

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MUSHIR ALAM.

CIVIL APPEAL NO. 1793 OF 2016 AND C. M. APPEAL NO. 206 OF 2016.

(On appeal against the judgment dated 31.5.2016 of the Lahore High Court, Rawalpindi Bench passed in FAO No. 49 of 2015).

Nadeem Farooq and others. ...Appellant(s)
Versus
Newze Land Electronic Trading Co. Lee Sharja. ...Respondent(s)

For the appellant(s): Sh. Zamir Hussain, ASC.
Mr. Ahmed Nawaz Ch., AOR. (Absent)

For the respondent(s): Mr. Shaukat Rauf Siddique, ASC.
Mr. Mehmood A. Sh., AOR. (Absent).

Date of Hearing: 30.11.2016.

ORDER

EJAZ AFZAL KHAN, J.- This appeal as of right has arisen out of the judgment dated 31.05.2016 of the Lahore High Court, Rawalpindi Bench whereby the learned Judge in its chambers allowed the revision petition filed by the respondent and set aside the order of the Executing Court accepting objection of the appellant.

2. This case was argued at length on many dates. The main contention of the learned ASC appearing on behalf of the appellants was that since the decree sought to be executed has been passed by the Federal Court of first instance which cannot be treated as a decree of superior Court in terms of Section 44-A CPC, it cannot be executed.

3. Learned ASC appearing on behalf of the respondent contended that since the Federal Court of first instance also hears appeals in the matters against judgments of local Courts, it could also be treated as Federal Court of appeal and as such a superior Court for all legal and practical purposes.

4. We also involved the learned DAG in the matter but the assistance he provided is summed up as under :-

“Learned Deputy Attorney General assisted the Court. Apparently he appears to have agreed with the proposition that the court of appeal does not mean the court of appeal exercising appellate jurisdiction in the matters other than those decreed by such court. It, according to him, includes the court confirming, reversing or modifying the decree of the court of first instance. Learned ASC for the respondent insisted that the court of appeal does not necessarily mean the court of appeal exercising appellate jurisdiction against the decree passed by the court of first instance but since nothing incisive, aboveboard and unambiguous has been cited as could justify a departure from the ordinary meaning of the word “superior” used in Section 44-A CPC, the learned Deputy Attorney General wants a week’s more time to provide the assistance of that nature. Re-list on 07.11.2016.”

5. We have gone through the record carefully and considered the submissions of the learned ASCs for the parties.

6. The question emerging for the consideration of this Court is what is the nature of the decree, what is the status of the Court passing it and whether such decree could be executed in a Court in Pakistan. The main provision of CPC dealing with the nature of the decree, status of the Court passing it and its executability is Section 44-A which reads as under :-

“44-A. Execution of decree passed by Courts in the United Kingdom and other reciprocating territory. (1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in [Pakistan] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the expectations specified in clauses (a) to (f) of Section 13.

Explanation 1. “Superior Courts”. With reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

Explanation 2. "Reciprocating territory" means [the United Kingdom and such other country or territory as] the [Federal Government] may, from time to time, by notification in the [official Gazette], declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 3. "Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

a) with reference to superior Courts in the United Kingdom, includes judgments, given and decree made in any Court in appeals against such decrees or judgments, but

b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment.]"

7. What is the status of United Arab Emirates and what is the superior Court in its hierarchy for the purposes of Section 44-A CPC have been fully illustrated in the notification SRO No. 208(I)2007 which reads as under:-

"SRO. 208(I)/2007.--- In exercise of the powers conferred by Section 44A of the Code of Civil Procedure, 1908 (Act V of 1908), the Federal Government is pleased to declare the United Arab Emirates to be a reciprocating territory and the Court of Appeal of the United Arab Emirates to be Superior Courts for the purposes of the said Section.

WHEREAS under section 44A of the Code of Civil Procedure, 1908 (Act V of 1908), the Federal Government is empowered to declare, by notification in the Official Gazette, any country to be reciprocating territory for the purposes of said section and also to declare Superior Courts with reference to any such territory."

It is thus clear that United Arab Emirates has been declared as a reciprocating State and that the Court of Appeal in the United Arab Emirates is a superior Court for the purposes of Section 44-A CPC. What is the hierarchy and ranking of the Courts established in United Arab Emirates has been listed in Article 9 of the Federal Law No. 03 issued on 26.05.1983 (Concerning The Federal Judicial Corps) which reads as under:-

"Article 9. As Amended by Article 1 of the Federal Law No. 2 dated 24/3/1991:

The federal courts in the United Arab Emirates State shall consist of:

1. *The Federal Supreme Court.*
 2. *The Federal Courts of Appeal.*
 3. *The Federal Courts of First Instance.*
- Their ranking among themselves shall be in the order in which they are listed hereinabove."*

8. A combined reading of Section 44-A CPC, SRO notification No. 208(l)/2007 and Article 9 of the Federal Law No. 03 issued on 26.05.1983 (Concerning The Federal Judicial Corps) would reveal that United Arab Emirates is a reciprocating State and that the Federal Court of Appeal established in the hierarchy is a superior Court for the purposes of Section 44-A CPC. Now what is left to be determined by this Court is as to what is the status of the Court passing the decree sought to be executed? A look at the decree would reveal that it has been passed by the Court of first instance which can neither be construed as Court of Appeal nor a superior Court in terms of Section 44-A CPC and the notification issued thereunder. When so it cannot be executed without having recourse to the process of Section 13 of the CPC. The view taken by the High Court thus does not appear to be correct.

9. For the reasons discussed above, we allow this appeal, set aside the impugned judgment and restore that of the Executing Court. The respondent, however, would be at liberty to institute a suit in terms of Section 13 CPC which shall be disposed of as expeditiously as possible but not later than six months. The C. M. Appeal also stands disposed of.

JUDGE

JUDGE

ISLAMABAD.
30.11.2016.
M. Azhar Malik