IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED.
MR. JUSTICE IJAZ UL AHSAN.
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL.
MR. JUSTICE SAJJAD ALI SHAH.
MR. JUSTICE YAHYA AFRIDI

Civil Petition No.1084 of 2011 & Civil Appeal Nos.1711 of 2007 & 353 of 2013

ON APPEAL AGAINST JUDGMENTS DATED 14.04.2011, 07.09.2007 AND 14.12.2012 OF THE LAHORE HIGH COURT, IN CR NOs.1040-D OF 2009 AND 1009 OF 2006 AND RSA NO.174 OF 2012 RESPECTIVELY.

Mir Muhammad Khan	**Petitioner** (in CP No.1084/2011)
Haji Abdul Ghaffar	**Petitioner** (in CA No.1711/2007)
Abdul Wahid	**Petitioner** (in CA No.353/2013)

Versus

Haider & others	**Respondent** (in CP No.1084/2011)
Sher Muhammad (Deceased)	**Respondent** (in CA No.1711/2007)
Muhammad Irfan	**Respondent** (in CA No.353/2013)

For the Petitioner(s):	Ch. Afrasiab Khan, ASC. *(in CP No. 1084/2011)*
	Mr. Azhar Maqbool Shah, ASC. *(in CA No. 1711/2007)*
	Malik Ghulam Mustafa Kandwal, ASC *(in CA No. 353/2013)*
For the Respondent(s):	N.R *(in CP No. 1084/2011)*
	Nemo (in CA No. 1711/2007)
	Nemo (in CA No. 353/2013)
Date of Hearing:	11.11.2019

JUDGMENT

IJAZ UL AHSAN, J-. Through this common judgment, we are deciding Civil Petition No.1084 of 2011 and Civil Appeal Nos.1711 of 2007 and 353 of 2013 arising out of judgments of the Honourable Lahore High Court, in CR Nos.1040-d of 2009 and 1009 of 2006 and RSA No.174 of 2012 respectively.

2. The present cases arise out of judgments of the Honourable Lahore High Court, whereby suits for possession through pre-emption filed by the Petitioner (in CP No.1084 of 2011) and Appellants (in CA Nos.1711 of 2007 and 353 of 2013) were dismissed. In CP No.1084 of 2011 and CA No.1711 of 2007, the Honourable Lahore High Court has through its judgments dated 14.04.2011 and 07.09.2007 set-aside judgments and decrees of the Lower Courts and dismissed the suits for possession through pre-emption. In both cases, it was held, *inter alia*, that the Petitioner (in CP No.1084 of 2011) and the Appellant (in CA No.1711 of 2007) had failed to prove the necessary elements of the *Talb-i-Muwathibat* by not mentioning in their plaints the time at which information regarding the "pre-empted sale" was received. It was held that the witnesses in both cases had also failed to mention the time at which information of the "pre-empted sale" had been received by the Petitioner and the Appellant. As such, the Honourable Lahore High Court in both cases saw it fit to set-

aside the judgments and decrees of the Lower Courts and dismiss the suits for possession through pre-emption.

3. In CA No. 353 of 2013, the Appellant's suit for possession through pre-emption was dismissed by the Lahore High Court *vide* its judgment dated 14.12.2012. Although the Trial Court had *vide* its judgment dated 30.11.2009 decreed the suit in favour of the Appellant, the Lahore High Court held that one of the two attesting witnesses in the Appellant's case was not produced by the Appellant. In addition, the witness produced by the Respondent as DW-3 had not supported the story of the Appellant. Furthermore, it was held that the address mentioned on the postal receipts, produced by the Appellant to prove the serving of the notice for *Talb-i-Ishhad*, was incorrect and the postman who allegedly served the notice was not produced to prove that the notice of *Talb-i-Ishhad* had in fact ever been served on the Respondents.

4. Learned Counsel for the Petitioner in CP No.1084 of 2011 has submitted that the dispute in question arose in 2004 and the suit for possession through pre-emption was filed before the Trial Court in 2005. Learned Counsel contends that at the time that the dispute arose the governing law on the issue of *Talb-i-Muwathibāt* was interpreted to mean that the pre-emptor need not mention in the plaint the date, time, and place at which

information regarding the "pre-empted sale" was received. To support his arguments learned counsel placed reliance on judgments of two five-member benches of this Court in *Altaf Hussain v. Abdul Hameed* (2000 SCMR 314) and *Haji Noor Muhammad v. Abdul Ghani* (2000 SCMR 329), wherein it was held *"that it is not a sine qua non for the pre-emptor to specify in the plaint almost all the witnesses in whose presence he had made Talb-i-Muwathibat and also specifying the time and then to make the said Talab under section 13 of the Act."* (*Haji Noor Muhammad* (Supra)).

5. Learned Counsel for the Petitioner (in CP No.1084 of 2011) has admitted that the time at which information of the "pre-empted sale" was received is, in fact, missing from the plaint and the evidence adduced by the Petitioner before the Trial Court. He has, however, argued that the judgment of another five-member bench of this Court in the case of *Mian Pir Muhammad and Another v. Faqir Muhammad and Others* (PLD 2007 SC 302), which established the aforementioned pre-conditions to the making of *Talb-i-Muwathibat*, was rendered subsequent to the year in which the pre-empted transaction took place and as such could not be applied to the proceedings in the present circumstances. It is his case that all the requirements for the making of *Talb-i-Muwathibat*, as well as all the other *Talbs* under Section 13 of the Punjab Pre-Emption Act, 1991 (the **"1991 Act"**), were fulfilled by the

Petitioner (pre-emptor), in accordance with the then prevalent interpretation of the law. Therefore, the judgment of the Lahore High Court dated 14.04.2011 was liable to be set aside.

6. Similarly, Learned Counsel for the Appellant (in CA No. 1711 of 2007) has also admitted that the time at which information of the "pre-empted sale" was received by the Appellant is missing from the plaint and the evidence recorded before the Trial Court. However, Learned Counsel has also placed reliance on the judgments of this Court in *Altaf Hussain* (Supra) and *Haji Noor Muhammad* (Supra) to argue that the circumstances giving rise to the present proceedings arose before this Court rendered its judgment in the case of *Mian Pir Muhammad* (Supra). It is his contention that the decision of this Court in *Mian Pir Muhammad* (Supra) has a prospective effect and cannot be applied retrospectively.

7. Learned Counsel for the Appellant (in CA No.353 of 2013) while advancing his arguments, contended that the Honourable Lahore High Court, in its judgment dated 14.12.2012, had failed to take into account the judgment of the Honourable Shariat Appellate Bench of the Supreme Court in *Muhammad Shabbir Ahmad Khan v. Government of Punjab* (PLD 1994 SC 1) wherein it was held that the notice of *Talb-i-Ishhad* is only a procedural matter to facilitate the proper process of filing a suit of

pre-emption and does not, in any way, affect the basic right of pre-emption. He also placed reliance in this matter on *Abdul Malik v. Muhammad Latif* (1999 SCMR 717).

8. We have heard the Learned Counsel for the Petitioner and the Appellant and have gone through the record. In light of the common issues present in all these cases before us, and the arguments advanced by all the parties, two important questions of law need to be answered by us:

(i) Firstly, with respect to the failure of the Petitioner and the Appellants in all these cases to prove the full particulars of *Talb-i-Muwathibat* and *Talb-i-Ishhad* and whether such failure is fatal to pre-emption suits.

(ii) Secondly, whether the law laid down by this Court in *Mian Pir Muhammad* (Supra) will be applied retrospectively to cases pending before the courts.

9. The law applicable to the present cases, and the mode and manner of making the various demands in the exercise of the right of pre-emption, is spelled out in Section 13 of the 1991 Act. For ease of reference it is reproduced below:

> ***"13. Demand of Pre-Emption.–*** ***(1)*** *The right of pre-emption of a person shall be extinguished unless such person makes demands of pre-emption in the following order, namely–*
> *(a) "talb-i-muwathibat";*
> *(b) "talb-i-ishhad"; and*

(c) "talb-i-khusumat".

Explanation_.- *(I) "Talb-i-muwathibat" means immediate demand by a pre-emptor, in the sitting or meeting (Majlis) in which he has come to know of the sale, declaring his intention to exercise the right of pre-emption.*

NOTE:- *Any words indicative of intention to exercise the right of pre-emption are sufficient.*

(II) "Talb-i-ishhad" means demand by establishing evidence.

(III) "Talb-i-khusumat" means demand by filing a suit.

(2) *When the fact of sale comes within the knowledge of pre-emptor through any source, he shall make "Talb-i-muwathibat".*

(3) *Where a pre-emptor has made talb-i-muwathibat under sub-section (2), he shall as soon thereafter as possible but not later than two weeks from the date of knowledge make talb-i-ishhad by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgement due, to the vendee, confirming his intention to exercise the right of pre-emption:*

Provided that in areas where owing to lack of post office facilities it is not possible for the pre-emptor to give registered notice, he may make talb-i-ishhad in the presence of two truthful witnesses.

(4) *Where a pre-emptor has satisfied the requirements of talb-i-muwathibat under sub-section (2) and talb-i-ishhad under sub-section (3), he shall make talb-i-khusumat in the court of competent jurisdiction to enforce his right of pre-emption."*

A bare reading of section 13 (ibid) makes it clear that any act towards the exercise of the right of pre-emption that does not follow the process laid down for making the demand of pre-emption will necessarily fail. The process for making such a

demand has three elements: *Talb-i-Muwathibat, Talb-i-Ishhad,* and *Talb-i-Khusumat.* Any pre-emptor who fails to fulfil any one of these elements, in the manner provided by law and interpreted and explained by courts, cannot be successful in his attempt to pre-empt the sale of a property that falls within the ambit of the law on pre-emption.

10. In our view, the foundation of this process and the law of pre-emption is the first demand, *Talb-i-Muwathibat,* commonly referred to as the jumping demand. Since all succeeding steps in the process of making the demand for pre-emption follow from the *Talb-i-Muwathibat,* and the time at which it was made, it is necessary to explore what it entails. In the past, there has been some divergence of opinions in the judgments of this Court with respect to the elements required to prove the making of *Talb-i-Muwathibat.* These were summarized in *Atiq-ur-Rehman v. Muhammad Amin* (PLD 2006 SC 309), where it was held that:

> *"7. The legal position emerged is that right of pre-emption cannot be claimed without fulfillment of the requirement of Talb-i-Muwathibat and Talb-i-Ishhad and performance of Talb-i-Muwathibat is prerequisite for the performance of Talb-i-Ishhad. The first Talb is Talb-i-Muwathibat which is immediate demand for exercise of right of pre-emption in the sitting or meeting in which the pre-emptor comes to know about the sale and without proving the performance of first Talb, the requirement of second Talb namely Talb-i-Ishhad even if fulfilled, is of no consequence.*

The essential condition to fulfil Talb-i-Muwathibat is that pre-emptor must declare his intention for exercise of right of pre-emption in presence of witnesses immediately on coming to know about the sale and the performance of the first Talb, cannot be proved unless pre-emptor proves through positive evidence the specific date on which he on coming to know about the sale, made declaration for exercise of right of pre-emption. This is settled law that Talb-i-Muwathibat is the foundation for exercise of right of pre-emption but there is difference of opinion on the question regarding the manner of proving the requirement of this Talb. The one view is that proof of tentative date of knowledge of sale is sufficient to fulfil the requirement of Talb-i-Muwathibat whereas according to other view without proof of specific date of knowledge, the requirement of Talb-i-Muwathibat is not performed and in consequence thereto, the performance of Talb-i-Ishhad is also not fulfilled in terms of section 13 of Punjab Pre-emption Act, 1991. In view thereof, the crucial question for determination would be whether without proof of particular date of knowledge of sale, the performance of Talb-i-Muwathibat with reference to a tentative date would be sufficient to serve the purpose of law or the date of knowledge of sale and the Majlis in which pre-emptor' made a declaration for exercise of right of pre-emption must be specifically proved. In Noor Muhammad v. Abdul Ghani (2000 SCMR 329), this Court held that performance of Talb-i-Muwathibat may not be essentially proved with reference to the specific date and time or place and the Majlis in which the exercise of right of pre-emption was announced but in the subsequent judgments in Muhammad Saleem v. Khuda Bakhsh (PLD 2003 SC 315); Muhammad Siddique v. Muhammad Sharif (2005 SCMR 1231); Abdul Qayyum through L.Rs. v. Muslik-e-Alam and

another (2001 SCMR 298) and Civil Appeal No.560 of 1995 (Zarghoon Shah (deceased) through L.Rs. v. Muhammad Yaqoob Khan) and Civil Petitions Nos.424 and 528 of 2004 (Fazal Subhan v. Mst. Sahib Jamala) it was consistently held that requirement of making Talb-i-Muwathibat without the proof of the date and the meeting in which declaration for exercise of right of pre-emption was made, would not be fulfilled. This is settled proposition of law that the pre-emptor without satisfying the performance of Talbs in accordance with the requirement of section 13 of Punjab Pre-emption Act, 1991, cannot succeed and unless it is established on record the specific date of knowledge of sale and the Majlis in which the declaration was made for exercise of right of pre-emption, the requirement of Talb-i-Muwathibat is not fulfilled and if the first Talb is not proved to have been made in accordance with law, the performance of second Talb (Talb-i-Ishhad) also cannot be proved. The right of pre-emption is a piratical right and the pre-emptor must prove the essential conditions for exercise of such right strictly in accordance with law."

11. While Learned Counsel for the Petitioners and the Appellants in the instant cases have argued that the requirement of mentioning particulars – such as the date, time, and place where information regarding the "pre-empted sale" was received by the pre-emptor – did not exist before this Court's judgment in Mian Pir Muhammad (Supra), we note that this is not entirely true. In fact, as mentioned in Atiq-ur-Rehman (Supra), this Court had in its earlier judgments clarified that the mentioning of date and place where information regarding the "pre-empted sale" was received by the pre-emptor was necessary in order to prove the

making of *Talb-i-Muwathibat*. However, we also note that at the time of the institution of the present case the question of mentioning the exact time at which this information was received was still governed by judgments of five-member benches of this Court in *Altaf Hussain* (Supra) and *Haji Noor Muhammad* (Supra).

12. This question was again considered by a five-member bench of this Court in *Mian Pir Muhammad* (Supra), which explained the meaning of the word "*immediate*" in the context of Explanation (I) to Section 13(1) of the 1991 Act. The said explanation provides the meaning of *Talb-i-Muwathibat* as the "*immediate demand by a pre-emptor, in the sitting or meeting (Majlis) in which he has come to know of the sale, declaring his intention to exercise the right of pre-emption.*" It is important to note here that this explanation relies heavily on the word "*immediate*" in order to define *Talb-i-Muwathibat* and its importance. The earlier judgments had not expressly considered and examined the implications and rationale for using the said word. In *Mian Pir Muhammad* (Supra), it was held that:

> "*4. It is observed that great emphasis and importance is to be given to this word in making of Talb-i-Muwathibat and it is necessary that as soon as the pre-emptor acquired knowledge of the sale of pre-empted property, he should make immediate demand for his desire and intention to assert his right of pre-emption without the slightest loss of time. According to the dispensation which has been reproduced hereinabove after*

performing Talb-i-Muwathibat, in terms of section 13(2) of the Act, the pre-emptor has another legal obligation to perform i.e. making of Talb-i-Ishhad as soon as possible after making Talb-i-Muwathibat but not later than two weeks from the date of knowledge of performing Talb-i-Muwathibat, therefore, the question can conveniently be answered by holding that to give full effect to the provisions of subsections(2) and (3) of section 13 of the Act, it would be mandatory to mention in the plaint date, place and time of performance of Talb-i-Muwathibat because from such date, the time provided by the statute i.e. 14 days under subsection (3) of section 13 of the Act shall be calculated. Supposing that there is no mention of the date, place and time of Talb-i-Miwathibat (sic) then it would be very difficult to give effect fully to subsection (3) of section 13 of the Act, and there is every possibility that instead of allowing the letter of law to remain in force fully the pre-emptor may attempt to get a latitude by claiming any date of performance of Talb-i-Muwathibat in his statement in Court and then on the basis of the same would try to justify the delay if any, occurring in the performance of Talb-i-Ishhad. It is now a well-settled law that performance of both these Talbs successfully is sine qua non for getting a decree in a pre-emption suit. It may be argued that as the law has not specified about the timing then how it would be necessary to declare that the mentioning of the time is also necessary. In this behalf, it is to be noted that connotation of Talb-i-Muwathibat in its real perspective reveals that it is a demand which is known as jumping demand and is to be performed immediately on coming to know of sale then to determine whether it has been made immediately, mentioning of the time would be strictly in consonance with the provisions of section 13 of the Act. This Court in the case of Rana Muhammad Tufail v. Munir Ahmed and another (PLD 2001 SC 13), declined to grant leave to

appeal maintaining the judgment of the learned High Court as there was four hours delay in making the Talb-i-Muwathibat from the time of receiving the knowledge of the sale. In the case of Mst. Sundri Bai v. Ghulam Hussain (1983 CC 2441) High Court of Sindh, held the delay of 1-1/2 hour, in making Talb-i-Muwathibat to be fatal to the scheme of Shufa when the pre-emptor was residing on the first floor while the purchaser /respondent was residing on the ground floor of the same building. In another case of Mst. Kharia Bibi v. Mst. Zakia Begum and 2 others (C.A. 1618 of 2003) this view was endorsed."

13. Section 13 of the 1991 Act does not mention requirements such as the mentioning of date, time, and place on which the *Talb-i-Muwathibat* was made in the plaint. However, it is clear that these particulars are the material facts on the basis of which the making of *Talb-i-Muwathibat* can be proved. The right of pre-emption is also a unique and fragile right. Unlike many other rights bestowed by law, the exercise of this right depends entirely on the timely making of the various demands set out in section 13. It is also obvious, from a bare reading of section 13 that the making of *Talb-i-Muwathibat* is the foundation on which the making of *Talb-i-Ishhad* and *Talb-i-Khusumat* is based. In fact, the timelines and conditions for the making of *Talb-i-Ishhad* and *Talb-i-Khusumat* provided in section 13(3) and 13(4) of the 1991 Act depend entirely upon the making of *Talb-i-Muwathibat*. Therefore, the date, time and place of making such demand is

pivotal and foundational to the exercise of the right of pre-emption, the importance of which cannot be over-emphasized.

14. This understanding is supplemented further by the law laying down the requirements of pleadings, namely the Code of Civil Procedure, 1908 (**"CPC"**). There can be no two views on the question that the pleadings in pre-emption suits are supposed, *inter alia*, to meet the requirements of Order VI of the CPC. Order VI Rule 2 of the CPC obligates the plaintiff to state all material facts in a concise form. It mandates that all parties must state all material facts *necessary* for the purposes of establishing a cause of action within their pleadings. In the context of the exercise of the right of pre-emption by any party, the date, time, and place of performance of *Talb-i-Muwathibat* is the most material fact because all subsequent acts towards successfully exercising and enforcing the right of pre-emption have reference to, flow out of, and the time frame within which such acts are required to be performed is with relevance to, the date of performance of *Talb-i-Muwathibat*. It, therefore, stands to reason that the material and necessary facts required to prove the making of *Talb-i-Muwathibat* must be mentioned within the pleadings from the commencement of an action claiming a right of pre-emption so as to set out with clarity the case of the Plaintiff, not let the defendant be taken by surprise, and to avoid misuse and abuse of the law by an unscrupulous litigant who may choose the date of his knowledge

and performance of *Talb-i-Muwathibat* to suit his convenience without any regard to the actual facts.

15. The foregoing view is also supported by this Court's judgments in *Mian Pir Muhammad* (Supra) as well as in *Abdul Qayyum v. Muhammad Rafique* (2001 SCMR 1651), where it was held that:

> *"We have heard learned counsel and have also carefully examined the impugned judgment. As per section 13 of the Act a pre-emptor is required to make Talabs (demands to assert his right of pre-emption from extinguishment. To enforce such right two Talabs i.e. Talb-i-Muwathibat and Talab-i-Ishhad are required to be made essentially). Section 13(1) of the Act does not provide the set procedure for making of Talb-i-Muwathibat except stressing that it should be made immediately without wasting time in making of mind to enforce the right or otherwise because under Explanation attached to subsection (1) of section 13 of the Act emphasis should be made to perform the Talab in the sitting or meeting (Majlis) in which he has come to know of the sale declaring his intention to exercise the right of pre-emption. Earlier it was the opinion of this Court in the case of Shafi Muhammad v. Muhammad Hazar Khan and others 1996 SCMR 346 that the plaint may contain a statement of fact to indicate the place where Talb-i–Muwathibat was made by petitioner/pre-emptor. However, subsequently in another judgment in the case of Amir Jan and 3 others v. Haji Ghulam PLD 1997 SC 883 this Court improved upon its earlier observations by explaining that requirement of law would be fully met if it was alleged in the pleading that after having coming to know of sale, pre-emptor declared his intention to pre-empt such sale,*

material fact must be proved at trial through evidence on issue framed in that regard. The evidence to be led need not be disclosed in the plaint. However, if the plaintiff fails to mention the material fact that he has made Talb-i-Muwathibat on having gained knowledge of the sale would be debarred from leading evidence on the material fact of Talb-i-Muwathibat. The view expressed in this judgment is in consonance with law of, pleadings according to which plaintiff is not obliged to make reference of the evidence to be led by him except noting a particular fact, which is to be proved subsequently by leading evidence."

This view has also been taken in many later cases such as *Abdul Aziz v. Fateh Muhammad* (2007 SCMR 336), *Haq Nawaz v. Muhammad Kabir* (2009 SCMR 630), *Muhammad Ismail v. Muhammad Yousaf* (2012 SCMR 911), and *Muhammad Anwar v. Safeer Ahmad* (2017 SCMR 404) where this Court conclusively held that any suit for pre-emption that fails to mention the basic facts required to prove the making of *Talb-i-Muwathibat* will necessarily fail.

16. In view of the above, we hold that in CP No.1084 of 2011 and CA No.1711 of 2007 the failure of the pre-emptors to mention the time at which information of the "pre-empted sale" was received by them was indeed fatal to their suits for possession through pre-emption. While in one of the cases (CP No.1084 of 2011), the pre-emptor produced one witness (Allah Wasaya, PW3) who mentioned the approximate time at which he conveyed

information regarding the "pre-empted sale", the pre-emptor was not able to corroborate this through the evidence of the other witnesses or his own testimony. In any case, the fact that he had failed to mention the time of making of *Talb-i-Muwathibat* in his plaint would mean that he had failed to meet the requirement set out in *Mian Pir Muhammad* (Supra).

17. Similarly, in CA No.353 of 2013, we note that the pre-emptor's own witness (PW-3) who informed him regarding the "pre-empted sale" was unable to corroborate any of the assertions made by the pre-emptor. He not only failed to mention the time when he allegedly informed the pre-emptor but also failed to mention the names of the other witnesses present at the time. Furthermore, the pre-emptors own witnesses in this case were unable to corroborate his assertions with respect to the making of *Talb-i-Ishhad*. In this regard, the record clearly shows that while the pre-emptor himself as PW1 gave testimony that the notice of *Talb-i-Ishhad* had been prepared by a lawyer, he failed to mention the name or any other details of this lawyer. Additionally, one of the attesting witnesses who according to the pre-emptor was present at the time that he made the *Talb-i-Muwathibat* was not produced. The record shows that the same witness appeared as DW3 on behalf of the Respondents in the case, contradicted the pre-emptors assertions, and also alleged that the pre-emptor in fact had prior knowledge of the "pre-empted sale" well before the day

on which he had allegedly received the information of sale. Similarly, the pre-emptor also failed to prove that he had in fact followed the provisions of Section 13(3) of the 1991 Act with respect to sending the notice for *Talb-i-Ishhad*.

18. Section 13(3) of the 1991 Act clearly sets out that the notice of *Talb-i-Ishhad* must be served on the vendor through *Registered Post with Acknowledgment Due*. However, it is obvious from the record that the address mentioned in the postal receipt is not the same as the one mentioned in the notice. Moreover, nothing in the record proves the assertion of the pre-emptor that the notice was ever served on the Respondent in the case, who in his written statement before the Lahore High Court as well as before the Lower Courts categorically denied service of the notice in question. Therefore, it fell upon the Appellant/pre-emptor in the case to prove that the notice had been delivered. By failing to prove the same or even producing the postman who allegedly delivered the notice, the Appellant/pre-emptor failed to establish the sending or receipt of the notice for the performance of *Talb-i-Ishhad* in this case.

19. In light of these findings, it is clear that the Petitioner in CP No.1084 of 2011 and the Appellant in CA No.1711 of 2007 both failed to prove that they met the requirements for the performance of *Talb-i-Muwathibat* as per this Court's judgment in

Mian Pir Muhammad (Supra). Furthermore, the Appellant in CA No.353 of 2013 also failed to prove the serving of the notice of *Talb-i-Ishhad* required under Section 13(3) of the 1991 Act. The testimony of the witnesses produced by him also contradicted his claims regarding the performance of *Talb-i-Muwathibat* and cast doubt on his assertions regarding the fulfilment of all the demands required therein. It is settled law that if *Talb-i-Muwathibat* is not proved to have been made then the performance of *Talb-i-Ishhad* and all other requirements for a successful demand of pre-emption cannot be proven. Similarly, even if *Talb-i-Muwathibat* has been made in accordance with the law if any of the requirements for the performance of *Talb-i-Ishhad* are not fulfilled the suit for possession through pre-emption is bound to fail.

20. Now we proceed to examine the question of retrospectivity and applicability of the judgment of this Court in Mian Pir Muhammad (Supra) to the present cases. It is pertinent to mention here that the general rule in common law is that judicial pronouncements, with respect to most civil cases, apply retrospectively to cases pending before the courts and prospectively to any cases that are filed after the judgment has been rendered. Courts in various common law jurisdictions have applied this rule extensively. In Henry Harper v Virginia Department of Taxation (1993) (509 U.S. 86), Supreme Court of the United States of America held that:

> *"When this Court applied a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the announcement of the rule."*

While obvious exceptions to this rule must, and do, exist in the context of criminal cases and those cases where the Supreme Court has chosen not to apply its decisions retrospectively. If the Supreme Court does not explicitly mention that a judgment will not apply to cases still awaiting a decision before the courts, e.g. to protect vested rights, etc., the interpretation of the law declared by the Supreme Court will apply to them.

21. It is settled law that when the Supreme Court interprets or declares the law, that interpretation only clarifies the meaning of the words already used by the legislature or the competent authority drafting the provisions. It stands to reason, therefore, that the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted. This Court, in its judgment in *Malik Asad Ali v. Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad* (PLD 1998 SC 161) has also held that:

> *"The principle that the change in the state of law as a result of interpretation by this Court is to be given effect to from the date the Court interpreted the law is also not applicable in those cases which could be brought under challenge in accordance with the law before or after the interpretation of the provision by this Court. Even otherwise, as pointed out by us earlier, this Court while adopting an interpretation of the provision of the law or the Constitution which is at variance from the existing view, it is only declaring the correct law as an apex Court. By doing so, it neither legislates any new law nor amends the existing law. Therefore, while interpreting a provision of law or the Constitution, this Court can also provide the date from which the interpretation given by it is to come into effect, keeping in view the nature of the provision it is interpreting, the likelihood of possible prejudice which may be caused to an individual or a body of individual and the requirement of justice in the case."*

It is a matter of fact that all judgments of the Supreme Court where any law or provision has been interpreted only declare what the law is and do not make or amend any laws. Therefore, we agree with the view taken by this Court in *Malik Asad Ali* (Supra) and hold that such interpretations must apply to any cases that are brought before the courts under the law in question. It is, of course, within the purview of the Supreme Court to limit this application by prescribing a time from which such interpretations must apply, but this must be done according to the circumstances of specific cases and by balancing the detriments of such application with the existing laws in place.

22. We also note that this Court has already held that the requirements to mention particulars of all *Talbs*, including the time, date and place at which information of the "pre-empted sale" was received by the pre-emptor before making the *Talb-i-Muwathibat*, in accordance with the decision in *Mian Pir Muhammad* (Supra) will apply to all pending cases on the matter. Reliance in this respect is placed on the judgments of this Court in *Haq Nawaz* (Supra) and *Mst. Bashira Begum v. Nazar Hussain* (PLD 2008 SC 559), where the Supreme Court held that:

> *"According to the dictum laid down by the larger bench of this Court mentioned above, the requirement of Talbs with requisite details in the plaint is also essential even in the pending cases."*

23. We agree with and approve the said view for the reasons enumerated above. In light of what has been discussed, we find no merit in the arguments advanced by the Learned Counsel for the Petitioner and the Appellants with respect to the retrospective application of the judgment of this Court in *Mian Pir Muhammad* (Supra) to the present cases. Resultantly, we hold that the judgment of this Court in *Mian Pir Muhammad* (Supra) will apply to the present cases and all cases pending before the Courts wherein similar questions of law have been raised.

24. In view of the aforementioned findings and observations, we find no reason to interfere in the findings of the Honourable Lahore High Court in all the aforementioned judgments in the three cases before us. Consequently, Civil Petition No. 1084 of 2011 and Civil Appeal Nos. 1711 of 2007 and 353 of 2013 are hereby dismissed.

25. Above are the reasons for our short order dated 11.11.2019, which for ease of reference is reproduced below:

> *"We have heard learned ASC for the parties, who have argued the matter before us and have also gone through record of the cases. For reasons to be recorded, C.P. No.1084 of 2011 and C.A. Nos.1711 of 2007 and 353 of 2013 are dismissed."*

ISLAMABAD, THE
11th of November 2019.
*MUA/**
~~NOT~~ **APPROVED FOR REPORTING**