

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

**Civil Appeal No. 24/2016 in
CPLA. No. 20/2013.**

Before:-

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

1. Shabir Wali Khan s/o Ghulam Wali Managing Director Wali Trade Group Pvt. Ltd Gilgit r/o Konodas near Tablighi Markaz and Wali house No. 2 Muhallah Yadgar Chock Khomar Gilgit permanent address Village Hasis Tehsil Ishkoman District Ghizer.
2. Dildar Ahmed s/o Fazal Ahmed Director Wali Trade Group Pvt. Ltd. Gilgit r/o Majini Muhallah District Gilgit.
3. Col. Amjad Wali s/o Ghulam Wali Khan r/o Village Hasis Tehsil Ishkoman District Ghizer.
4. Dr. Hussain Ali Medical Officer Health Department Gilgit-Baltistan, Gilgit.

Petitioners.

VERSUS

1. National Bank of Pakistan through its Branch Manager Sost Branch Gilgit.

Respondent.

PETITION FOR LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT/DECREE DATED 17.5.2013 PASSED BY THE HON'BLE GILGIT-BALTISTAN CHIEF COURT HAVING JURISDICTION OF BANKING COURT. WHEREBY THE LEARNED BANKING COURT HAS DECREED THE SUIT OF PLAINTIFF AS PRAYED FOR.

PRESENT:-

1. Malik Shafqat Wali senior Advocate for the petitioners.
2. Mr. Muhammad Hussain Shehzad advocate for the respondents.
3. The Deputy Attorney General for Pakistan at Gilgit-Baltistan.
4. The Advocate General Gilgit-Baltistan.

DATE OF HEARING: - 19.04.2016.

DATE OF ANNOUNCEMENT OF JUDGMENT: - 03.05.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been arisen out of the impugned order dated 17.05.2013 passed by the learned Chief Court Gilgit-Baltistan, wherein the learned Chief Court/Banking Court vide order dated 17.05.2013 directed the

petitioners to deposit the decretal amount till 17.06.2013. The petitioners feeling aggrieved by and dissatisfied with impugned order filed petition for leave to appeal for setting aside the impugned order. This Court vide order dated 08.07.2013 issued notices to the respondents for their appearance. The case was fixed for hearing on 19.04.2016 and heard accordingly.

2. Mr. Malik Shafqat Wali learned senior counsel for the petitioners at the very outset of the proceedings submits that the petitioners inadvertently filed this petition before this apex court instead of filing the same before the learned Chief Court Gilgit-Baltistan. He requests to return this petition to the petitioners so as the same may be filed before the right forum in order to proceed with the matter in accordance with law. He further submits that this court has the authority to return the petition to the petitioners in circumstances. He further submits that sufficient cause has been shown for condonation of delay, if any, as provided under Section 5 of The Limitation Act 1908. The appeal can be returned in order to file the same in a competent Court of law so the matter may be decided on merits as well. He also submits that the petitioners have an arguable case on merit. The learned Banking/Trial Court has granted leave to defend to the petitioners whereafter on 14.09.2012 certain issues were framed and the matter was fixed on 02.10.2012 for recording of evidences. He also submits that the case was subsequently adjourned to 16.05.2013, wherein both the parties were present. But case was adjourned to 17.05.2013 without

recording the evidences, the parties were present however the petitioners/defendants requested for an adjournment which was declined. Consequently, the defence of the petitioners/defendants was struck off and the suit of the respondent/plaintiff was decreed. The learned Trial Court converted it into Execution proceedings. The petitioners/ defendants were directed to deposit the decretal amount upto 17.05.2013. He further submits that on 22.06.2013 the petitioners/defendants appeared before the learned Banking Court who were directed to deposit the decretal amount on 29.06.2013. The petitioners feeling aggrieved inadvertently filed constitutional Petition for Leave to Appeal in this Court instead of filing appeal before the learned Chief Court. He finally prayed that this petition be returned to the petitioners enabling them to file appeal in the proper forum/competent Court of law. While submitting so he supports his contentions relying upon a case of Mst. Khadija Begum versus Mst. Yasmeen & 04 others decided by the Hon'ble Supreme Court of Pakistan reported as (PLD 2001 SC 355).

3. On the other hand, the learned counsels for the respondents strongly opposed the contentions of the learned counsel for the petitioners and submits that the case may not be returned to the petitioners in order to file in competent courts of law as there is no provision for returning the petitions to the petitioners at this stage. The petitioners cannot take benefits of wrongly filing the petition in this court. He, however, submits that the petitioners

may withdraw unconditionally their petition. Both the learned counsels for the respondents relied upon a case Bolan Bank Limited versus Capricorn Enterprise Private Limited reported as (1998 SCMR 1961).

4. We have heard both the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned order dated 17.05.2013 passed by the learned Banking Court as well as the case laws referred by the learned counsels for the respective parties. The case law referred by the learned counsel for the respondents is distinguishable whereas the case law cited by the learned counsel for the petitioners is applicable.

5. In our considered view that in absence of the specific provisions under Civil Procedure Code for directing to return of the appeal for want of Pecuniary /Ordinary/Appellate jurisdiction, the provisions of Section 107 read with Order 7 Rule 10 CPC would be attracted. It is noted that Order 7 Rule 10 CPC deals with the return of Plaint which provides procedure to be followed at the time of returning of the plaint whereas Section 107 (2) CPC lays down that Appellate Court shall have the same powers as shall perform as may be the same duties as are conferred by the CPC on the Courts of original jurisdiction in respect of suits instituted therein.

6. The learned Counsel for the petitioners has successfully persuaded us that the appeal filed in wrong forum can be returned to be filed in the competent appellate forum. In case the same is not

allowed, the petitioners/legal heirs of the deceased would seriously prejudiced and suffered an irreparable losses & injuries.

7. In view of the above discussions we convert this petition into an appeal and the same is allowed. The Original Petition for Leave to Appeal be returned to the petitioners enabling them to file the same in the competent Court of law if so advised.

8. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?