

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
C. P. No. D – 8465 of 2017

(*State Bank of Pakistan and 2 others*
Versus
Waseem Ahmed and 3 others)

Date	Order with Signature of Judge
------	-------------------------------

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Mr. Jawad Akbar Sarwana, J.

Priority:

1. For order on office objection
2. For hearing of CMA No.35432/17
3. For hearing of main case

07.05.2025

Mr. S. Masroor Ahmed Alvi, Advocate for Petitioner
a/w Mr. Manzoorul Haq, Law Officer, SBP

Mr. Shafaat Nabi Khan Sherwani
a/w Ms. Humaira Baig, Advocate for Respondent No.1

Mr. Abdul Jalil Zubedi, Additional Advocate General (Sindh)

Ms. Shazia Ahmed Hanjra, DAG

This Petition has challenged the two Orders of learned Trial Court and learned Revisional Courts; (i) Order dated 17.02.2016, passed by learned VIIth Senior Civil Judge, Karachi (South) in Suit No.1103 of 2012 and (ii) Order dated 28.03.2017 passed by learned District Judge, Karachi (South) in Civil Revision Application No.34 of 2016, dismissing the Application filed by the Petitioner-State Bank of Pakistan ("SBP") under Order VII Rule 11 CPC, for rejection of the Plaint of Suit No.1103 of 2012, instituted by the Respondent No.1.

2. Syed Masroor Ali Alvi, learned Counsel for the Petitioner along with Mr. Manzoor-ul-Haq, Law Officer, State Bank of Pakistan, have argued that both the Courts below have not considered the earlier litigation which was decided against the Respondent No.1. Contends that after the Judgment of the Hon'ble Supreme Court in the case of *Muhammad*

Mubeen-Us-Salam and others versus Federation of Pakistan through Secretary, Ministry of Defence and others (PLD 2006 Supreme Court 602), the Service Appeal of the Respondent No.1 pending before the Federal Service Tribunal stood abated and he should have availed the remedy within ninety (90) days as directed by the Hon'ble Supreme Court in Paragraph 109 of the Judgment, which was not done and thus he cannot agitate his grievances in the above Suit. Contends, instead of filing Suit (within 90 days), the Petitioner preferred Constitutional Petition No. D-1968 of 2006 in which an Order was passed, rejecting the stance of Respondent No.1, about his transfer to Respondent-NAB; which was challenged by the Respondent No.1 in CPLA No.635 of 2009, which was allowed and the Order was set aside, Lis was remanded with directions to decide the matter afresh. Subsequently, this Court has passed the Common Judgment in number of Constitutional Petitions, including that of the Petitioner, that is, C.P.No.D-1968 of 2006, dismissing them, but, with an observation that the Petitioners will be at liberty to seek their remedy in accordance with law. Mr. Alvi, has emphasized that this observation does not give any legal cover to the Respondent No.1 to file the above time-barred Suit; because, in accordance with law means that if the Suit was barred by Limitation or any other law, that should have been taken note of by the Courts below, at the first instance, in view of Section 3 of the Limitation Act, and the Application (ibid) of Petitioner-SBP should have been allowed. Contends that in the Suit itself, the Respondent No.1 has preferred an Application for Condonation of delay, which means that he is acknowledging the fact that the Suit is time barred but that Application was kept pending, instead of deciding it in favour of the Petitioner, while deciding the above Application for rejection of the plaint. Contends that the Respondent No.1 is a habitual litigator against SBP, and even his current Suit (supra) is not maintainable as the Plaint of the Suit has challenged the Policies of SBP, which cannot be the subject matter of any civil proceedings.

3. Mr. Abdul Jalil Zubedi, learned Additional Advocate-General (Sindh), has stated that he has appeared on the Court Notice, whereas, Ms. Shazia Hanjira, learned Deputy Attorney General, stated that since National Accountability Bureau ("NAB") has been impleaded as one of the Respondents, therefore, she is representing NAB. However, no prayer is sought against the Respondent-NAB in which undisputedly the Respondent No.1 worked for some time.

4. Mr. Shafaat Nabi Sherwani, learned Counsel for the Respondent No.1 has stated in his arguments while refuting the arguments of the Petitioner's Counsel, that the plea of limitation will not apply as the Respondent No.1 was agitating his cause before this Court and later the Hon'ble Supreme Court has remanded the matter and nowhere such issue was raised. Secondly, both the Courts below have correctly decided in the impugned Orders that such type of limitation is a mixed question of law and facts which cannot be decided without framing of issues and recording of evidence. With regard to the plea of *Res judicata*, learned Counsel for the Respondent No.1 states, that the earlier Suit No.946 of 2006, as mentioned in the Application (ibid), pertains to a different subject matter in which IInd Appeal No.132 of 2018 is *sub-judice* in this Court and such pendency of IInd Appeal cannot be considered as *Res judicata*. He has referred to the Appreciation Letter of the Respondent-NAB about the performance of the Respondent No.1 (*Page-151*).

5. We have heard the arguments and perused the record.

6. In the above Application in Paragraph-3, it is mentioned that the earlier Suit No.946 of 2006 which is filed by the Respondent No.1, a 1st Appeal No.296 of 2012, was *sub-judice* (at the relevant time) which is now pending before this Court.

7. Undisputedly the earlier Constitutional Petition filed by the Petitioner was heard on merits and in the Appeal to the Apex Court, it

remanded back the *Lis* to this Court for a Decision (as stated in the foregoing Paragraph). The above shows that the Petitioner was agitating his grievances in the above Constitutional Petition quite seriously. **Secondly**, the above observation made by the learned Division Bench of this Court for seeking remedy in accordance with law, cannot be ignored. Whether such remedy subsequently availed by the Respondent No.1 was in accordance with law or not?, should be decided by the concerned Forum in which a *lis* is pending, that is, the learned Trial Court. **Thirdly**, it is not disputed that IInd Appeal of earlier Suit is *sub-judice* in this Court and that is another ground that present Plaint of the Suit cannot be rejected merely on the basis of pendency of IInd Appeal. The Respondent No.1 in his present Suit also claimed Damages, whether or not the same can be granted or refused, can only be decided after issues are framed and evidence is led. It is not disputed that the above Suit is at the stage of evidence.

8. Both the impugned Orders have been perused and they have mentioned the correct reasons that in view of the above facts, the observation of this Court in earlier Decision for availing the remedy in accordance with law, does become a mixed question of law and facts, which cannot be decided merely on the basis of record and a legal issue. Therefore, we have found no illegality in both the impugned Orders, requiring interference of this Court in its Writ Jurisdiction.

9. Accordingly, this Petition is dismissed and both the impugned Orders are maintained with an observation that learned Trial Court seized of the matter will decide it expeditiously, within two months and will also consider the Point of Limitation while giving the Decision. The Application of the Respondent No.1 can be decided while handing down the Judgment in the Suit (*supra*).

J U D G E
J U D G E