

cancelled; that since they were given as security they cannot be encashed; that the Plaintiffs in advance have already approached and advise the concerned Bank not to encash such cheques and have stopped payment of the same; that the Defendants cannot, on the basis of such cheques initiate any proceedings of criminal nature; that if stance of the Defendants is even accepted, then they ought to have filed a summary Suit under Order 37 CPC; but instead they have chosen to file a Suit bearing No.1177/2013 for Specific Performance of the Agreement(s) in question asking for supply of purported sugar; hence, the Defendants by their own conduct, cannot seek encashment of cheques and initiate any criminal proceedings on the basis of such postdated cheques; that from the record, it reflects that there was an Agreement(s) between the parties, whereas, the personal guarantees and promissory notes were also executed, and therefore, if there is any dispute between the parties, the appropriate remedy lies with the Civil Court and such remedy has already been availed by the Plaintiffs as well as Defendants by cross Suits; that a specific quantity for supply of sugar has been identified in the Agreement(s) in question; therefore, the cheques given as security and as a guarantee cannot be used for causing threat or harassment; that as per the account reconciliation, the quantity of sugar claimed stands duly delivered, and it is the case of the Plaintiffs that excess amount is to be recovered from the Defendants; that before settlement of the accounts, the cheques cannot be utilized or encashed; that in the Suit of specific performance filed by the Defendants the injunction application was allowed; however, in High Court Appeal, it was set aside, therefore, the Defendants are not in a position to oppose the listed application; that even after passing of the Appellate order, the Defendants have never made an attempt to amend their pleadings; that the Civil Petition for Leave to Appeal filed against the Appellate order is though pending, but no restraining orders have been passed; that by conduct the Defendants have sought delivery of the purported short supply of sugar, and if that is the case, then at the same time they cannot seek encashment of the postdated cheques; that the bar contained under Section 56(e) of the Specific Relief Act 1877 does not apply to the present proceedings as till filing of this Suit, no criminal proceedings had been initiated as yet; that Section 53 of the Specific Relief Act read with Order 39 Rule 1 & 2 CPC allows a Civil Court to pass temporary injunction, whereas, Section 56 relates to

permanent injunctions and therefore, even otherwise, the bar contained under Section 56(e) of the Act *ibid* is not applicable; that temporary injunctions are not affected by Section 56 as in terms of Section 53 the Court independently grants temporary injunctions read with relevant provisions of CPC; that it is a question of determination of liability; hence, it is only the Civil Court which has jurisdiction in the matter; that all ingredients for grant of a temporary injunction including a *prima facie* case, balance of convenience and causing of irreparable loss to the Plaintiffs are present in this case; hence, the injunction must be granted; that the Plaintiffs have come before the Court for cancellation of cheques much prior to the Defendant's Suit for Specific Performance, whereas, in any case, the Defendants have not sought enforcement of the such cheques and have rather opted for Specific Performance of the Agreement(s), and therefore, even if they are successful in their Suit ultimately, it is the delivery of the sugar which would be the maximum relief given to them, and not by way of any encashment of cheques or recovery of money; that the Defendants after dismissal of their High Court Appeal, have suddenly got active in proceeding with this case, as earlier no urgency of any nature was sought, and it reflects badly on their conduct in respect of the listed application, depriving them from exercise of any discretion in their favour. In support he has relied upon ***Trading Corporation of Pakistan V. Devan Sugar Mills Limited and others (PLD 2018 SC 828)***, ***Nooruddin Hussain and another V. Diamond Vacuum Bottle Manufacturing Co. Ltd., Karachi and another (PLD 1971 Karachi 720)***, ***Ahmad Din and others V. Faiz Ali and others (PLD 1954 Lahore 414)***, ***Kazi Mohammad Akbar V. Province of Sind and another (PLD 1952 Sind 32)***, ***Muhammad Akbar V. The State and another (PLD 1968 SC 281)***, ***A. Habib Ahmed V. M. K. G. Scott Christian and 5 others (PLD 1992 SC 353)***, ***Badaruddin V. Mehr Ahmad Raza, Additional Sessions Judge, Jhang, Etc. (NLR 1993 Criminal 593)***, ***Mian Allah Ditta V. The State and others (2013 SCMR 51)***, ***Abdul Sattar V. The State and another (PLD 2013 Lahore 173)***, ***Muhammad Munir Ahmad V. The State and another (2010 MLD 1838)***, ***Digri Sugar Mills Limited and 2 others V. Mian Kamran Ilahi and another (2018 CLD 449)***.

3. Mr. Salim Salam Ansari Advocate appearing on behalf of Plaintiffs No.2 & 3 in addition to adopting the arguments of learned Counsel for

the Plaintiff No.1 has contended that the Plaintiffs No.2 & 3 being Directors / share holders of Plaintiff No.1 are signatories of the cheques in question; that the said cheques were given on behalf of the Company for security purposes pursuant to the Agreement(s) between the parties, whereas, the sugar stands supplied / delivered, and therefore, no encashment could be enforced; that in terms of Section 9 of the Negotiable Instrument Act 1881, the Defendants are not holders in due course; that after supply of the agreed quantity of sugar, the cheques are no more valid and by presumption stands cancelled; that proper delivery orders and acknowledgments are on record regarding supply of the agreed quantity of sugar, and therefore, no proceedings can be initiated before proper evidence is recorded at the trial of the Suit.

4. Learned Counsel for Defendant No.2 has contended that the cheques in question were not given as security; but to cover any default on the part of the Plaintiffs in supplying the agreed quantity of sugar; hence, they were presented for encashment, but were returned by the Bank with endorsement of 'stop payment' instructions; that the Suit was filed by the Plaintiffs after dishonoring of cheques, whereas, after 'stop payment' instructions and refusal of its encashment on the date of filing of the present Suit, there was no cause of action available with the Plaintiffs to seek any restraining orders; that the Suit is not for rendition of accounts as contended, but to stop / stay the criminal proceedings which may be initiated by the Defendants; that Section 56(e) of Specific Relief Act 1877 provides that no injunction can be granted to stay any criminal proceedings; hence, listed application is liable to be dismissed as this Court is barred in law from exercising any such jurisdiction; that the Defendants vehemently dispute the claim of the Plaintiffs that sugar has been delivered as it is the case of the Defendants that the original delivery orders issued to them are still in their possession, whereas, due to a default clause, the quantity has increased as well; that if the Plaintiffs, as claimed, have made deliveries, then from the pleadings itself they ought to have established such fact which is not the case in hand, whereas, through rejoinder affidavit they have tried to improve their case which is impermissible; that material facts have been concealed by them regarding the understanding / Agreement(s) between the parties starting from 2011 wherein also, they had defaulted and had requested to execute fresh Agreement(s) against

fresh postdated cheques; hence, they are not entitled for any injunctive relief due to their conduct; that the Agreement(s) provide in clear terms that if delivery is not made, then cheques would be encashed and there are no restrictions or conditions attached to any such encashment; that neither sugar has been supplied, nor the amount advanced as loan / investment has been repaid, therefore, the Plaintiffs have no case for grant of any injunction; that Section 56(e) applies to both perpetual as well as temporary injunctions and Order 39 Rule 1 & 2 CPC is not applicable exclusively; that the case law relied upon by the Plaintiffs' Counsel in support of his contention is not relevant inasmuch as all decisions referred to were rendered either, under the Constitutional Jurisdiction or the criminal jurisdiction of the Courts, whereas, in this matter it is the case of the Defendants that a Civil Court cannot grant an injunction as it is barred under Section 56(e) of the Specific Relief Act, 1877. In support he has relied upon ***Aamir Shehzad V. The State (PLD 2005 Lahore 568)***, State Life ***Insurance Corporation V. Haji Abdul Ghani and 3 others (1986 MLD 1245)***, ***Messrs Petro commodities (Pvt.) Ltd. V. Rice Export Corporation of Pakistan (PLD 1998 Karachi 1)***, ***Marghub Siddiqi V. Hamid Ahmad Khan and 2 others (1974 SCMR 519)*** and ***Faisal Kapadia and another V. Motorola Ltd. And 2 others (2010 MLD 518)***.

5. I have heard all the learned Counsel and perused the record. It appears that instant Suit has been filed by the Plaintiffs for Declaration as well as Permanent Injunction, Cancellation, Return and Rendition of Accounts as well as Recovery of the excess amount. Their precise case is that a declaration be given to the effect that the cheques given to Defendants were without consideration and were tendered as a security and they may be permanently restrained from causing any harassment and blackmailing by using such cheques with a further prayer for restraining them from initiating any criminal proceedings related to the cheques in question. From the record which does not appear to be in much dispute, it appears that there are 6 separate Agreement(s) between the Plaintiff No.1 Company and Defendants No.1 & 2 which are precisely termed as Investment and Commission Agreement(s) for different quantities of refined sugar, and describe the Defendants as *Investors*, whereas, the Plaintiffs as *Sellers* and further postulate that certain amount has been deposited by the *Investors*, whereas, there is a

deposit price; payment date; quantity of sugar as well as the delivery schedule. Clause 9 of such Agreement(s) describes the securities which includes delivery orders; promissory notes; personal guarantees of Plaintiffs No.2 & 3 as well as postdated cheques. In essence the Agreement(s) are more or less identical, the only difference being in the quantity of sugar and consequently, the amount involved. It is the case of the Plaintiffs that as per the Agreement(s) the quantity of sugar stands supplied and in fact according to them some excess supply has been made; hence, the post-dated cheques which were given as security pursuant to the Agreement(s) in question, are liable to be returned and cannot be used for any encashment or for any other purpose including criminal proceedings pursuant to dishonor of such cheques, if any. It is also the Plaintiff's case that after the quantity was supplied and cheques were not returned, they have approached their Bank and requested 'stop payment' of these cheques and as a consequence thereof, when some of the cheques were tried to be encashed, the Bank has referred back these cheques with an endorsement of 'stop payment'; hence, even otherwise, it is not a case of any dishonesty, contemplating criminal proceedings. On the other hand, the Defendant's case is that they are holding the cheques which have been dishonored, and notwithstanding any Agreement(s), since the quantity agreed has not been supplied, whereas, the Plaintiffs have defaulted in making supplies as well as returning the invested amount, they are entitled to seek encashment of the cheques and upon their dishonor they could resort to initiate criminal proceedings, if so desired. The Defendant's further case is that in view of Section 56(e) of the Specific Relief Act, 1877, this Court cannot grant any injunction in respect of any criminal proceedings. To this, Plaintiff's Counsel has argued that firstly, Section 56 only applies in respect of permanent injunctions, whereas, through listed application, the Plaintiffs are seeking a temporary injunction under Section 53 of the Specific Relief Act, and such injunctions are governed by Order 39 Rule 1 & 2 CPC and therefore, the bar, if any, under Section 56 *ibid* would not apply.

6. Before proceeding any further, it would be advantageous to refer to the relevant provisions of Section 53 and 56 of the Specific Relief Act, 1877 which reads under:

“53. Temporary injunctions. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”

56. Injunction when refused. An injunction cannot be granted—

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restraint persons from applying to any legislative body;
- (d) to interfere with the public duties of any department of [the Central Government], 2* * * or any Provincial Government], or with the sovereign acts of a Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;
- (k) where the applicant has no personal interest in the matter.”

7. Section 53 as above contemplates two situations for grant of injunctions i.e. temporary and perpetual. Temporary injunctions are such as are to continue until a specified time or until a further order of the Court, and they may be granted at any period of a Suit, and are regulated by the Code of Civil Procedure, whereas, perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the Suit. By way of a perpetual injunction the Defendant is thereby perpetually restrained from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the Plaintiffs. It is clear from the aforesaid provisions of Section 53 that

insofar as temporary injunctions are concerned, they are to be regulated by the Code of Civil Procedure and in that Code for grant of such injunctions Order 39 Rule 1 & 2 CPC regulates such injunctive orders. It is also important to note that by now the law regarding ingredients for grant of an injunction is settled, whereby, a Plaintiff coming before the Court must establish that he has a prima facie case and balance of convenience lies in his favour and if the injunction is refused he would suffer irreparable loss. Insofar as the provisions of Section 53 *ibid* are concerned, they fall under Chapter IX of the Specific Relief Act, 1877, which pertains to injunctions generally and in Chapter X perpetual injunctions have been specified starting from Sections 54 to 56 *ibid*. Section 54 deals with the situation when perpetual injunctions can be granted; Section 55 deals with mandatory injunctions; Section 56 provides situations when injunction cannot be granted or must be refused and Section 57 deals with injunctions to perform negative Agreements. The Defendants have placed reliance on Section 56(e) whereby, the injunction cannot be granted to stay proceedings in any criminal matter. For the present purposes, I am not inclined to give any definite findings on this controversy and aspect of the matter that when a permanent injunction cannot be granted under Section 56(e), then a temporary injunction under Section 53 read with Order 39 Rule 1 & 2 CPC cannot be granted as well, for the simple reason that in the peculiar facts of this case and insofar as I am concerned, the provisions of Section 56(e) are not relevant and applicable at this stage of the proceedings. It is nobody's case that any criminal proceedings are presently pending and the Plaintiffs are seeking stay of such proceedings. In fact, there is a report placed on record through written statement of Defendants No.3 to 9 wherein, they have stated that no case is pending with them nor they have got any concern with the present dispute. The law as is in field in Pakistan and as relied upon by the Defendants Counsel is only to the effect that an injunction cannot be granted to stay proceedings in any criminal matter. What in fact the Plaintiff is seeking through listed application is that the Defendants be restrained from seeking encashment of the cheques in question with a further prayer that if any encashment is sought and if the cheques are returned duly endorsed by the Bank as 'stop payment', then the Defendants be further restrained from taking any further action as to the cheques in question. Here, for the present purposes neither any

reference has been made by the Plaintiffs to any pending criminal proceedings, nor any such particular pendency has been brought on record on behalf of the Defendants; hence, the question of seeking any restraining order to that effect is not an issue for the present purposes while deciding the listed application, nor the bar contained in Section 56(e) *ibid* would come in the way of this Court. Any such conclusive effort in the present facts would be an exercise in futility; hence, does not warrant any such adjudication as contended on behalf of the Defendants.

8. Though as discussed hereinabove, it is not necessarily needed to delve upon this aspect of the matter regarding the bar contained in s.56(e) and its applicability; or whether the bar is absolute as contended; however, for the sake of clarity I may observe that the argument that if no permanent injunction could be granted in terms of s.56(e) or that it is barred and precludes the jurisdiction of the Court to do so; then there is no reason to entertain an injunction application under s.53 *ibid* as pleaded, does not appear to be that attractive. In my view, even if there is any such bar; it is definitely not absolute and there are exceptions to it. And one such exception is itself provided in s.56(b) which provides that no injunction can be granted to stay proceedings in a Court not subordinate to that from which the injunction is sought; therefore if s.56 in its entirety was to hold field and override s.53 (including temporary injunctions), the Court would also have been precluded or barred from passing any restraining order against even a Sub-Ordinate Court. This is admittedly not the case.

9. To further strengthen this argument one may refer to the case reported as **Kazi Mohamed Akbar v Province of Sindh (PLD 1952 Sind 32)**. In that case an Appeal came before the erstwhile Sindh Chief Court wherein the Plaintiff / Appellant was seeking an injunction which was primarily hit by the bar contained in s.56(d), which forbids the granting of any injunction which would “*interfere with the public duties of any department of Government of Pakistan or the Local Government.....*”. However, the Plaintiffs / Appellant’s Counsel then made an alternative argument that the Suit is one for restraining the Defendant No.1; but that was also repelled by the learned Division Bench speaking through Tayabji. J., the then Chief Justice. Interestingly, while dismissing the claim of the

Appellant the learned Division Bench went on to observe that, however, they are not in Agreement with the argument that no interim injunction could be granted against Defendant No.1, merely because perpetual injunction could not be ordered at the end of the Suit. The Court went on to hold that:

A very large number of other questions arising in the suit were discussed before us. It appears to us to be quite un-necessary to refer to them here. We may, however, mention, that we are not in Agreement with the view that no interim, injunction could be granted against defendant 1, merely, because the perpetual injunction, prayed for as one of the reliefs, could not be ordered at the end of the suit against defendant 1. It appears to us to be clear that the considerations upon which a Court may grant or refuse to grant an interim injunction, pending the disposal of the suit, may be, and often must be, entirely different from the consideration upon which a Court may grant or refuse to grant a perpetual injunction at the end of the suit. As is clearly laid down in section 53 of the Specific Relief Act, temporary injunctions are regulated by the Code of Civil Procedure.

10. A learned Judge of the Lahore High Court (Kaikus, J. as he then was) in the case reported as **Ahmad Din and others V. Faiz Ali and others (PLD 1954 Lahore 414)** had the occasion to deal with similar facts and the precise question before the Court was that (i) can an injunction be issued at all to restrain judicial proceedings (ii) and can it be issued to restrain proceedings pending in a Court which is not subordinate to the Court issuing injunction. The learned Judge also repelled the argument as raised on behalf of Defendants in that case in the following terms;

I hold that an injunction can be issued to restrain judicial proceedings. It should be obvious, however, that it will be issued only where the proceedings in which it is issued can, directly or indirectly, affect the proceedings that are stayed. I will now deal with the question whether section 56 (b) of the Specific Relief Act prevents the Court from restraining (by temporary injunction) a proceeding pending in a Court not subordinate to the Court issuing injunction. In order to find out whether the power of Court to stay a judicial proceeding is affected by the fact that the Court in which proceeding is pending is not subordinate to the Court issuing the injunction, we have to determine what is the source of this jurisdiction. Order 39 rules 1 and 2 do not apply. It is only in the exercise of its inherent jurisdiction that the Court issues such injunctions. When we speak of inherent, jurisdiction, we refer to a jurisdiction that is necessarily involved in a jurisdiction that admittedly exists. Civil Courts have jurisdiction to grant relief in civil matters and if the exercise of a power be necessary for granting full relief, that power should be deemed to exist in the absence of statute or settled practice. For granting full relief it is essential that a power to maintain the status quo should exist, for a party to a suit should not suffer merely because a suit cannot be decided the moment it is filed. If a suit is filed for restraining the defendant from demolishing a wall, the Court must have power to prevent the defendant from demolishing the wall till the matter is decided. The case I am referring to is now covered by Order 39, rule 2, C. P. C., but had this rule not existed the power to grant such an injunction would still be there. I am conscious of the fact that in England, before the Judicature

Acts, Courts of Common Law did not issue injunctions which fact may be used as an argument that such powers are not inherent. But luckily that distinction between Courts of Common Law and Equity which is more historical than fundamental, does not exist here, for our Courts of law are also Courts of Equity.

If the jurisdiction to issue such a temporary injunction be referable to inherent power, it cannot be taken away by section 56 (b) of the Specific Relief Act by the express words of section 53, Specific Relief Act, temporary injunctions are to be governed by the Civil. Procedure Code. If there was any intention to limit the power to grant temporary injunctions on the principle contained in section; 56, there ought to have been a provision to that effect. If a jurisdiction to restrain judicial proceedings by temporary injunction did exist before the enactment of section 56 (b), it is obvious that it has not been taken away. In fact, I need not labour the point, for it has been held by a Division Bench of this Court in *Kanshi Ram and another v. Sharaf Din and another* (A I R 1923 Lah. 144 (2).), that section 56 (b) does not govern temporary injunctions.

11. Insofar as any further challenge to the above judgment is concerned I have not been able to lay my hands on any such case; however, in the case reported as ***Shahzada Muhammad Umar Beg v Sultan Mahmood Khan (PLD 1970 SC 139)*** this judgment was cited in support by one of the parties. This was a service matter where an Inspector, Excise and Taxation was served show-cause notice and reverted to his substantive post of Excise Sub-Inspector and in his place another person was appointed as an Inspector. He filed a declaratory Suit and prayed for temporary injunction restraining the Government from reverting him during the pendency of the Suit. The Senior Civil Judge granted the injunction; but it was set aside by the 1st Appellate Court. The High Court reversed the said order of the Additional District Judge and restored the order of the Civil Judge. The Supreme Court accepting the appeal, reversed the order of the High Court and observed that the Additional District Judge had passed order in the light of well settled principles of the grant or refusal of the temporary injunctions viz. whether plaintiff has a *prima facie* case, whether the balance of convenience is in favour of grant of injunction and whether the plaintiff would suffer irreparable loss if the injunction is refused. In this context the following observation was made: -

"It is not correct to say as remarked by the learned Single Judge in the High Court, that the bar under section 56(d) of the Specific Relief Act was the main consideration which had weighed with the learned Additional District Judge to vacate the temporary injunction. The learned Single Judge in dealing with the bar under section 56(d) has relied on a decision of Kaikaus, J., as he then was, in the case of *Ahmad Din and others v. Faiz Ali and others* wherein it was held that if the jurisdiction to continue a temporary injunction is referable to inherent power, it cannot be taken away by section 56 of the Specific Relief Act. With all respect, even if it were to be accepted that section 56 does not limit the

inherent power of a Court to grant temporary injunction, it cannot be said that in the exercise of those inherent powers it will not be a serious matter for the Court's consideration whether it would be right to issue an injunction to a public Department which would obviously disturb its working and it would not do so unless compelling reasons demand that course."

12. From the above observations it is clear that the view of the learned single judge in the case of **Ahmad Din (Supra)** has not been discarded or set-aside, and the Appeal was allowed by the Hon'ble Supreme Court on various other grounds already taken note of by the Additional District Judge. This case (Supreme Court case) was also cited before another learned Single Judge of this Court in the case reported as **Nooruddin Hussain and another v Diamond Vacuum Bottle Manufacturing Co. Limited (PLD 1981 Karachi 720)** and the learned Judge after referring to the aforesaid observations of the Hon'ble Supreme Court went on to observe as under;

It therefore cannot be stated that the grant of temporary injunction is regulated by the provisions of sections 21 and 56 of the Specific Relief Act. However, the provisions of section 56 of the Specific Relief Act can provide a guideline to establish whether the plaintiffs have a *prima facie* case, whether irreparable loss will be caused to the plaintiffs and in whose favour the balance of convenience lies. The learned counsel for the plaintiffs has relied upon the case of *Kazi Muhammad Akbar v. Province of Sind (P L D 1952 Sind 32)*.....'

13. Therefore, in all fairness, it can be safely held that the rule as contended on behalf of the Defendants is not absolute and is dependent on the facts and circumstances of the case and so also exercise of discretion by the Court, which otherwise cannot be curtailed absolutely.

14. It would also be advantageous to refer to the relevant provisions of the Specific Relief Act of 1963 now enforceable in India after repealing the old law i.e. The Specific Relief Act of 1877 and the corresponding provisions of s.53 and 56 *ibid* of such Act are Sections 37 & 41 which reads as under:

"37. Temporary and perpetual injunctions.—(1) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

41. Injunction when refused.—An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; 1 [(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.

15. Perusal of the aforesaid provisions of Section 37 reflects that insofar as temporary and perpetual injunctions are concerned, there is no material change. However, when Section 56 of our Specific Relief Act (and so also the old Indian Law) is compared with the Specific Relief Act of 1963 in India, it transpires that there is paradigm shift from the old law. A glance at the two provisions as above reveals the legislative response to the earlier judicial interpretations. Earlier the authority was in relation to grant of stay against a “Court” and the Court had to be the Court subordinate to the one granting the injunction. But by judicial interpretation consensus was reached that as injunctions act in *personam* while the Court by its injunction cannot stay proceedings in a Court of superior jurisdiction; it could certainly by an injunction restrain a party before it from further prosecuting in other Court; may be superior or inferior in hierarchy of Courts. And in India the legislature took note of this and amended the law while enacting the Act

of 1963, whereby, it has materially altered the language of s.41 (b) replacing s.56 (b) in clear and express terms and now even an injunction against a person from prosecuting a case before another Court is barred. They thought it better to re-enact the said provisions and therefore, while enacting Section 41(b), it was provided that now even injunction cannot be granted to restrain any person from instituting or even prosecuting a criminal matter. If the law as is now prevailing in India would have been a law in Pakistan as well, then perhaps, the Defendants in this matter could have made out an arguable case that the law prohibited the Court from restraining the Defendants to initiate or prosecute any criminal proceedings. However, unfortunately, such law is still not on our statute book as it is still the old Act of 1877 which is applicable and the same provides that a Court cannot grant an injunction to stay the criminal proceedings; but at the same time it does not prevent the Court from granting an injunction in matters when criminal proceedings are yet to be initiated as that would not amount to stay proceedings in any criminal matter. The Court in that case can restrain a party before it by way of an injunction. It needs to be appreciated that notwithstanding the fact that before passing of an ad-interim injunction by this Court on 03.09.2013, some of the cheques had already been presented for encashment and were returned with an endorsement of 'stop payment'. However, the Defendants never proceeded with; initiated or instituted any criminal proceedings against the Plaintiffs, whereas, immediately thereafter, the Plaintiffs filed instant Suit and obtained ad-interim orders, whereby, the Defendants were restrained from seeking any further encashment of the cheques in question. Therefore, in my humble view for the present purposes the objection raised by the Defendant's Counsel in the peculiar facts and circumstances of this case in respect of applicability and the prohibition under Section 56(e) is neither relevant nor applicable.

16. Though none of the learned Counsel for the parties has cited any case law, whereby, a Civil Court has exercised its jurisdiction in restraining a Criminal Court from proceedings any further in a matter of dispute on the same cause of action. On the contrary, there is a series of case law, wherein, on applications, the Criminal Courts or the High Courts or the Supreme Court have on the basis of the pendency of civil cases, stayed the proceedings of criminal matters on the same

cause of action. Learned Counsel for the Plaintiffs has relied upon a Judgment of the Hon'ble Supreme Court reported as ***Muhammad Akbar V. The State and another (PLD 1968 SC 281)***, wherein, the precise question before the Court was in respect of an order passed by a learned Single Judge of the High Court of Pakistan at Lahore, in proceedings under Section 561-A of the Code of Criminal Procedure filed by Respondent No. 2 for quashing of certain criminal proceedings under Section 411 and 379 /147 of Pakistan Penal Code and the learned Judge though did not pass an order of quashment; but in the given facts and circumstances of the case stayed the proceedings till final decision in a Civil Suit between substantially the same parties for Dissolution of a Partnership and Rendition of Accounts. The relevant observations of the Hon'ble Supreme Court as under: -

“From the above recital of facts it will appear that the suit for the dissolution of the partnership has not been finally disposed of as yet. Even the second suit for declaration and injunction is not concluded, for, no final adjudication has yet been made of the application for setting aside the ex parte decree. The motor bus, with respect to which the offence of theft is alleged to have been committed, is admittedly registered in the name of the partnership firm. It is clear, therefore, that the ownership of the vehicle is in serious dispute. Though the father of the, complainant claims that it was he who had purchased the vehicle yet the vehicle, it seems, was treated as an asset of the partnership firm and was got registered in the name of the firm. Thus until its ownership is decided, it cannot be said that it had been wrongfully taken away from the possession of Mulla Abdul Karim. Now this question of ownership of the vehicle is itself sub judice. Its fate will depend upon the final decree in the suit for dissolution of partnership. If it is awarded to Mulla Abdul Karim then and only then will his ownership be established. It cannot, therefore, be said that the subject-matter of the dispute in the criminal litigation is not dependent upon the decision in the civil litigation. If it is found to be an asset of the partnership, then a managing co-partner has the right to retain possession of it until the civil Court takes it away from him. By merely forcibly taking it away from the custody of another partner he cannot be said to have committed theft of it, for, such taking away would, in the circumstances, be in assertion of a bona fide claim of right. In these circumstances the question arises as to whether the learned Judge of the High Court had exercised his discretion rightly in staying the criminal proceedings until the question of title had itself been decided in the pending Civil litigation.

Normally it is true, that criminal proceedings should not be postponed pending the disposal of Civil litigation connected with the same subject-matter. But where it is clear that the criminal liability is dependent upon the result of the Civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decision between the Civil Court and the Criminal Court. In such event it is equally clear that the Criminal Court has not only the right to but should also stay its hands until the Civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the Criminal Courts should give a finding in respect of the same question.”

17. After coming to the above conclusion the Hon'ble Supreme Court went on to observe that this is not the case in which criminal litigation is being stayed by an order of the Civil Court; but this is a case, where the High Court exercising its inherent criminal jurisdiction under Section 561-A of Cr.P.C, has in the interest of justice, ordered the stay of the criminal proceedings and it cannot be said that it had no jurisdiction to do so.

18. In the case reported as **A. Habib Ahmed V. M. K. G. Scott Christian and 5 others (PLD 1992 SC 353)**, the Hon'ble Supreme Court has been pleased to stay the criminal proceedings till the decision of the Civil Court. The precise facts in that case were that on a direct complaint filed by the Petitioner / Appellant against the Respondents under Section 403, 406, 409/149 PPC the Special Court of Sindh (Banks) at Karachi had taken cognizance of the offence and the High Court of Sindh through the Judgment impugned before the Hon'ble Supreme Court had set aside the said order. The relevant findings of the Hon'ble Supreme Court are as under: -

"There is yet another point to be dealt with. During the hearing of these appeals, it came to light, as above, that the civil suit dealing with the same subject-matter is still pending. We asked the learned counsel for the appellants to address arguments on the point; whether, in accordance with the ordinary rule laid down by this Court that in such like situation the proceedings in the Criminal Court would remain stayed till the decision of the Civil Court, should not be followed he had not much to say to oppose this procedure. See the case of Abdul Haleem v. The State (1982 SCMR 988) wherein this rule was also followed."

In the light of the foregoing discussion we allow these appeals, set aside the impugned judgments and direct that the accused/respondents shall be tried by the Special Courts (Banks) for Offences under the Banks (Special Courts) Ordinance IX of 1984. It is further directed that the proceedings before the said Court shall remain stayed till the decision of the civil matter, the information regarding which decision, would be laid before the Criminal Court by the parties concerned including the appellants."

19. In the case reported as **N. Manakji V. Fakhar Iqbal and Another (1969 S C M R 198)**, again in somewhat similar circumstances the criminal proceedings were stayed till decision of the case pending before the Civil Court on somewhat identical facts and issue. The precise reason which prevailed upon the Hon'ble Supreme Court to pass such orders was premised on the facts that the nature of dispute between the parties was primarily of a civil nature. The matter came up before the Supreme Court from the order of a learned Judge of the High

Court of West Pakistan at Lahore, that whether the High Court may under Section 561-A of the Code of Criminal Procedure stay proceedings in a criminal matter, merely because of Civil Suit involving the same question of facts and law in dispute has also been instituted. The Hon'ble Supreme Court placed reliance on the case of **Muhammad Akbar (supra)** and came to the following conclusion: -

“Though we refrain from expressing any opinion on the merits of the case lest it may prejudice either action at law it is relevant to mention for the limited purpose of this order that while it was admitted that the appellant purchased shares of the value of Rs. 60,000 held by the respondent in the Pak Bank Limited his counsel was unable to point out the mode by which payment of the price of share was made. It is thus apparent that serious questions of fact and law arise in the civil suit for determination of the Court and the plea that it was a mere counterblast to the criminal case has little force. The time factor is also against the appellant's contention. As seen, the respondent presented the cheque for payment on the 5th April 1966. Payment was refused on the 6th whereupon he issued a notice to the appellant through a counsel on the 11th April 1966, threatening legal action. The complaint made by the appellant was received by the S. S. P., Rawalpindi on the same day though it bears the date 9th April 1966. The more material date 2-10-1966 when the report under section 173, Cr. P. C., was submitted by the Police in the Court of a local Magistrate. By then summons had been issued to the appellant for filing written statement in the civil suit and for settlement of issues.

The stay of proceedings in the criminal case was in the circumstances of the case plainly called for. No other ground to interfere with the impugned order of the High Court is made out.

The appeal is dismissed.”

20. Coming to the cases from the Indian jurisdiction reference may be made to the case reported as **Shreyas Agro Services Pvt. Ltd. Vs. Chandrakumar S.B. (2006 CriLJ 3140)**, wherein, the Karnataka High Court while dealing with Section 138 of The Negotiable Instrument Act 1881 (as is prevailing in India) corresponding to more or less similar version of our Section 489-F of the Pakistan Penal Code has been pleased to hold that in case of bonafide dispute with regard to the extent of liability, the dishonour of cheque does not attract prosecution for the offence under Section 138 of the Negotiable Instrument Act 1881 as prevailing in India:-

“5. The appellant has also produced the letter written by the accused marked at Ex P. 40 to contend that the accused had admitted the liability. The contents of the letter discloses that the accused admits the principal amount but however disputes the interest claimed and states that the amount reflected in the cheques is not the correct legal liability. Section 20 of N.I. Act declares that inchoate instruments are also valid and legally enforceable. In the case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability. If the drawee were to dishonestly fill up any excess liability and the extent of liability if it becomes bona fide matter of civil dispute in

such case, the drawer has no obligation to facilitate the encashment of cheque. In the instant case the reply Ex. P. 40 discloses that long before presentation of cheque, the extent of liability was disputed by ignoring the objection, the company filled up the cheque for an amount not admitted by the drawer. If the accused were to prove that there is a bona fide dispute with regard to extent of liability, the dishonour of cheque under such circumstances does not attract prosecution under Section 138 of N.I. Act. The dismissal of complaint is sound and proper. The appeal is dismissed.”

21. In the case reported as ***Keygien Global Limited Vs. Madhav Impex and Others (2006 CriLJ 3413)***, again the Karnataka High Court in somewhat similar situation, wherein, the controversy was in respect of supply of certain quantity of readymade garments (in lieu of which cheques were issued] and were found to be defective and upon presentation the cheques were dishonoured. The Hon’ble Judge was pleased to hold as under: -

“2. It is admitted that cheque was issued in respect of supply of readymade garments. On delivery, it is found that goods were defective and not according to specifications. Hence, the accused rejected and returned the goods. It is admitted that accused has not appropriated the goods supplied by the complainant. If the rejection of the goods by the accused is illegal, the complainant has remedy to sue for damages but, has no right to seek value of the rejected and returned goods. The cheque is obviously issued in respect of rejected and returned goods. Hence, the accused would be under no legal obligation to see that the cheque issued is cleared since the liability is in serious dispute. The complainant is not entitled to make use of the cheque to recover the amounts under the pretext of seeking damages obviously when the cheque is not issued towards the payment of damages. In that view, the order of acquittal recorded is sound and proper. Appeal dismissed.”

22. In the case reported as ***Uppinangady Grama Panchayath Vs. P. Narayana Prabhu (2006 CriLJ 3141)***, again the Karnataka High Court was pleased to hold that to sustain prosecution under Section 138 of the Negotiable Instrument Act 1881 as prevailing in India, it is necessary that the cheque should have been issued in respect of either past or current existing debt or other legal liability and dishonour of cheques issued in advance towards future rent does not attract prosecution for the said offence. The relevant observations are as under:

“3. The admitted facts narrated above clearly discloses that the cheques are not issued in respect of the existing current liability to pay the rent for occupation. The cheques have been issued in advance towards future rental liability. May be that accused had unilaterally terminated the contract and might have committed breach of terms of contract. The Panchayath may have right to sue the accused for damages for the breach of contract but the Panchayath has no right to seek payment of rents for the periods when the accused is not in occupation.

4. To warrant prosecution under Section 138 of N.I. Act it is necessary that the cheque should have been issued in respect of either past or current existing debt or

other legal liability. The cheques obviously not issued towards payment of damages. There is no legal obligation on the part of the accused to effect clearance of the cheques issued towards the rental liabilities for the period where he is not in occupation of the premises. The amount reflected in the cheque is not an enforceable legal liability. Therefore, the dishonor of cheque does not attract any penalty under Section 138 of the N.I. Act. The order of acquittal is sound and proper. The appeals are dismissed.”

23. Insofar as the merits of the Plaintiffs and Defendants case is concerned, it is not in dispute that there are Agreements between the parties and both of them are at variance as to its fulfillment and performance to its fullest extent. The Plaintiffs case is that they have performed the Agreements; have supplied the required quantity of sugar; and in fact, Defendants owe money to them, and therefore, the cheques which were otherwise given as security are to be returned. On the other hand, the Defendants case is that they have not received the agreed quantity of sugar, and therefore, they can seek encashment of the cheques in question. However, it is also important to note that the Defendants have also sought specific performance of these Agreements by way of a subsequent Suit bearing No.1177/2013 which has been filed on these very Agreements which are the bone of contention between the parties in the present Suit. A learned Single Judge of this Court vide order dated 21.3.2014 was pleased to grant interim injunction to the Defendants in that case, whereby, the Plaintiffs herein were directed not to dispose of / sell sugar to the extent of 21542 metric tons and or create third party interest in the same, till disposal of the Suit. The said order of the learned Single Judge was impugned by the present Plaintiffs / Defendants in that Suit through High Court Appeal No. 78/2014 and a learned Division Bench of this Court vide its judgment dated 19.6.2017 in the case reported as ***Digri Sugar Mills Limited and 2 others V. Mian Kamran Ilahi and another*** **CLD 449** has been pleased to set aside the said order of the learned Single Judge and now presently as informed, a Civil Petition for Leave to Appeal is pending before the Hon'ble Supreme Court. On perusal of the aforesaid judgment of the learned Division Bench as well as the pleadings in that case, it appears that the Defendants case in that Suit is to the effect that relationship established by the Agreements was not that of a financing or money lending transaction; but are of sale and purchase of sugar, as according to them the Respondents i.e. Defendants herein were the buyers of the sugar as stipulated in the six

Agreements in question, whereas, the Appellant Company / Plaintiff herein was the seller. Their further case before the Appellate Court was that they had paid the price and therefore, entitled for delivery of the sugar. Such stance has been reiterated in that judgment on several occasions and after perusal of the same, it appears that the parties had dispute in respect of the very Agreement(s) in question as one of them is seeking a Declaration that they have performed the Agreements and therefore, the securities including the postdated cheques are required to be returned to them, whereas, the other is seeking specific performance of the said Agreements. Therefore, in my view, the argument of the Plaintiffs' Counsel appears to be weighty and logical that at the most even if the Defendants contention is accepted and their Suit is decreed; they would only be entitled for the quantity of sugar claimed by them and in no manner they could ask for a money decree. Consequently, the Plaintiffs' Counsel is further justified in arguing that if the case of the Defendants would have been only in respect of the cheques in question, then they ought to have filed a summary Suit under Order 37 CPC; but such course has not been adopted by them and instead they have chosen to seek performance of the Agreements; hence, they are estopped by their conduct from seeking recovery or encashment of the cheques in question. Therefore, at this stage of the proceedings, seeking encashment of the cheques in dispute, even otherwise, seems to be too far-fetched as well as unreasonable.

24. Though, I have already arrived at a conclusion that in the present case even if the injunction is granted as prayed, it would not be hit by Section 5(e) of the Specific Relief Act, inasmuch as at the present moment there are no criminal proceedings pending in this matter. However, notwithstanding this, when the facts of the present case are examined, it further appears that though postdated cheques were given by the Plaintiffs; but the Agreement in question as a whole do not provide that in case of default of any part of the Agreement, the Defendants are entitled to seek encashment of the cheques. Apparently, they were provided as a security, whereas, the Agreement(s) in question is to the investment made by the Defendants, whereby, they have been described as "*Investors*" in respect of the commodity i.e. white refined sugar and entitled for supply of certain quantities of the same with a delivery schedule. There is also a default clause in the Agreement(s)

which stipulates that in case of delay on the part of the seller (Plaintiff) to provide sugar as per quantities on the dates specified in Clause 8, the rate of 70 Kgs per metric ton per month proportionally on a daily basis will be reduced from the purchase price from the seller which resultantly means that either the price would be reduced and if not; then excess quantity of sugar would have to be supplied proportionately. Once the parties had agreed the modalities mutually, wherein, it has not been provided that if there is a default then cheques would be encashed, then perhaps, the case of the Defendants by itself loses its strength in seeking encashment of the same. It is further intensified and supported by their own conduct, wherein, they have filed an independent Suit for Specific Performance of the Agreement(s) for the enhanced quantity of sugar as per the default clause and not for recovery or enforcement of the negotiable instrument available with them under Order 37 CPC. This draws an inference at least for injunction purposes, that the cheques in question were never intended to be encashed in such a manner, otherwise, the same ought to have been provided in the very Agreement(s) in question.

25. The question that whether the contract was fully performed or not by the Plaintiffs and Defendants, the parties are at serious dispute to such aspect of the matter as they rely on voluminous documents which include delivery orders, acknowledgments, statements of accounts etc. etc. and for the present purposes, it would not be advisable for this Court to record any conclusive findings as to such claim of the parties; nor the Court is in a position at the injunctive stage to examine and deeply appreciate such documents when they are being disputed by the parties before the Court. But for the present purposes, the Court can always ask the parties to maintain status quo by granting a temporary injunction and leave the matter at the trial so as to finally adjudicate the respective contentions of the Plaintiffs and the Defendants. Since the Agreements in question are not in dispute, whereas, the Defendants have failed before the Appellate Court to maintain the temporary injunction granted in their favour, coupled with the fact that an ad-interim order is already continuing since filing of this Suit, in my view, it would be in the interest of both the parties to maintain status quo in respect of the cheques in question and lead evidence in the matter in support of their respective contentions and therefore, I am of the view

that in view of hereinabove facts and circumstances of the case the Plaintiffs have made out a prima facie case and balance of convenience also lies in their favour and would suffer irreparable loss if the ad-interim orders are not confirmed by way of a temporary injunction pending final adjudication of the Suit. The application for such purposes merits consideration. Accordingly, I allow the listed application by confirming the ad-interim order passed on 03.09.2013.

26. CMA No.9036 of 2013 is allowed as prayed.

Dated: 19.02.2020

J U D G E

Arshad