

PLD 2023 Sindh 187**Before Ahmed Ali M. Shaikh C.J. and Yousuf Ali Sayeed, J****GHULAM ASGHAR PATHAN and others---Petitioners****Versus****FEDERATION OF PAKISTAN and others---Respondents**

Constitutional Petitions Nos. D-5913 of 2018 and **D-1222 of 2021**, decided on 20th February, 2023.

(a) Sindh Civil Courts Ordinance (II of 1962)---

----S. 7---Original jurisdiction of the court of District Judge---Original jurisdiction of High Court ---Scope---Commercial cases---Petitioners argued that S. 7 of the Sindh Civil Courts Ordinance, 1962, concentrated cases which should be heard in the ordinary courts of civil judicature under the aegis of District Judge, instead of the High Court---Petitioners claimed that limiting the pecuniary jurisdiction of District Courts in Karachi District was discriminatory, as such jurisdiction was unlimited in all other districts and throughout the country---Held, that while preserving the jurisdiction for commercial disputes was important, the singular basis of a pecuniary threshold was unworkable, as it lead to an overwhelming number of non-commercial cases inundating the forum and delaying the resolution of commercial disputes---Most of the pending civil cases in the High Court are of a non-commercial nature and they could have been handled at the district level, creating an unnecessary bottleneck on the original side and constricting the smooth passage of cases---Establishment of commercial courts, similar to those established in Punjab by the Lahore High Court, can provide a solution to this problem, especially given Karachi's status as a center of commerce and the economic engine of the country---Provincial Government was directed to consider taking remedial action, including tabling an amendment to S. 7 and related provisions of the Sindh Civil Courts Ordinance, 1962 (the 'Ordinance')---Amendment can either eliminate the exception to the jurisdiction of the District Judge in Karachi district or limit it to encompass only those civil suits and proceedings that fall above the prescribed pecuniary threshold and involve commercial disputes.

Province of Sindh v. Haji Razzaq and others PLD 2017 SC 207 and Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan 2018 SCMR 1444 rel.

(b) Constitution of Pakistan---

----Art.37---Promotion of social justice and eradication of social evils---Scope---Speedy justice is not about rushing the disposal of cases to clear the backlog in courts---Rather, it refers to delivering justice fairly and promptly by following due process of law---Effective dispensation of justice plays a crucial role in creating an environment conducive to a country's development, and the importance of this cannot be overstated---However, prolonged delays in dispensing justice can erode people's faith in the system and courts bogged down by an uncontrollable number of cases and delays cannot fulfill their true purpose---It is a common misconception that judges are solely responsible for addressing delays in the justice system---In reality, it is the responsibility of the State, specifically the Provincial Government, as outlined in Art. 37(d) under Part II of Chap. 2 of the Constitution---Primary objective of the justice

system is to dispense justice effectively in accordance with the law and the litigants are the real stakeholders in this process---Therefore, it is essential to address any systemic failures practically rather than just rhetorically to ensure an administratively capable system.

Attorney-General v. Times Newspapers Ltd. (1973) 3 All ER 54; Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corp. (1981) 1 All ER 289 and Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.R/s. and another PLD 2022 SC 99 rel.

Petitioner No.1 in person (in C.P. No. D-5913 of 2018).

Petitioner in person (in C.P. No. D-1222 of 2021).

Fahim Zia and Raja Muhammad, Members, Sindh Bar Council, Muhammad Saleem Mangrio and Aamir Nawaz Warraich, President and General Secretary, Sindh High Court Bar Association, Amir Saleem, President Karachi Bar Association, Abdul Hafeez Balouch, General Secretary, Malir Bar Association for Respondents.

Kazi Abdul Hameed Siddiqui, D.A.G. and Mubashir Mirza, Asstt. A.G. for Respondents.

Hassan Akbar, Advocate General, Sindh assisted by Muhammad Jawad Dero, Addl. A.G. Sindh, Saifullah and Saima Imdad Mangi, Asstt. Advocates General, Sindh, along with Abdul Sattar Pathan; Nadeem Ahmed Qureshi, Law Officers, Law Department, Government of Sindh and Dr. Liaquat Ali Abro, Consultant Law to Chief Secretary, Government of Sindh.

Khawaja Shams-ul-Islam, Muhammad Ali Lakhani, Ali Murad Gulzar, Taimoor Ali Mirza, Mujtaba Sohail Raja and Aijaz Ahmed and Arif Mustafa Jatoi, Member of the Provincial Assembly of Sindh, Interveners.

Dates of hearing: 8th, 16th and 20th February, 2023.

ORDER

YOUSUF ALI SAYEED, J.---The fictional case of Jarndyce v. Jarndyce, depicted by Charles Dickens as a probate matter languishing endlessly across generations before the Court of Chancery, is often quoted to emphasise the seemingly interminable nature of legal proceedings in a judicial system afflicted by procedural delays.

2. That case is introduced in the very first chapter of the aptly titled novel 'Bleak House' as an internecine dispute that has, over the years, destroyed the lives and happiness of most members of the family involved, as they come to be consumed with pursuing their claims in anticipation of the long-awaited judgement. The relevant passage reads thus:

"Jarndyce and Jarndyce drones on. This scarecrow of a suit has, over the course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old

people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out."

3. The proper administration of justice is well recognised as being vital to the social order, and it has long been a concern of civilized societies to find ways and means of identifying and removing defects and deficiencies as are the cause of a backlog in the judicial system.

4. The cause(s) of a backlog and delay may often be diverse and profound, including factors outside the courts. What if, for example, an excessive and unsustainable number of cases were to be channelised before a particular forum by virtue of the nature and parameters by which the jurisdiction of that Court is controlled?

5. Per the Petitioners, such a factor afflicts the original jurisdiction exercised by this Court in terms of Section 7 of the Sindh Civil Courts Ordinance, 1962 (the "Ordinance"), as it places a pecuniary limit on the original jurisdiction of the Court of the District Judge in civil suits and proceedings in the District of Karachi and provides that original jurisdiction in like matters of a greater value be exercised by the High Court. As such, whereas the original jurisdiction of the District Judge in civil suits and proceedings in all other districts is without any limit on account of value, in Karachi District an exception stands carved out whereby such jurisdiction in matters falling above the pecuniary threshold prescribed from time to time has been conferred upon this Court and is exercised at the Principal Seat on what is termed the Original Side.

6. For the record, at the time that the Petitions were filed, subject to the amendments made from time to time so as to enhance the pecuniary threshold, Section 7 of the Ordinance, as it then stood, provided as follows:

"7. Original jurisdiction of the Court of District Judge.

Subject to this Ordinance or any law for the time being in force, the original jurisdiction of the Court of the District Judge in civil suits and proceedings shall be without limit of the value whereof excepting in the Karachi Districts where the original jurisdiction in civil suits and proceedings of the value exceeding fifteen million [15 million] rupees shall be exercised by the High Court.

Provided that nothing contained hereinabove shall affect any suit or proceedings pending in the High Court prior to the commencement of Sindh Civil Courts (Amendment) Act, 2010 and all such suits and proceedings shall continue to be tried and decided by the High Court."

7. The pecuniary limit set upon the advent of the Ordinance had apparently been Rs.25,000/-, but was enhanced to Rs.50,000/- in the year 1971 and to Rs.100,000/- in 1981. Thereafter, the same was again raised to Rs.500,000/- vide the Sindh Civil

Courts (Amendment) Act, 1991, and then to Rs.3 million vide the Sindh Civil Courts (Amendment) Ordinance 2002. That is where it stood until amended vide the Sindh Civil Courts (Amendment) Act 2010, as aforementioned. Subsequently, through the Sindh Civil Courts (Amendment) Act 2021, the pecuniary limit has been further enhanced to Rs.65,000,000/-, which is where it presently stands.

8. The case advanced by the Petitioners is that cases that ought to otherwise be dispersed across the ordinary Courts of civil judicature falling under the aegis of the District Judge are instead concentrated before this Court by operation of Section 7, with the spectre of Jarndyce thus being raised so as to loom large and cast a shadow over those proceedings. They contend that curtailment of the pecuniary jurisdiction of the Courts of the District Judge in Karachi District is discriminatory, as such jurisdiction is otherwise unlimited across all other districts of the province and in fact throughout the length and breadth of the country as a whole.

9. Additionally, it was argued that the manner in which the jurisdiction of the courts to hear civil suits and proceedings in Karachi District has been structured is irrational as it promotes the concentration of cases before this Court, resulting in undue pendency and delay. It was also submitted that the procedure adopted by this

Court for purposes of the trial in such matters routinely entails the appointment of a legal practitioner as a commissioner for recording the evidence, whereas evidence at the district level is recorded by the Court itself. It was argued that the practices adopted by the Court undermines the evidentiary exercise, as the rules of evidence are not properly adhered to due to the informal atmosphere prevalent during

the course of proceedings conducted before a commissioner. Furthermore, the capacity of the Court to appraise the evidence is diminished as the Court is not in a position to appreciate the demeanour of the witnesses.

10. As it transpires, for their part, the Sindh Bar Council (the "SBC") as well as the concerned Bar Associations, namely the Sindh High Court Bar Association (the "SHCBA"), the Karachi Bar Association and the Malir Bar Association all unequivocally supported the conferment of unlimited pecuniary jurisdiction upon the District Courts at Karachi. The office bearers and representatives of the Bar Associations in attendance invited attention to the respective Resolutions passed in that regard, with the President and General Secretary of the SHCBA going on to state that the envisaged initiative was a necessary measure in view of the ever-mounting pendency of suits on the Original Side, and that the bulk of the vast corpus of suits that come up before this Court by virtue of Section 7 could be more effectively dealt with at the district level.

11. For purpose of ready reference, it would be expedient to reproduce the relevant excerpt from the para-wise comments of the SBC as well as the resolutions passed by the respective Bar Associations reflecting their stance, which read as follows:

Comments of the SBC

"9. That the contents of remaining Para(s) of the Petition are admitted and Sindh Bar Council supports the Petition since under Article 10-A of the Constitution of Islamic Republic of Pakistan, the civil and political rights needs that the pecuniary jurisdiction of the Civil Courts be extended, so that the citizen

advocates of Sindh will enable to avail the opportunity of unlimited pecuniary jurisdiction. The Sindh Bar Council has no objection for grant of the Petition."

"KARACHI BAR ASSOCIATION

Statement

I, Amir Saleem son of Muhammad Saleem, President, Karachi Bar Association do hereby submit and state on behalf of Karachi Bar Association (Respondent No.5) as under:

That the stand of Karachi Bar Association is clear on the

point of unlimited pecuniary jurisdiction of civil courts at Karachi as there should not be any discrimination among the civil courts of Karachi and civil courts of remaining areas of Pakistan.

That the Karachi Bar Association has no objection for giving unlimited pecuniary jurisdiction to the civil courts in Karachi, as like other civil courts in Pakistan.

Karachi Bar Association prays that Government of Sindh and the other authorities concerned may kindly be directed to make amendment in the relevant provisions of law in order to give unlimited pecuniary jurisdiction to Civil Courts at Karachi.

(Amir Saleem)

Advocate Supreme Court

President Karachi Bar Association"

"MALIR BAR ASSOCIATION Date.18.02.2023

RESOLUTION

An emergent meeting of Executive Committee of this Bar Association was held on Saturday dated 18.02.2023, which was presided by the President Mr. Rao Zahid Ali on the agenda of unlimited pecuniary jurisdiction of Civil Courts at Karachi.

The Executive Committee discuss and deliberate their views on the agenda mentioned above and unanimously resolved the issue that this Bar Association is clear on the point of unlimited pecuniary jurisdiction of Civil Courts at Karachi as there should not be any discrimination among the civil courts of Karachi and civil Courts of remaining areas of Pakistan, this Bar Association stand and support the concept of equity and uniform policy. Therefore, this Bar Association in the C.P No. D-5913 /2018 has no objection for giving unlimited

pecuniary jurisdiction to the civil courts of Karachi, like other civil courts throughout Pakistan in the constitutional Petition.

Abdul Hafeez Baloch
General Secretary
Malir Bar Association"

"SINDH HIGH COURT BAR ASSOCIATION

February 9, 2023

Resolution

An emergent Meeting of the Committee was held on 9th February, 2023 which was presided by Mr. Muhammad Saleem Mangrio (President):

After long discussion and detailed deliberations, it was resolved as under:

"Member of the Managing Committee unanimously resolved in favour of unlimited original jurisdiction of Civil Courts within the territorial jurisdiction of Karachi. Further resolved that Mr. Muhammad Saleem Mangrio (President) and Mr. Amir Nawaz Warraich (Honorary Secretary) are fully authorized to appear and proceed with C.P. No. D-5913 of 2018 and C.P. No. 1222 of 2021".

12. The learned DAG submitted that the subject of the Petitions did not concern the Federation and invited attention to the para-wise reply submitted on behalf of Federal Ministry of Law and Justice, disavowing any connection with the matter and it being stated that the issue involved relates to the Provincial Government and Departments. However, he too echoed the call of the SBC and the respective Bar Associations for the jurisdiction of the District Court at Karachi to be without a pecuniary limit.

13. Mr. Arif Mustafa Jatoi, an elected member of the Provincial Assembly of Sindh, came forward in the matter as an Intervener through an Application under Order I, Rule 10, C.P.C., submitting that a Bill had already been presented by him in the Assembly for amending Section 7 of the Ordinance so as to omit the exception carved out in respect of Karachi District and confer unlimited pecuniary jurisdiction on the Court of the District Judge.

14. In a different vein, certain advocates practicing before this Court at the Principal Seat also sought to join the fray through Applications under Order I, Rule 10 C.P.C. so as to oppose the Petitions notwithstanding the stance of the SBC and the Bar Associations, with it essentially being submitted by them with reference to various judgments of the Honourable Supreme Court and of this Court that the origins of the Original Side could be traced back to the Sindh Courts Act 1926, and with it being argued that Section 7 of the Ordinance was neither discriminatory nor otherwise ultra vires the Constitution, hence was not amenable to being struck down. They submitted that despite the mounting pendency and backlog of cases on the Original Side, the jurisdiction conferred in terms Section 7 ought to be preserved. They contended that the capacity of the Court could be enhanced by increasing the sanctioned strength of Judges and by drawing on support from judicial officers from the ranks of the lower judiciary to perform a supporting role in such areas as the recording of evidence. However, despite repeated queries being posed to those Interveners as to the historic rationale for the exceptional jurisdiction of this Court at the Principal Seat having been carved out and the reason why that jurisdiction to the extent of Section 7 of the

Ordinance ought to be preserved, no explanation was forthcoming from their side on either score.

15. On the other hand, upon taking to the rostrum, the learned Advocate General sought to shed light on that aspect, submitting that the exception in respect of the District of Karachi had been necessitated by the fact that Karachi was always a port city and historically a hub of commerce, where commercial disputes involving intricate points of law would arise for determination. Hence it was felt that an original jurisdiction in respect of civil suits and proceedings ought to be conferred on the High Court to cater to such matters.

16. Furthermore, whilst arguing that the Petition was misconceived and not maintainable, he conceded that the Original Side was inundated with litigation of a non-commercial nature by virtue of the purely pecuniary nature of the jurisdiction conferred in terms of Section 7 of the Ordinance, which could be more effectively dealt with by the ordinary civil courts, and that the channelisation of

such cases before this Court undermined the effective adjudication of commercial disputes.

17. We have considered the arguments advanced in the matter, and also called for the historic data regarding the cases pending on the Original Side.

18. The background of the original civil jurisdiction exercised by this Court, dating back to the Sindh Courts Act, 1926, has already been exhaustively delineated in several judgments, including that rendered by a learned five-member bench of the Apex Court in the case reported as Province of Sindh v. Haji Razzaq and others PLD 2017 SC 207, and it is unnecessary to burden the record with a reproduction of the narrative recorded in that regard.

19. Turning firstly to the argument advanced on the touchstone of discrimination, it merits consideration that the same stands answered though the judgment of the Honourable Supreme Court in the case reported as Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan 2018 SCMR 1444, where it was held *inter alia* that "allowing such special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution".

20. However, when the further arguments of the Petitioners as to the undue concentration of cases before this Court is considered in light of the data gathered regarding the pendency of suits on the Original Side over the past two decades, the picture that emerges serves as a telling indictment of the scheme of Section 7 of the Ordinance, reflecting that the number of matters has invariably kept increasing from year to year despite the periodic enhancement of the pecuniary threshold.

21. The year-wise data of pendency arising from by virtue of Section 7 of the Ordinance from August 2002 to January 2023, including related High Court Appeals but excluding matters that otherwise originate under various special laws, such as company petitions and suits relating to admiralty, banking, etc., is as follows:

JUDICIAL YEAR (ending 31st August)	SUITS	SMAs	HIGH COURT APPEALS	TOTAL
PENDENCY BEFORE AMENDMENT				

2002	7969	377	8346	
AMENDMENT MADE ON 18.09.2002 (JURISDICTION ENHANCED FROM RUPEES 5 LAC TO 3 MILLION)				
2003	8811	337	Data Unavailable	9148
2004	9504	284	"	9788
2005	10434	268	"	10702
2006	10808	239	"	11047
2007	11400	287	"	11687
2008	12352	276	"	12628
2009	12994	286	"	13280
2010	14030	363	552	14945
AMENDMENT MADE ON 02.03.2011 (JURISDICTION ENHANCED FROM RUPEES 3 MILLION TO 15 MILLION)				
2011	14788	425	551	15764
2012	15826	469	566	16861
2013	12634	213	521	13868
2014	13655	225	609	14489
2015	13878	232	802	14912
2016	17412	249	932	18593
2017	17703	309	1269	19281
2018	17908	364	1205	19477
2019	17514	380	1448	19342
2020	18162	434	1462	20058
2021	19602	656	1453	21711
AMENDMENT MADE ON 28.12.2021 (JURISDICTION ENHANCED FROM RUPEES 15 MILLION TO 65 MILLION)				
2022	21266	360	1407	23033
JANUARY 2023	21715	307	1450	23472

Note: The pendency in 2013 in Civil Suits decreased for the reason that many cases that were shown as pending on the previous Management Information System were found to have been disposed of on physical verification.

22. The data reflects that in the month of August 2002, at the end of the judicial year 2002 and just prior to the pecuniary limit being enhanced from Rs. 5 lac to Rs.3 million, a total number of 7969 Suits were thus pending on the Original Side and that despite such enhancement, the figure continued to rise from year to year so as to reach a total of 14030 by the end of judicial year 2010, when the pecuniary limit was again enhanced from Rs. 3 million to 15 million.

23. That too apparently did nothing to stem the flow of cases, for by June 2021, the pendency had risen to 19602 suits. Despite the amendment made in that year to enhance the pecuniary limit from 15 million to 65 million, the pendency continues to rise and 21266 suits were pending at the end of the judicial year 2022, with the figure

rising to 21715 as of January 2023. The effect is also then felt on the Appellate Side, through the pendency of a large number of High Court Appeals.

24. Such pendency is scarcely surprising when one considers the immense population of Karachi and its rate of growth. Moreover, the available data clearly reflects that the rate of institution of Suits before this Court on the Original Side has continued to rise notwithstanding the pecuniary enhancements from time to time. That, coupled with the fact that the sanctioned strength of this Court (which was 28 in the year 2002 and even now is only 40) permits at best 5 to 6 Judges to be assigned to the Original Side at any given point in time, resulting in a continued backlog. If one were to compute the average pendency on that basis, the figure runs into the thousands, with the life of a suit on the Original Side often being well over a decade.

25. Furthermore, those suits that are of a commercial nature are often overwhelmed by the preponderance of matters of an ordinary civil nature, whether in the nature of suits for administration, partition, specific performance or related matters for cancellation of sale agreements, etc. A jurisdiction based solely on a pecuniary threshold is unworkable, as has proven so over time. Such a singular basis allows for the forum to be inundated with all species of litigation, rendering it so awash with cases as to drown out the commercial matters that were perhaps the reason for its creation. The majority of the pending civil cases are thus non-commercial and of a nature where the issues arising for determination are routinely dealt with by the Courts at the district level. Such cases nonetheless originate in this Court by virtue of Section 7 of the Ordinance only on account of the value of the claim in such strength of numbers as to clog the dispensation of justice.

26. By contrast, there are only 14202 First Class Suits pending before the District Courts of Karachi as on 07.02.2023, with the total number of such Courts being 63 and the average pendency per Judge being 225. On average, the life of a suit in those Courts is 682 days.

27. Thus, it is apparent from the data available that the present scheme of Section 7 of the Ordinance creates an unnecessary bottleneck on the Original Side, constricting the smooth passage of cases and suffocating the expeditious dispensation of justice.

28. The issue of 'speedy justice' has long been talked about, but before dealing with the possible solutions, it is necessary to understand what is meant by that term. Speedy justice does not refer to the disposal of cases hurriedly in an attempt to get rid of the massive backlog in courts. Instead, the term denotes justice being served fairly and timely by following the due process of law. The role that the effective dispensation of justice can play in creating an enabling environment for the development of a country should never be underestimated. However, inordinate delay in imparting justice in the long term leads to an erosion in the faith of people, and courts mired in an uncontrolled stream of cases, their proceedings thus marred by delay, cannot properly serve their true purpose. While the Judges of this Court would of course continue to strive tirelessly to perform their judicial function as is best possible, irrespective of the scope and magnitude of the jurisdiction conferred, it is a misconception that judges are solely responsible to address the issue of delays. In our view, properly speaking, the matter requires immediate attention on the part of the State, in this case the Provincial Government, in accordance with its obligation in terms of Article 37(d) under Part II of Chapter 2 of the Constitution. After all, it must

be borne in mind that the wheels of justice serve and turn for only one purpose - the effective dispensation of justice in accordance with law, and that the real stakeholders of the system at the end of the day are the litigants, with it being imperative that the wheel be purged of rust for their benefit. As such, if there is a systemic failure, the same needs to be addressed through ways that are practical and not simply rhetorical, so as to ensure a system that is administratively capable at the end of the day.

29. In the words of Lord Diplock in *Attorney-General v. Times Newspapers Ltd.* (1973) 3 All ER 54:

"In any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another...."

"The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely on obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based on those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of law, they should be able to rely on there being no usurpation by any other person of the function of that court to decide it according to law."

30. Later, in *Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corp.* (1981) 1 All ER 289, he expressed very similar sentiments in observing that:

"Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory."

31. Similarly, in the case reported as *Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.R/s. and another* PLD 2022 SC 99, it was observed by the Honourable Supreme Court that:

"The law must not become stagnant or archaic while society moves forward. It must be accessible, intelligible and must change with the times responding to the realism of modern day life which requires transfiguration of new ways and means and invention of up to date mechanisms for the purpose of providing

access to justice with the aim to cut down the volume of litigation and pendency of cases."

32. Indeed, the arguments from virtually all quarters recognize that the present structure of the jurisdiction conferred in respect of Karachi District on this Court in terms of Section 7 presents a perennial problem, with the SBC and Bar Associations have shown great sagacity while expressing their desire for such jurisdiction to be vested wholly and solely in the District Court. Needless to say, it would be far

easier and more desirable to build capacity at the level of the district judiciary to cater to the cases that properly fall to be determined by those Courts.

33. Be that as it may, whilst appreciating the selfless approach of the SBC and Bar Associations, in light of the historic rational for such jurisdiction to have vested in this Court, as eruditely explained by the learned Advocate General, and the rich history marking the exercise of civil jurisdiction by the Single Benches of this Court at the Principal Seat on the Original Side, as noted in the case of Searle IV Solution (Supra), we are of the view that there is still a genuine purpose to be served by preserving such a jurisdiction to the extent of suits involving commercial disputes.

34. The need for such commercial courts has long since been recognised, with it being observed in Report No.38 prepared by the Law and Justice Commission of Pakistan at the time of enhancement of the pecuniary limit from Rs. 5 lac to Rs. 3 million as far back as the year 2002 as follows:

"The original jurisdiction of the High Court of Sindh for the Karachi district has been constantly considered to be abolished by the Federal/ Provincial Governments/ Legislatures through the Karachi Courts Ordinance 1955, the Sindh Laws (Adaptation, Revision, Repeal and Declaration) Ordinance 1955 and the proviso to Article 5 of the W.P. High Court (Establishment Order) 1955. The Pakistan Bar Council has also not been in favour of conferring such jurisdiction upon the High Court of Sindh. The Attorney General for Pakistan has stated in the High Court of Sindh that the Pakistan

Bar Council had expressed strong views on the subject of the original jurisdiction of the High Court of Sindh. The Advocate General Sindh also made a statement that the Karachi Bar Association has passed a resolution supporting the increase of the jurisdiction of the District Courts. (PLD 1981 Kar. 210).

The Law Reform Commission (1958-59) headed by Mr. Justice S. A. Rehman recommended conferring of unlimited pecuniary jurisdiction upon the Civil Judge 1st Class at Karachi and for commercial cases specially trained commercial civil judges be posted at Karachi. The recommendation of the Commission reads.-

At present the original jurisdiction to try civil cases is possessed by the Karachi Bench of the West Pakistan High Court only, in cases of valuation, exceeding Rs. 25,000. This is a legacy from the days of the Sindh Chief Court and the reason advanced for retaining this arrangement is that important commercial cases, involving foreign firms functioning in Karachi, are required to be handled at the level of the High Court by experienced Judges who would inspire confidence in the foreign business community. Eventually, however, such commercial cases should also be tried, in our opinion, by specially trained

commercial Civil Judges to be posted at Karachi, Chittagong, or any other developed part, area or commercial center of importance.

The Law Reform Commission (1967-70) headed by Justice Hamood-ur-Rehman also recommended that commercial courts presided over by specially trained senior judicial officers should be set up at Karachi, Lahore, Multan, Fasialabad and Hyderabad. The recommendation of the Commission reads as under:

Commerce and trade including international trade are fast developing in this country. With the progressive increase in commerce and trade, disputes arising therefrom are also on the increase. The Commission, therefore, recommends that Commercial Courts presided over by specially trained senior judicial officers should be set up in important cities like Dacca, Narayanganj, Chittagong and Khulna in East Pakistan and Karachi, Lahore, Multan, Lyallpur and Hyderabad in West Pakistan."

35. We are cognizant that commercial courts have already been established in the Punjab under the initiative of the Lahore High Court, and see no reason why such a salutary step may not be taken in this province, especially when Karachi is well recognised as a centre of commerce and the economic engine of the country.

36. Indeed, in view of its history, the Original Side could readily be restructured as a commercial court, subject of course to suitable definition of what constitutes a "commercial case" and a "commercial dispute", with the jurisdiction to hear commercial suits above a pecuniary threshold. As in the Punjab, a network of courts could then also be established at the district level in Karachi (subject to a pecuniary limit) and at such other locations where the need is determined, without that pecuniary limitation.

37. Obviously, such measures require legislative steps. Accordingly, in view of the foregoing, we dispose of these Petitions while directing the Provincial Government to give immediate consideration to the overwhelming quantum of pendency on the Original Side, as reflected in Schedule-1, and consider such remedial action as is thought best, whether through tabling an amendment to Section 7 and other related provisions of the Ordinance to eliminate the exception to the jurisdiction of the District Judge in respect of Karachi District, or limit that exception to encompass only those civil suits and proceedings that fall above the prescribed pecuniary threshold and at the same time are of a commercial nature, involving commercial disputes.

38. We are confident that the Provincial Government remains cognizant of its overarching obligation to ensure expeditious and inexpensive justice, and are sanguine that it will live up to the expectations of citizens clamouring in that regard. Before parting with the matter, we would like to record our appreciation to the Petitioners, the Interveners, as well as the learned law officers, particularly the learned Advocate General of Sindh, for their valuable assistance. Let a copy of this Order be communicated to the Secretary Law, Government of Sindh, for information and action.

SA/G-3/Sindh Order accordingl

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