

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

BEFORE:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**C. Appeal No. 87/2016
in
CPLA No. 100/2016.**

NBP through Manager Sost Branch Hunza-Nagar

Petitioner.

Versus

M/S Silk Route Dry Port Trust Sost

Respondents.

PRESENT:-

1. Mr. Muhammad Hussain Shehzad Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record for the petitioner.
2. Mr. Manzoor Ahmed Advocate alongwith Mr. Basharat Ali Advocate for the respondents.

DATE OF HEARING: - 19.09.2017.

DATE OF DETAILED JUDGMENT:- 25.06.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Appeal has arisen out of the impugned judgment dated 02.08.2016 in Civil First Appeal No. 11/2015 passed by the learned Chief Court whereby the said Civil First Appeal filed the respondents was accepted by setting aside the judgment/decreed dated 13.09.2012 passed by the learned Banking Court at Gilgit. The petitioners being aggrieved by and dissatisfied with the impugned judgment filed this petition for leave to appeal. This court vide order dated 17.11.2016 granted leave to appeal and the case was heard on 19.09.2017.

2. Briefly, the facts of the case are that the respondents availed amounting to Rs. 50 million from the petitioner's Bank as loan. The said loan was sanctioned on 10.10.2007 which was paid

to the respondents accordingly. The date for final adjustment /re-payment of the loan in question was 30.01.2009 but the respondents failed to repay the said amount including the markup as per policy of the Bank in question within the stipulated time. Consequently, the petitioners became constrained to file Civil Suit No. 06/2010 for recovery of Rs. 5, 85,44,918/- in Banking Court Gilgit-Baltistan. Notices were issued to the petitioners /defendants but neither were they appeared before the learned Banking Court nor they filed leave to defend. The learned Banking Court upon hearing decreed the said suit vide as prayed vide order dated 13.09.2012. The petitioners being aggrieved by and dissatisfied with the said order filed Civil First Appeal No. 11/2015 in the learned Chief Court Gilgit-Baltistan which upon hearing was allowed vide impugned judgment dated 02.08.2016 by setting aside the order(s) dated 13.09.2012 , and orders dated 22.07.2013 and 06.03.2015 passed by the learned trial Court, hence, this petition for leave to appeal. This Court vide order dated 17.11.2016 granted leave to appeal and the case was heard on 19.09.2017.

3. The leaned counsel for the petitioner contends that the judgment/decree was passed by the learned Banking Court against the respondents on 13.09.2012 for recovery of loan worth of Rs. 5,85,44918/- (rupees five crore eighty five lac forty four thousand nine hundred and eighteen only) under The Financial Institution (Recovery of Finances) Ordinance 2001. He also contends that before passing the said judgment/decree, the respondents No. 01 to

05 in spite of serving notices to them, they persistently remained absent from the courts throughout the proceedings. He further contends that Mr. Amjad Hussain Advocate was also absent on 13.09.2012 who has been appearing in the previous proceedings posing himself as counsel for the respondents/defendants No. 01 to 05 but no Wakalat Nama was ever filed by him before the learned Banking Judge in the said recovery suit. Furthermore, no application for "Leave to Defend" was filed in the learned Banking Court by the respondent Nos. 01 to 05 being the contesting defendants. He also contends that neither the learned Banking Court itself converted the judgment/decree into an "Execution Petition" as provided under Section 19 of The Financial Institution (Recovery of Finances) Ordinance 2001, nor the petitioner Bank filed such application. He also submits that the learned Banking Court after decreeing the suit on 13.09.2012 was legally duty bound to convert it into an Execution Petition. The Banking Court, however, shifted the responsibility to the decree holder/petitioner Bank and a cost of Rs. 20000/- was imposed on the petitioner Bank vide order dated 20.08.2013 which was not tenable. He further contends that the learned Banking Court issued notices to judgment debtors and simultaneously warrants against them to execute the judgment/decree for auctioning properties of judgment debtors. The learned Deputy Commissioners Gilgit, Hunza and Nagar were appointed as Auction Officers to conduct the auction proceedings thereto but all in vain. Subsequently on non-appearance of the

respondents/defendants and non-payment of the decretal amount, the Banking Court issued Non-Bailable Warrant of their Arrests. The respondents, however, managed for not serving upon them such Non-Bailable Warrant of their Arrests as well as their counsels also remained successful in getting adjournments on one or another pretext.

4. Per learned counsel, the respondent No. 03 Mir. Ghazanfar Ali Khan was elevated as Governor, Gilgit-Baltistan and the Banking Court vide order dated 21.12.2015 withheld the Non Bailable Warrant of Arrests issued against him alongwith Prince Saleem Khan and instead issued notices to them to pay decretal amount. The learned counsel for the petitioner further contends that it is not understandable that the learned Banking Court under what provisions of law withheld the Non Bailable Warrant of Arrests issued against respondent No. 02 Prince Saleem Khan who does not enjoy said immunity. He submits that the decree passed on 13.09.2012 was not challenged by the respondent within 30 days as provided in Sub Section (1) of Section 22 of The Financial Institution (Recovery of Finances) Ordinance 2001. The appeal against the aforementioned impugned order was filed by the respondents on 18.03.2015 after the considerable delay of 02 years 04 months and 06 days alongwith other orders passed in Misc. applications dated 22.07.2013 & 06.03.2015 respectively. The learned Gilgit-Baltistan Chief Court upon hearing the respective parties was pleased to accept the appeal filed by the respondents

and decree dated 13.09.2012 and orders dated 22.07.2013 & 06.03.2015 passed in Misc. applications by the learned Banking Court were set aside with the directions to proceed with the suit under the law & procedure.

5. The learned counsel for the petitioner also submits that after serving notices upon the respondents by the learned Banking Court, the respondents have not filed application for “Leave to Defend” under Section 9 of The Financial Institution (Recovery of Finances) Ordinance 2001. The learned Banking Court continued trial instead of decreeing the suit against the respondents which was mandatory in nature. He further submits that the learned Gilgit-Baltistan Chief Court has not applied its judicial mind to the fact that the appeal was hopelessly time barred and it was filed in violation of the provisions of Section 22 of The Financial Institution (Recovery of Finances) Ordinance 2001 which is not sustainable. He also contends that the decree passed on 13.09.2012 by the learned Banking Court was well reasoned based on facts and law and no interference was warranted thereto. He prays that the impugned judgment may graciously be set aside by maintaining the order dated 13.09.2012 passed by the Banking Judge of the learned Chief Court Gilgit-Baltistan to meet the ends of justice.

6. On the other hand, the learned counsels for the respondents support the impugned judgment passed by the learned Chief Court. They contend that the order dated 13.09.2012 passed

by the learned Banking Court was an ex-parte decree as the respondents have not been heard by providing them opportunity to defend their case by filing leave to defend, hence, the said order was not tenable in law. Per learned counsels, no date of hearing was fixed by the learned Banking Judge and the decree passed on a date other than that fix by the Court is a void order, therefore, no limitation runs against such order in circumstances. The learned Banking Court failed to apply its judicial mind to the facts and law while disposing the said ex-parte decree. They further contend that the said order has been passed against the mandatory provisions of Article 85 Rule (2),(3) and (4) of the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 read with Article 248 of the Constitution of the Islamic republic of Pakistan, 1973. According to which no criminal /civil proceedings whatsoever shall be instituted or continued against the Governor or the Chairman of the Council while he is in office. They contend that since the order dated 13.09.2012 passed by the learned Banking Judge was an ex-parte decree which was void, therefore, the same has rightly been set aside through the subsequent impugned judgment by the learned Chief Court. They pray that the impugned judgment may pleased be maintained.

7. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the order dated 13.09.2012 passed by the learned Banking Court as well as the impugned judgment dated 02.08.2016 in CFA No.

11/2015 passed by the learned Gilgit-Baltistan Chief Court, the case diaries of both the courts below, the referred provisions of The Financial Institution (Recovery of Finances) Ordinance 2001. The perusal of the record transpires that sufficient opportunities were granted to the respondents by the learned Banking Judge while disposing off the Civil Suit No. 06/2010 and passing the order dated 13.09.2012 but the respondents/defendants persistently remained absent from the court throughout the proceedings. Similarly, the counsel for the respondents did not attend the proceedings after appearing in the previous date of hearing posing himself as Advocate for the defendants but he did not turn up again. The suit was admittedly filed in the year 2010 but the same was lingering on up to 2012 on account of the absence of the respondents. The learned Trial Court could not put itself at the mercy of the respondents, hence, he was no option but to proceed with the suit in accordance with law as The Financial Institution (Recovery of Finances) Ordinance 2001 demands speedy trial of the suit filed under its provisions. In our considered view, the order dated 13.09.2012 passed by the learned Banking Judge is well reasoned and well founded which was wrongly set aside through the impugned judgment dated 02.08.2016 passed in CFA No. 11/2015 by the learned Chief Court. The said impugned judgment is not tenable in law being passed contrary to the law and facts of the case.

8. The learned Gilgit-Baltistan Chief Court has rightly observed that Mr. Mir Ghazanffar Ali Khan (respondent No. 03) should have not been impleaded after his elevation as Governor, Gilgit-Baltistan as provided in Article 85 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. After observation of the learned Chief Court, the petitioner Bank while filing this petition should have refrained in impleading, Mr. Mir Ghazanffar Ali Khan, Governor, Gilgit-Baltistan as respondent No. 03 and his matter should have been deferred. We while granting leave to appeal directed to delete the name of His Excellency Mr. Mir Ghazanffar Ali Khan, Governor, Gilgit-Baltistan from the names of the respondents.

9. In view of the above discussions, we allowed this appeal. Consequent thereto, the impugned judgment dated 02.08.2016 in Civil First Appeal No. 11/2015 passed by the learned Chief Court was set aside and order dated 13.09.2012 in Civil Suit No. 06/2010 passed by the learned Banking Court was upheld.

10. The appeal is allowed in above terms.

Chief Judge.

Judge.