

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M NO. _____/2022

IN

Service Appeal No. 16159/2020

Gul Rait Khan & Others

.....APPLICANTS/APPELLANTS

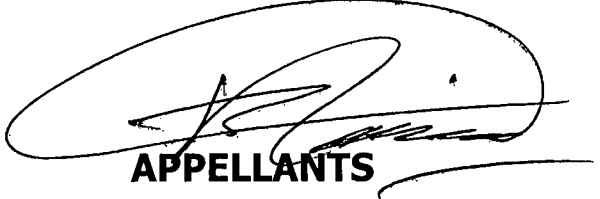
VERSUS

Govt. Of KP & Others

.....RESPONDENTS

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APPELLANTS

THROUGH:

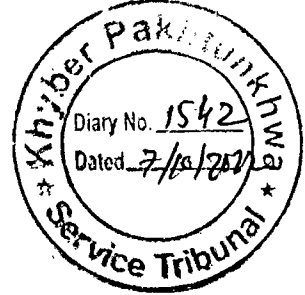

NOOR MOHAMMAD KHATTAK
ADVOCATE
SUPREME COURT OF PAKISTAN

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M NO. _____/2022

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VERSUS

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.....**RESPONDENTS**

APPLICATION FOR RE-FIXATION OF APPENDED
APPEALS FOR RE-HEARING/ARGUMENTS.

R/SHEWETH:

The applicant/appellants submits as under:

- 1- That the appended appeals were fixed for arguments on **10-05-2022** and were heard after lengthy arguments on that date, however the order in that was not announced on that very date. List of appended appeals are attached as Annexure.....**A.**
- 2- That order has not been announced in the mentioned appended appeals after lapsing more than five months, therefore, it would be in the best interest of justice that the appended appeals be re-heard to recollect the memory.
- 3- That on similar issue the Supreme Court of Pakistan has held in the judgment reported in 1996 SCMR 669 that a judgment/order shall be announced within three months if not announced than it is required to be heard afresh. Copy of the judgment 1996 SCMR 669 is attached for ready reference as Annexure**B.**
- 4- That there is no legal bar in rehearing of the appended appeals in fact the same is within the best interest of justice.

- 5- That any other grounds and proof would be raised at the time of arguments with prior permission of this Honorable Tribunal.

It is therefore most humbly prayed that on acceptance of this application the appended appeals may please be re-fixed for rehearing afresh.

Dated: 07-10-2022


APPLICANTS/APPELLANTS
GUL RAIT KHAN & OHTERS

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE
SUPREME COURT OF PAKISTAN

AFFIDAVIT

I, **Gul Rait Khan**, Additional Private Secretary BPS-19 O/O Chief Secretary Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




DEPONENT

S.NO	Appeal No	Title of case			Nature of case
1	16159/20	Gul Raif	VS	Establishment	Ex. Allowance
2	16160/20	Sufaid Gul	VS	Establishment	Ex. Allowance
3	16161/20	Ikram ul Haq	VS	Establishment	Ex. Allowance
4	16162/20	Syed Arifullah	VS	Establishment	Ex. Allowance
5	16163/20	Badshah Khan	VS	Establishment	Ex. Allowance
6	16164/20	Siraj ud Din	VS	Establishment	Ex. Allowance
7	16165/20	Muhammad Din	VS	Establishment	Ex. Allowance
8	16166/20	Dil Nawaz Khan	VS	Establishment	Ex. Allowance
9	16167/20	Nikdar Ali	VS	Establishment	Ex. Allowance
10	16168/20	Riazullah	VS	Establishment	Ex. Allowance
11	16169/20	Nisar Muhamamd	VS	Establishment	Ex. Allowance
12	16170/20	Abdul Wasi	VS	Establishment	Ex. Allowance
13	16171/20	Tila Khan	VS	Establishment	Ex. Allowance
14	16172/20	Haji Muhammad	VS	Establishment	Ex. Allowance
15	16173/20	Nisar Khan	VS	Establishment	Ex. Allowance
16	16174/20	Amin Khan	VS	Establishment	Ex. Allowance
17	16175/20	Jamroz Khan	VS	Establishment	Ex. Allowance
18	16176/20	Habib ul Hassan	VS	Establishment	Ex. Allowance
19	16177/20	Muhamamd Rafiq	VS	Establishment	Ex. Allowance
20	16178/20	Saeed Parviz	VS	Establishment	Ex. Allowance
21	16179/20	Mazhar Ali	VS	Establishment	Ex. Allowance
22	16180/20	Mir Shahbaz Khan	VS	Establishment	Ex. Allowance
23	16181/20	Qaisar Khan	VS	Establishment	Ex. Allowance
24	16182/20	Syed Irfan Shah	VS	Establishment	Ex. Allowance
25	16183/20	Nooran Shah	VS	Establishment	Ex. Allowance
26	16184/20	Irshad Ali	VS	Establishment	Ex. Allowance
27	16185/20	Ahmad Hussain	VS	Establishment	Ex. Allowance
28	16186/20	Ahmad Hassain	VS	Establishment	Ex. Allowance
29	16187/20	Muhammad Iqbal	VS	Establishment	Ex. Allowance
30	16188/20	Khalil ur Rehman	VS	Establishment	Ex. Allowance
31	16189/20	Jamshed Iqbal	VS	Establishment	Ex. Allowance
32	16190/20	Momin Khan	VS	Establishment	Ex. Allowance
33	16191/20	Muhammad Javed	VS	Establishment	Ex. Allowance
34	16192/20	Hazrat Dhyan	VS	Establishment	Ex. Allowance
35	16193/20	Muhammad Ibrahim	VS	Establishment	Ex. Allowance
36	16194/20	Raffiullah	VS	Establishment	Ex. Allowance
37	16421/20	Fazli Rahim	VS	Establishment	Ex. Allowance
38	16422/20	Ali Farman	VS	Establishment	Ex. Allowance
39	2821/20	Rehmatullah	VS	Establishment	Allowance

ATTESTED
by the undersigned
on 10/11/2020

1996 S C M R 669

-4- "B"

[Supreme Court of Pakistan]

Present: Sajjad Ali Shah, C.J., Sh. Riaz Ahmad and Raja Afrasiab Khan, JJ

Syed IFTIKHAR-UD-DIN HAIDAR GARDEZI
and 9 others---Appellants

versus

CENTRAL BANK OF INDIA LTD., LAHORE and 2 others---Respondents

Civil Appeal No. 461 of 1992, decided on 24th October, 1995.

(On appeal from, the judgment of the Lahore High Court dated 6-6-92 passed in R.F.A. 44 of 19169).

Civil Procedure Code (V of 1908)-----

---O.XLI, Rr.30 & 31 read with S.107---Term "future day "occurring in O.XLI, R.30, C.P.C.---Connotation---Judgment announced by High Court after 8 months of hearing appeal on basis of points already noted---Validity---Dispute between parties was not decided keeping in view evidence on record---When arguments were over, it was mandatory for Court to pronounce judgment in open Court at once or at some future day of which notice should have gone to parties or their counsel---Term "future day" as used in O.XLI, R.30, C.P.C. could not mean that judgment would be announced after unreasonable delay of 8 months---Case was also hit by O.XLI, R.31, C.P.C. for all the points which were argued and -relied upon for appellants were not considered for their proper determination on basis of available evidence--- Court was required to decide disputes issue wise as far as it could be practicable in given situation of each case---Issues having not been abandoned by consent of parties, same had to be decided by the High Court in appeal while setting aside judgment of Trial Court---Appeal was remanded to High Court to be heard and decided within specified period.

Pathana v. Khanda PLD 1952 BJ 38; Mst. Fatima v. Sardara PLD 1956 Lah. 474; S.K. Lodhi v. Claims Commissioner. PLD 1968 Lah. 1311; M.K. Zaman v. Matiar Rahman 1969 P.Cr.L.J. 361; Bashir Ahmad Khan v. Mumtaz Begum 1979 CLC 114; Muhammad Bakhsh v. The State 1989 SCMR 1473; Walayat Hussain v. Muhammad Hanif 1989 MLD 1012; Adamjee Jute Mills Ltd. v. Province of East Pakistan PLD 1959 SC (Pak.) 272; Allah Bakhsh v. Noor Khan 1980 CLC 498; Nasir Abbas v. Manzoor Shah PLD 1989 SC 568; Ahmad Din v. Karam Elahi 1988 MLD 615; M/s. Muhammad Siddiq Muhammad Umar v. Australasia Bank Ltd. PLD 1966 SC 684; United Bank v. Begum Jamila Khatoon 1988 MLD 413; Australasia Bank Ltd. v.

H.S. Mahmood Hassan PLD 1983 Kar. 431; Official Assignee v. M.C. Harikrishana AIR 1935 Rang. 201; Sandaravaradan v. Mani Iyer AIR 1939 Mad. 915; Abdul Kadir v. Abdul Waheed 1968 SCMR 464; Sardar Muhammad v. Muhammad Israr 1995 SCMR 1356; Roshi v. Fateh 1982 SCMR 542; Nawaneetdas v. Gordhandas AIR 1955 M.B. 113; Muhammad Ibrahim v. Sind Industrial Trading Estate Ltd. PLD 1985 Kar. 95; Amir Bakhsh v. Muhammad Ramzan 1990 MLD 245; Juma Khan v. Mst. Shamim and 3 others 1992 CLC 1022; Alah Ditta v. Barkat Ali and 3 others 1992 SCMR 1974; Imtiaz Ahmad v. Ghulam Ali PLD 1963 SC 382; Fateh Ali v. Pir Muhammad 1975 SCMR 221; Abdul Hakim v. Ghulam Mohyuddin PLD 1994 SC 52; Z.A. Amin v. National Bank of Pakistan 1976 SCMR 100 and Arshad Amin v. Swiss Bakery etc. 1993 SCMR 216 ref.

Ch. Khurshid Ahmad, Advocate Supreme Court for Appellants. Khawaja Saeed-uz-Zaffar, Advocate Supreme Court for Respondents.

Dates of hearing: 17th, 22nd, 23rd and 24th October, 1995.

JUDGMENT

RAJA AFRASIAB KHAN, J.---On 27th of August 1952, Central Bank of India Limited, having its registered office at Bombay and branches at Multan and other places (hereinafter called the Bank) instituted suit for recovery of Rs.3,74,836.80 (three lacs seventy-four thousand eight hundred and thirty-six and paisas eight) on the basis of:--

- (a) Equitable mortgage of 12th December 1946.
- (b) Mortgage deed dated 15-2-1947.
- (c) Mortgage deed dated 12-4-1947, and
- (d) Letter of Guarantee dated 5-2-1947, accounts etc. etc.

against the predecessor-in-interest of appellants and respondent No. 3 in Civil Court at Multan. On 25-8-1953, the plaint was amended which had the following prayer:--

"That in view of the facts stated above the plaintiff-Bank respectfully prays:--

- (a) That a decree for payment of the amount of Rs.3,74,836.80 referred to above may be passed in favour of the plaintiff against the defendants and both the defendants be held jointly and severally liable for the payment of the whole decretal amount.
- (b) That in case of default the mortgaged properties described in paras. (5),(7) and (10) of the plaint be sold except that properties described in para. (10) be sold

subject to the charge of the New Bank of India Ltd., Multan City, as mentioned in para. 11 of the plaint and the sale proceeds be appropriated towards the repayment of the decretal amount.

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(c) That in case the sale proceeds are found insufficient to pay the amount due to the plaintiff-Bank for obtaining a decree for realising the balance from other properties of the defendants and the person of defendant No. 1.

(d) That the plaintiff may be allowed interest from the date of institution of the suit till the date of the payment of the whole amount due to the plaintiff.

(e) That the plaintiff may be awarded the costs of the suit, and

(f) That the plaintiff may be granted any other relief which may be appropriate in view of the facts of the case and provisions of law."

The suit was contested by the appellants by filing written statement on 20th of May 1954. Preliminary objections about the maintainability of the suit were also raised. According to the objections, the loan was obtained against the securities of value of Rs.10,00,000 (ten lac) which were not accounted for by the Bank and in the given situation, the suit could not be allowed to proceed further. Replication was filed on 7-6-1954. On 22-10-1953, newly added defendant No.3 (The New Bank of India Limited) also filed written statement in the case. On divergent pleadings of the parties, 34 issues were framed. The parties produced evidence on the issues. The Bank produced Dunji Shah Patel P.W. 1. Statement of Mr. S.R. Jariwala was recorded at his residence on 17-1-1969. The documentary evidence Exhs. P-1 to P-17 was also produced. Iftikhar Ahmad D.W.1, Syed Sahib Ali D.W.2, Khadim Hussain D.W.3, Sher Muhammad D.W.4, Malik Ranjha D.W.5, Muhammad Hussain D.W.6, Ghulam Mohyuddin D.W.7, Khadim Hussain D.W.8, Mahmood Bux D.W.9, Ch. Ashiq Hussain D.W.10, Saeed Ahmad D.W.11 and Syed Muhammad Jalil Hussain Shah D.W.12 were produced to rebut the case of the Bank. In addition thereto, documents Exhs. D1 to D3 were placed on record. Learned trial Judge dismissed the suit with costs on 8th of February 1969. Similarly, Suit No. 299 of 1968 was dismissed by the Court vide the same judgment. On the basis of findings on issues Nos.2 and 17, learned Court held as follows:-----

"No evidence about the value of the stock has, however, been produced by the other party. Both the issues are decided, accordingly, in favour of the defendant."

Through R.F.A. No. 44 of 1969, validity of impugned judgment and decree was challenged. A Division Bench of Lahore High Court heard the appeal on 5th, 6th, 7th, 8th and 12th of October 1991. The judgment was, nonetheless, reserved. On 6th of June 1992, after about 8 months of the hearing, the appeal was accepted and in the result, the judgment and decree of the trial Court was set aside. The appellants

had instituted appeal against the impugned judgment and decree of the High Court. - 7 -

It has been submitted by the learned counsel for the appellants that the High Court did not consider the material evidence while rendering the impugned judgment. He argues that the appellate Court was required to decide the appeal issue-wise on the basis of evidence available on record. To begin with, whole testimony of Saeed Ahmad D.W.11 was read before the Court to demonstrate that suit could not be held to be maintainable unless the aforesaid securities of the appellants were accounted for by the Bank. According to learned counsel, the case should have been reheard because the judgment was announced after considerable time and as such, it would be difficult to hold that the appeal was heard within the meaning of law. He relies upon *Pathana v. Khandal* (PLD 1952 BJ 38), *Mst. Fatima v. Sardara* (PLD 1956 Lah. 474), *S.K. Lodhi v. Claims Commissioner* (PLD 1968 Lah. 1311), *M.K. Zaman v. Matiar Rahman* (1969 P.Cr.L.J. 361), *Bashir Ahmad Khan v. Mumtaz Begum* (1979 CLC 114), *Muhammad Bakhsh v. The State* (1989 SCMR 1473), *Walayat Hussain v. Muhammad Hanif* (1989 MLD 1012), *Adamjee Jute Mills Ltd v. Province of East Pakistan* (PLD 1959 SC (Pak.) 272), *Allah Bakhsh v. Noor Khan* (1980 CLC 498), *Nasir Abbas v. Manzoor Shah* (PLD 1989 SC 568), *Ahmad Din v. Karam Elahi* (1988 MLD 615), *M/s. Muhammad Siddiq Muhammad Umar v. Australasia Bank Ltd.* (PLD 1966 SC 684), *United Bank v. Begum Jamila Khatoon* (1988 MLD 413), *Australasia Bank Ltd. v. H.S. Mahmood Hassan* (PLD 1983 Karachi 431), *Official Assignee v. M.C. Harikrishna* (AIR 1935 Rangoon 201), *Sandaravaradan v. Mani Iyer* (AIR 1939 Madras 915), *Abdul Kabir v. Abdul Waheed* (1968 SCMR 464), *Sardar Muhammad v. Muhammad Israr* (1995 SCMR 1356), *Roshi v. Fateh* (1982 SCMR 542), *Nawaneetdas v. Gordhandas* (AIR 1955 M.B. 113), *Muhammad Ibrahim v. Sindh Industrial Trading Estate Ltd.* (PLD 1985 Karachi 95), *Amir Bakhsh v. Muhammad Ramzan* (1990 MLD 245) and *Juma Khan v. Mst. Shamim and 3 others* (1992 CLC 1022).

Learned counsel for the decree-holder has attempted to controvert the arguments by submitting that the appellate Court was not bound to decide the dispute issue-wise as, in substance, all the issues were covered by the Court while summarising the contentions of the learned counsel for the parties. He maintains that trial Court had to decide the suit issue-wise under Order XX, Rule 5, C.P.C., but the appellate Court could not be held to be under such obligation to decide the appeal under Order 41, Rule 31, C.P.C. The former provisions are wholly different from the latter as they would deal with a contrary situation. He continues to argue that the impugned judgment and decree could not be set aside merely on a technical ground. The case, therefore, should not be remanded in the interest of justice. He states that substantial justice has been done by the High Court on the basis of evidence by giving a finding of fact which cannot be interfered with in the given circumstances. He relies upon *Allah Ditta v. Barkat Ali and 3 others* (1992 SCMR 1974), *Imtiaz Ahmad v. Ghulam Ali* (PLD 1963 SC 382), *Fateh Ali v. Pir Muhammad* (1975 SCMR 221), *Abdul Hakim v. Ghulam Mohyuddin* (PLD 1994 SC 52), *M/s. Z.A. Amin v. National Bank of Pakistan* (1976 SCMR 100) and *Arshad Amin v. M/s Swiss Bakery etc.* (1993

ATTEST

SCMR.216).

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We have heard the learned counsel for the parties at great length. The record was also carefully gone through by us with (heir assistance. Without touching the merits, we are inclined to remand the case to the High Court on a short ground that appeal pending before it was not heard and decided in accordance with the spirit of law and the rule laid down by this Court. The judgment was announced after about 8 months of the hearing of the appeal on the basis of points already noted by the High Court. In our view, this cannot be said to be the hearing of the appeal under Order 41, Rule 30 of Civil, Procedure Code. The relevant provisions of-C.P.C. will be reproduced to highlight the controversy in its proper perspective:-----

Section 107:-----

appellate Court shall have power--

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

This Court, in the light of above provisions, may finally determine the dispute or may remand it to the lower Court. It would depend upon the situation and the circumstances of each case as to what step had to be taken in that behalf. It, is not possible for this Court to determine this matter finally because substantial evidence available on record could not be considered by the High Court to come to some conclusion one way or the other. In other words, it could safely be held that the dispute between the parties was not decided keeping in view the evidence on record. After the arguments are over, it is mandatory for the Court to pronounce judgment in open Court at once or at some future day of which notice would go to the parties or their pleaders. Rules 30 and 31 of Order 41, C.P.C. are as follows:--

"Rule 30;

The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, the: parties or their pleaders." (underlining is ours).

Rule 31:

[Handwritten signature and notes]

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The Judgment of the appellat Court shall be in writing and shall start:----

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; etc. etc.

In this position of law, the High Court was required open Court at once or on some future day. The "future day" not possibly mean that judgment would as was done in this case. In any case, a period of 8 months is not reasonable according to the rule laid down by this Court in Muhammad Bakhsh's case supra. In the case of Mst. Ghulam Fatitna, following observations were made:--

"I have deliberately reopened the case so far as the arguments are concerned, because after such a long time the learned Judge cannot be expected to remember the arguments put forward and he may either not have any notes or may have destroyed the notes."

Delay even of a little over three months was considered to be objectionable and its explanation was asked for in case of Bashir Ahmad Khan. In the case of Walayat Hussain, there was delay of 8 months in announcing the judgment and it was held to be appropriate to rehear the case. The following observations were made:--

"It was contended by learned counsel for the petitioner that the suit was badly mishandled by the learned Civil Judge inasmuch as he hurriedly closed the evidence of the petitioner but then slept over the matter for a long time and decided it after about 8 months of the hearing of arguments. It was pointed out by them that the normal period for announcing judgment, after hearing of arguments, is three months and if the case is not decided within that period arguments are required to be heard afresh. Learned counsel for respondent could not justify the announcing of judgment by the learned Civil Judge after 8 months of the hearing of arguments and had no objection to the remand of the case to him for fresh decision after hearing arguments again. "

Dacca High Court while dealing with identical circumstances, took a very serious notice of delay in the announcement of judgment in case of M: K. Zaman. Para 4 of the judgment says:--

"It is to be noted that the procedure adopted in this case by the learned Magistrate Mr. A.K.M. Fazlul Haq is open to serious objection. There was no reason for not delivering the judgment within a week of hearing arguments. The first date for judgment was fixed 22 days ahead and then pronouncement of the judgment was adjourned on two other dates till at last it appears to have been written on

29-10-1966 more than 3-1/2 months after hearing of the arguments. It was simple case under sections 323 and 379 of the Pakistan Penal Code and there was no justification whatsoever for such delay in delivery of judgment. The delay on the part of the learned Magistrate in pronouncing his judgment in this simple case cannot be too strongly condemned. 10-

Let a copy of this judgment be sent to the Chief Secretary, Government of East Pakistan. "

This Court in Muhammad Bakhsh's case ruled that the reserved judgments had to be announced within reasonable time:--

"No doubt the judgment was announced one year after it had been reserved but we find that the learned Judge adverted to all the points as mentioned above. Nevertheless it is proper that once the arguments concluded and the judgment reserved, it has to be announced within reasonable period. We are sure that in future no unnecessary delay will take place in announcement of judgments." (Underlining is ours).

This case is also hit by rule 31 as all the points which were argued and relied upon by the learned counsel for the appellants were not considered for their proper determination on the basis of available evidence. The Civil Courts had to decide the disputes issue-wise as far as it would be practicable in the given situation in each case. It is not the case of learned counsel for respondents that issues were abandoned with consent of learned counsel for the appellants. In case, learned counsel for the parties agree that specified issues alone should be dealt with, then, of course, Courts need not enter into discussion on other issues for their decision. No such consent was, admittedly, obtained in this case when the appeal was decided. We would also hold that evidence of Saeed Ahmad D.W. was not considered by the High Court for the just decision of the appeal. This being so, the appeal of the appellants shall be deemed to be still pending decision before the High Court.

Result of the above discussion is that this appeal is remanded to the High Court to be heard and decided within three months without fail. The impugned judgment and decree of the High Court is set aside. Learned counsel for the parties may raise and argue as many questions of law and facts as they like during the hearing. With these observations, this appeal succeeds and is allowed with no order as to costs.

A.A/1-248/S

Case remanded

