so far as the limitation issue was concerned. However, the Restoration Application was still directed to be decided on its merits.

25. The complete lack of substance in the Restoration Application is addressed as follows in the Impugned Order:

> "Even if the time is condoned, without taken into consideration the aforesaid facts, no plausible grounds have been raised by the defendants' counsel, which could enable this Court under the law to restore the applications which were flatly refused to be argued. The present application filed on 08.12.2014 is absolutely silent in this regard. Such led me to presume that counsel for the defendants had intentionally and flatly refused to argue the subject applications sought to be restored through this application. There is no justified reason at all either in the application or in the affidavit to consider the instant application."

26. It is clear that no judgment or final determination of any kind whatsoever has been rendered in the Suit. The order under challenge herein does in no manner impinge on the appellants' right to appeal a judgment, if the same is rendered there against in the Suit. Such an appeal could be instituted and the appellants would be at liberty to agitate all applicable grounds, including those that the appellants considered should have been contemplated by the learned Single Judge while determining the leave to defend applications and the observations made hereinabove, and those contained in the orders of multiple fori discussed and/or assailed herein, shall cause no prejudice to the adjudication of the Suit and / or upon any appeal filed against any judgment and decree being rendered in the Suit.

27. In view of the reasoning delineated supra, the present appeal, along with listed applications, is hereby dismissed with no order as to costs.

JUDGE

JUDGE