2019 C L D 828

[Sindh]

Before Nadeem Akhtar and Mrs. Kausar Sultana Hussain, JJ

STATE BANK OF PAKISTAN---Appellant

Versus

MOHAMMAD NAEEM and others---Respondents

High Court Appeals Nos. 226 of 2005 and 74 of 2006, decided on 30th March, 2019.

Banking Companies Ordinance (LVII of 1962)---

----S. 94---Public Debts Act (XVIII of 1944), S. 28---Law Reforms Ordinance (XII of 1972), S. 3---Limitation Act (IX of 1908), Arts. 60 & 71---US Dollar Bearer Certificate Rules, 1991, Rr. 3, 4, 5, 6, 7, 9, 12, 13 & 14---Notification SRO No. 140(I)/91 dated 25-02-1991---Dollar Bearer Certificate, encashment of---Reversal of payment---Duty of State Bank---Plaintiff purchased US dollar bearer certificate from open market and presented it to defendant Bank for encashment---Payment was transferred to plaintiff's account but same was reversed on directions of State Bank of Pakistan on grounds that Certificate was stolen and already encashed to a foreign Bank---Suit filed by plaintiff was decreed in its favour by Single Judge of High Court---Validity---Only ground due to which State Bank had refused to reimburse amount of certificate to defendant Bank for payment to plaintiff was that certificate was stolen instrument and had already been encashed---Prior to presentation of Certificate by plaintiff and its encashment by defendant Bank, State Bank had received information in writing regarding its loss/theft as well as request for stopping payment---State Bank did not notify or circulate such information to defendant Bank although it was required to do so---State Bank was duty bound under Public Debts Act, 1944 to notify loss/theft of Certificate to defendant Bank and also to hold summary inquiry in order to determine claim made in respect thereof---Compliance of such terms was not made by State Bank and FIR lodged by foreign Bank after 55 days of alleged incident was not in existence when certificate was presented by plaintiff or when it was encashed by defendant bank---Burden was on State Bank and defendant Bank to prove that certificate was lost/stolen or it had been encashed and its amount was reimbursed by State Bank prior to date when it was presented by plaintiff---Accepting certificate from plaintiff and encashing same after verification were done by defendant Bank in normal course of its business and within authority granted to it by principal/State Bank---Subsequent act of defendant Bank of reversing/debiting amount from plaintiff's account on ground that principal/State Bank had refused to reimburse amount to it was unjustified and arbitrary and it could not be condoned on ground that it was done by it as an agent on instructions of principal/State Bank---No material whatsoever was produced in evidence to show that State Bank had instructed defendant Bank to reverse/debit amount of certificate from plaintiff's account---Division Bench of High Court declined to interfere in judgment and decree passed by Single Judge of High Court as same was without any misreading or non-reading of evidence and had no illegality or infirmity---Intra-Court Appeal was dismissed in circumstances.

Angbats Aktiebolaget Bohuslanska Kusten Sweden and Bird & Co. Pakistan Ltd. Chittagong v. Central Hardware Stores, Chittagong PLD 1969 SC 463; Bombay Brass

Works Co. v. Pakistan and another PLD 1966 Kar. 340; Major (Retd.) Khawaja Muhammad Yousaf and others v. Zila Council and others 2007 SCMR 274; Abdul Abid v. Siddique Moti and another 2003 MLD 1993 and Mst. Ameer Begum through Special Attorney and others v. Abid Hussain (minor) and others PLD 2000 Lah. 284 ref.

Emad-ul-Hassan for Appellant (in High Court Appeal No. 226 of 2005).

Arshad M. Tayebally along with Ms. Heer Memon for Respondent No.1 (in High Court Appeal No. 226 of 2005).

Malik Ghulam Murtaza for Respondent No.2 (in High Court Appeal No. 226 of 2005).

Muneer Ahmed for Respondent No. 3 (in High Court Appeal No. 226 of 2005).

Malik Ghulam Murtaza for Appellant (in High Court Appeal No.74 of 2006).

Arshad M. Tayebally along with Ms. Heer Memon for Respondent No.1 (in High Court Appeal No. 74 of 2006).

Emad-ul-Hassan for Respondent No. 2 (in High Court Appeal No. 74 of 2006).

Dates of hearing: 23rd October, 30th November and 11th December, 2018.

JUDGMENT

NADEEM AKHTAR, J.---Through these appeals, the appellants have impugned the judgment delivered in Suit No.576/2003 by a learned single Judge of this Court on 06.07.2005 and the decree drawn on 18.07.2005 in pursuance thereof, whereby the said Suit filed by Mohammad Naeem, respondent No.1 in both appeals, for recovery of US $ 100,000.00 was decreed with markup thereon at the rate of 10% per annum from the date of filing of the Suit viz. 31.03.1998 till realization. As the impugned judgment is common in these appeals and the facts as well as questions of law are also common, both these appeals were heard together with the consent of the parties and are being disposed of by means this common judgment.

2. Relevant facts of the case, as pleaded in the plaint, are that respondent No.1 Mohammad Naeem ('the plaintiff'), who was engaged in the business of foreign currency and stock broker at the relevant time, purchased a U.S. Dollar Bearer Certificate bearing No.F-023255 of the face value of U.S. $ 100,000.00 ('the certificate') from open market; he presented the certificate for encashment on 20.04.1994 at Union Bank Limited, respondent No.2 in H.C.A. No.226/2005 and appellant in H.C.A. No.74/2006 ('the private bank'), where he was maintaining a Foreign Currency Account No.075912-091; after due verification, the certificate was encashed by the private bank by crediting the entire amount of U.S. $ 100,000.00 on 21.04.1994 in the above account of the plaintiff ; on 15.05.1994, the entry of U.S. $ 100,000.00 was reversed by the private bank from the plaintiff's account by debiting the said amount therefrom; it was claimed by the private bank that State Bank of Pakistan, appellant in H.C.A. No.226/2005 and respondent No.2 in H.C.A. No.74/2006 ('the State Bank'), had refused to reimburse the private bank with the amount of U.S. $ 100,000.00 against the value of the certificate deposited for encashment by the plaintiff, on the ground that the certificate was a stolen instrument and had already been encashed by Banque Indosuez; and, the plaintiff kept on

requesting the private bank for payment of the value of the certificate and a letter dated 20.10.1997 was also sent by him for this purpose which was replied to by the private bank vide letter dated 05.11.1997, but the payment was not made.

3. In the above background, Suit No.223/1998 was filed by the plaintiff in the Banking Court No.I at Karachi against Bank of America, the predecessor-in-interest of the private bank, for recovery of US $ 100,000.00 with markup thereon and for liquidated damages. Subsequently, the State Bank was joined in the above Suit as defendant No.2 and thereafter the name of the private bank was substituted as defendant No.1 in place of Bank of America. As the Banking Court did not have jurisdiction in cases wherein the State Bank was a party, the Suit was transferred to this Court under its original civil jurisdiction and was renumbered as Suit No.576/2003. The plaintiff had made the following prayer in his above Suit:

"(a) Judgment and decree against the Defendant No.1 of US $.100,000/= (One Hundred Thousand United States Dollars).

(b) In the event that this honourable Court concludes that the liability is that of Defendant No.2, then judgment and decree against Defendant No.2 in the sum of US $ 100,000/= (One Hundred Thousand United States Dollars).

(c) Mark-up/Profit on US $.100,000/= (One Hundred Thousand United States Dollars) from the date that the account of the Plaintiff was debited to the date of decree.

(c) Liquidated damages on the aforesaid amount.

(d) Costs.

(e) Any other or further relief."

4. In its written statement, it was pleaded by the private bank that there was no privity of contract between the plaintiff and the private bank; the private bank had acted only as an agent of the State Bank while accepting the certificate, therefore, the liability, if any, for its payment was that of the State Bank; reversal/debit entry of US $ 100,000.00 in the account of the plaintiff was lawful and justified; and, the plaintiff had accepted and acquiesced the same by issuing a cheque for the said amount. The State Bank had pleaded in its written statement that it received a letter dated 14.04.1994 from Banque Indosuez that the certificate had been stolen; through their above letter, Banque Indosuez requested the State Bank to stop the payment of the certificate which was done by the State Bank; the Suit was time barred; and, no cause of action had accrued to the plaintiff against the State Bank. In view of divergent pleadings of the parties, following issues were settled:

"1. Whether defendant No.1 is the agent of defendant No.2? If so, what is the effect?

2. Whether the defendant No.2 is liable to pay the suit amount?

3. Whether the account and dispute between the plaintiff and defendant No.1 was settled as alleged in paragraphs 9 and 13(v) of the written statement. If so, its effect on the suit?

4. Whether this court has jurisdiction to try and entertain the suit?

5. Whether the claim is barred by limitation?

6. Whether the suit is bad for non-joinder of parties?

7. What should the decree be?"

5. Evidence was led by the parties. The plaintiff examined himself and the private bank and State Bank examined their respective authorized representatives. The parties also produced several documents in support of their respective cases. After examining the evidence led by the parties and hearing them, the Suit of the plaintiff was decreed by the learned single Judge in the above terms.

6. Mr. Emad-ul-Hassan, learned counsel for the State Bank (appellant in H.C.A. No.226/2005 and respondent No.2 in H.C.A. No.74/2006), contended that the Suit was barred by limitation as the reversal/debit entry was made on 15.05.1994 in the account of the plaintiff, but the Suit was instituted by him on 31.03.1998. According to him the subject Suit was governed by Articles 60 and 71 of the Limitation Act, 1908. He contended that under Article 60, a Suit for money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable, can be filed within three years from the date when the demand is made; and, under Article 71, a Suit on a bill of exchange accepted payable at a particular place can be filed within three years from the date when the bill is presented at that place. He pointed out that the first letter dated 20.10.1997 issued by the plaintiff demanding the amount of the certificate was issued by him after expiration of the prescribed period of limitation. It was argued by him that the Suit against the State Bank was not maintainable as its impugned acts were protected under section 94 of the Banking Companies Ordinance, 1962; and, the Suit was also not maintainable in the absence of the Federal Government. Learned counsel referred to Rules 3, 4, 5, 6, 7, 9, 12, 13 and 14 of US Dollar Bearer Certificate Rules, 1991, ('the Rules') notified by the Federal Government vide SRO No.140(I)/91 dated 25.02.1991 in exercise of powers conferred to it by section 28 of the Public Debt Act, 1944 (XVII of 1944). The Rules have been reproduced in paragraph 29 of the impugned judgment. He particularly emphasized upon Rules 3 and 4 by contending that under these Rules the certificates were to be issued by authorized dealers in Pakistan viz. 'office of issue' and such other offices or agencies as may be notified by the Governor State Bank of Pakistan ; and, the certificates could be purchased by individuals, firms, institutions and bodies corporate from any office of issue without any limit. It was argued by him that in any event the plaintiff was not entitled to receive the amount of the certificate as the same was not purchased by him from the 'office of issue' or directly from the State Bank.

7. Malik Ghulam Murtaza, learned counsel for the private bank (appellant in H.C.A. No.74/2006 and respondent No.2 in H.C.A. No.226/2005), adopted the arguments advanced by learned counsel for the State Bank. In addition to this, he contended that the private bank had no privity of contract either with the plaintiff or with the State Bank as the private bank had acted only as an agent of the State Bank at the time of accepting the certificate and also when the amount thereof was first credited in the plaintiff's account and then when it was reversed/debited; the reversal/debit was made by the private bank only after receiving instructions to this effect from the State Bank; and, the private bank was not liable either to encash the certificate or to reimburse its value to the plaintiff. He further contended that evidence of the private bank in the above context had remained unchallenged and un-rebutted. In support of his submissions, he relied upon Angbats Aktiebolaget Bohuslanska

Kusten, Sweden, and Bird & Co. Pakistan Ltd., Chittagong v. Central Hardware Stores, Chittagong PLD 1969 SC 463 and Bombay Brass Works Co. v. Pakistan and another PLD 1966 Karachi 340.

8. Mr. Arshad M. Tayebally, learned counsel for the plaintiff (respondent No. 1 in both appeals), contended that witness of the private bank had admitted in his cross-examination that they had informed the plaintiff for the first time on 05.11.1997 vide their letter (exhibit DW-1/15) that the amount of the certificate was not reimbursed to them by the State Bank and due to this reason they had no option except for reversing the entry by debiting the amount of the certificate from his account. He submitted that this admission alone was sufficient to show that the plaintiff's Suit was within time. He further contended that the witness had also admitted in his cross-examination that the certificate presented by the plaintiff was in order in all respects and it was to be encashed on mere presentation. He also contended that the appellants' contention that the plaintiff was not entitled to receive the amount of the certificate as the same was not purchased by him from the office of issue or directly from the State Bank, is misconceived and contrary to Rules 5 and 7 of the Rules. By referring to the documents produced by the private bank and State Bank viz. correspondence exchanged by them regarding reimbursement of the amount of the certificate, and the deposition and cross-examination of their respective witnesses, he submitted that the evidence led by them did not support the stance taken by any of them ; and, in fact their evidence had supported the case of the plaintiff. It was urged by him that the appellants have not been able to point out any misreading or non-reading of evidence by the learned single Judge. In support of his submissions, learned counsel placed reliance upon Major (Retd.) Khawaja Muhammad Yousaf and others v. Zila Council and others 2007 SCMR 274, Abdul Abid v. Siddique Moti and another 2003 MLD 1993 and Mst. Ameer Begum through Special Attorney and others v. Abid Hussain (minor) and others PLD 2000 Lahore 284.

9. We have heard learned counsel for the parties at length and with their able assistance have also examined the material available on record and the law cited by them at the bar. The following admitted position has emerged from the pleadings of the parties, the evidence led by them and the submissions made on their behalf:

I. The certificate was presented in original by the plaintiff before the private bank on 20.04.1994 and it was encashed on 21.04.1994 when the entire amount thereof was credited by the private bank in his account.

II. The certificate presented by the plaintiff was genuine and in order in all respects and was to be encashed on mere presentation (admitted in his cross-examination by the witness of the private bank).

III. According to the Rules, the holder of the certificate was to be treated/deemed to be the owner thereof (admitted in his cross-examination by the witness of the State Bank).

IV. The entire amount of the certificate was reversed/debited by the private bank from the plaintiff's account on 15.05.1994.

V. No material whatsoever was produced in evidence either by the State Bank or by the private bank to show that the State Bank had instructed the private bank to reverse/debit the amount of the certificate from the plaintiff's account.

VI. State Bank had received letter dated 14.04.1994 from Banque Indosuez regarding alleged loss/theft of the certificate (admitted by the witness of State Bank in paragraphs 1 and 5 of his affidavit-in-evidence).

VII. Through their above letter dated 14.04.1994, Banque Indosuez had requested the State Bank to stop the payment of the certificate (admitted by the State Bank in paragraphs 3(IV) and 3(VI) of its written statement).

VIII. The information regarding alleged loss/theft of the certificate and request for stopping its payment was received by the State Bank from Banque Indosuez six (06) days prior to the presentation of the certificate by plaintiff with the private bank and seven (07) days prior to its encashment by the private bank.

IX. State Bank was required to inform its authorized dealers regarding loss/theft of the certificate and also for stopping its payment, but no such information/circular was received by the private bank between 14.04.1994 to 20.04.1994 (admitted by the witness of the private bank in his cross-examination).

X. The private bank had issued several letters to the State Bank requesting for reimbursement of the amount of the certificate, and vide letters dated 19.05.1994 (exhibit D/W-1/10), 25.08.1994 (exhibit D/W-1/6) and 06.11.1994 (exhibit D/W-1/4) the State Bank had informed the private bank that the matter was under consideration with its Securities Department, Central Directorate, whose decision was awaited.

XI. No such decision was produced in evidence and the matter was kept pending by the State Bank for three years (admitted in his cross-examination by the witness of the private bank).

XII. Vide letter dated 24.01.1995 (exhibit D/W-1/3), the State Bank had informed the private bank that its claim will be considered by the State Bank on receipt of a decision from the Court of law. However, no decision from any Court of law was produced in evidence or even pleaded either by the State Bank or by the private bank.

XIII. FIR (exhibit D/2) in respect of alleged loss/theft of the certificate on 13.04.1994 was lodged by Banque Indosuez on 07.06.1994 i.e. after 55 days of the alleged incident, after 48 days of presentation of the certificate by the plaintiff and after 47 days of its encashment by the private bank. No FIR was lodged prior to 07.06.1994 either by Banque Indosuez or by the State Bank.

XIV. The investigation officer and/or complainant of the above case/FIR were not examined either by the State Bank or by the private bank nor was the final order/conclusion of the said case produced in evidence or even disclosed by them at the time of trial or in this appeal. Thus, the fate of the case i.e. whether the allegedly lost/stolen certificate was recovered or not, never came on record and is still a mystery.

XV. It was claimed both by the State Bank and the private bank that the State Bank had declined to reimburse the private bank as the certificate had already been encashed by Banque Indosuez. However, no document whatsoever was

produced in evidence by the State Bank and/or the private bank in support of the above contention nor did they examine any witness from Banque Indosuez.

XVI. In addition to the above, relevant details such as the date of encashment by Banque Indosuez, name of the holder/bearer of the certificate, and the date when the amount was reimbursed by the State Bank to Banque Indosuez, were not disclosed in their pleadings and/or evidence either by the State Bank or by the private bank and as such the same never came on record.

XVII. Even the original certificate, which was encashed both according to the State Bank and the private bank and which ought to have been with the State Bank after encashment, was never produced in evidence.

XVIII. The State Bank had relied upon the report (exhibit D/3) of an expert/chemical examiner to show that the certificate had some signs of eradication of rubber stamp. However, the said expert was not examined by the State Bank to prove the contents of the said report.

XIX. It was not the case of either the State Bank or the private bank that the certificate presented by the plaintiff was fake, counterfeit or duplicate. In fact, it was genuine as admitted by the witness of the private bank. Thus, either the certificate presented by the plaintiff was never lost or stolen or it must have been recovered before presentation by the plaintiff.

XX. The plaintiff was informed for the first time on 05.11.1997 by the private bank vide their letter (exhibit DW-1/15) that the State Bank had refused to reimburse the amount of the certificate to them and due to this reason the said amount was reversed/debited from the plaintiff's account (admitted in his cross-examination by the witness of the private bank).

10. It would be seen that the only ground due to which the State Bank had refused to reimburse the amount of the certificate to the private bank for payment to the plaintiff was that the certificate was a stolen instrument and Banque Indosuez had already encashed the same. In this context, it may be noted that prior to the presentation of the certificate by the plaintiff and its encashment by the private bank, the State Bank had admittedly received information in writing from Banque Indosuez regarding its loss/theft as well as request for stopping its payment, and yet the State Bank did not notify or circulate such important information to the private bank although it was required to do so as per the private bank's witness. Under the Public Debt Act, 1944, and the Rules framed thereunder, it was the statutory duty of the State Bank to notify loss/theft of the certificate to the private bank and also to hold a summary inquiry in order to determine the claim made in respect thereof. Admittedly compliance in the above terms was not made by the State Bank. It is also to be noted that the FIR lodged by Banque Indosuez after 55 days of the alleged incident was not in existence when the certificate was presented by the plaintiff or when it was encashed by the private bank. The burden was on the State Bank and the private bank to prove that the certificate was lost/stolen or it had been encashed and its amount was reimbursed by the State Bank prior to 20.04.1994 when it was presented by the plaintiff. The record and particularly the admitted position discussed in paragraph 9 above show that they had completely failed in proving any of the above because (a) the investigation officer and/or complainant of the alleged case/FIR were not examined either by the State Bank or by the private bank; (b) the final

order/conclusion of the said case was not produced in evidence or even disclosed by them at the time of trial or in this appeal; (c) the fate of the case i.e. whether the allegedly lost/stolen certificate was recovered or not, never came on record; (d) relevant details regarding the date of encashment by Banque Indosuez, name of the holder/bearer of the certificate, and the date when the amount was reimbursed by the State Bank to Banque Indosuez, were not disclosed in their pleadings and/or evidence and as such the same never came on record; (e) the expert/chemical examiner was not examined to prove the allegation of signs of eradication on the certificate; and, (f) the original certificate, which was encashed both according to the State Bank and the private bank and which ought to have been with the State Bank after encashment, was never produced in evidence.

11. It is important to note that despite asserting that the certificate was a stolen instrument and Banque Indosuez had already encashed the same, it was never pleaded or claimed by the State Bank that it had reimbursed the amount of the certificate to Banque Indosuez. Admittedly the State Bank alone was obliged to reimburse the amount of the certificate only once, therefore, the burden was squarely upon the State Bank to prove that the certificate had been encashed and the amount thereof was actually reimbursed by the State Bank to Banque Indosuez. However, the State Bank failed in discharging such burden as discussed in the preceding paragraph which clearly means that the State Bank never parted with the amount of the certificate.

12. The contention of the private bank that it was not liable to pay the amount of the certificate as it acted merely as an agent of the State Bank, cannot be accepted. It is an admitted position that when the certificate was accepted by the private bank from the plaintiff and also when it was encashed by the private bank, the private bank had not received any instructions from the State Bank regarding loss/theft of the certificate or for stopping its payment. Therefore, the certificate was rightly accepted and encashed by the private bank in the normal course of its business and under the State Bank's authority as per the Rules and prevailing instructions of the State Bank. The situation would have been completely opposite had the private bank refused to encash the certificate on its very presentation by the plaintiff on the ground that it had received instructions from its principal/State Bank to not encash the certificate as it was a stolen instrument. However, this was not the case. The private bank not only accepted the certificate from the plaintiff on 20.04.1994, but also encashed the same by crediting the entire amount thereof in the plaintiff's bank account on 21.04.1994 as per the Rules and prescribed procedure notified by the State Bank. Needless to say the private bank, like a prudent banker and agent, must have verified the genuineness and authenticity of the certificate in the normal course of its business and after due diligence must have found that the certificate was original, genuine and in order in all respects, as admitted by its own witness. The verification process undertaken by the private bank took one full day as the amount was credited in the plaintiff's account on next day.

13. We are of the considered view that the above acts viz. accepting the certificate from the plaintiff and encashing the same after verification, were done by the private bank in the normal course of its business and within the authority granted to it by the principal/State Bank; however, the subsequent act of the private bank of reversing/debiting the amount from the plaintiff's account on the ground that the principal/State Bank had refused to reimburse the amount to it, was unjustified and

arbitrary and it could not be condoned on the ground that it was done by it as an agent on the instructions of the principal/State Bank. It is significant to note that no material whatsoever was produced in evidence to show that the State Bank had instructed the private bank to reverse/debit the amount of the certificate from the plaintiff's account. This fact alone is sufficient to show that the act of reversing/debiting the amount was done by the private bank on its own and without any authority or instructions from the State Bank. It further shows that such act was committed by the private bank in order to save itself from losing the amount as by that time the State Bank had refused to reimburse the amount to the private bank. Such act on the part of the private bank was unjustified and illegal also on the ground that the question of reimbursement of the amount was a matter between the private bank and the State Bank, and if the State Bank had refused to reimburse the amount, the private bank ought to have sought its remedy against the State Bank in accordance with law. In any event, such dispute had no concern whatsoever with the plaintiff who was a bona fide holder/bearer of the certificate.

14. With regard to the objection that the Suit of the plaintiff was barred by time it may be noted that it is an admitted position that the plaintiff was informed for the first time on 05.11.1997 by the private bank vide its letter (exhibit DW-1/15) that the State Bank had refused to reimburse the amount of the certificate and due to this reason the said amount was reversed/debited from his account (admitted in his cross-examination by the witness of the private bank). It is also an admitted position that prior to the above mentioned date, correspondence viz. letters dated 19.05.1994 (exhibit D/W-1/10), 25.08.1994 (exhibit D/W.1/6), 06.11.1994 (exhibit D/W-1/4) and 24.01.1995 (exhibit D/W-1/3) was being exchanged by the private bank and the State Bank and on all such occasions the State Bank had informed the private bank that the matter was under consideration with its Securities Department, Central Directorate, whose decision was awaited, or its claim will be considered by the State Bank on receipt of a decision from the Court of law; and in view of the above, the plaintiff's claim was kept pending by the private bank as well as by the State Bank during this entire period and finally the plaintiff was informed on 05.11.1997 by the private bank vide exhibit DW-1/15 that the State Bank had refused to reimburse the amount. Thus, this objection has no force and it was rightly rejected by the learned single Judge.

15. Perusal of the impugned judgment shows that all the above aspects of the case were thoroughly examined, appreciated and discussed therein by the learned single Judge, and the same is based on proper appreciation of the material available on record, proper application of law and sound and convincing reasoning. Learned counsel for the State Bank and the private bank have not been able to point out any misreading or non-reading of evidence in the impugned judgment and/or any illegality or infirmity therein. In the above circumstances, we are of the considered view that the impugned judgment and decree do not call for any interference by this Court. Accordingly, both these appeals must fail.

Foregoing are the reasons of the short order announced by us on 11.12.2018 whereby both these appeals were dismissed with no order as to costs.

MH/S-48/Sindh Appeals dismissed.

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