ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Diary No. 8142/2021

Tahir Mehmood Abbasi
Versus
Javed Asghar Abbasi & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(02)	02.06.2021	Ch. Hasan Murtaza Mann, Advocate for the appellant.

In the instant matter the office raised an objection in view of the amendment in section 106 of the Code of Civil Procedure, 1908 **("CPC")** introduced by the Code of Civil Procedure (Amendment) Act, 2020 **("Amendment Act")**, pursuant to which the first appeal against an order filed by the appellant

was held to be not competent before the High Court.

2. Ch. Hasan Murtaza Mann, the learned counsel for the appellant argued that office of the Registrar of this Court had misconstrued the relevant provisions of the Amendment Act and had not taken into account section 19 of the Amendment Act through which section 159 has been inserted in the CPC, which states the following:-

> *"159. Savings of proceedings.-All proceedings instituted prior to enactment of the Code of Civil Procedure (Amendment) Act, 2020 shall be deemed to proceed and dealt in accordance with the provisions of Code of Civil Procedure which existed prior to the said amendment Act."*

3. Mr. Mann took this Court through the history of amendments introduced in the Civil Procedural Code to drive home the points that (i) not all amending statutes contained saving clauses, and (ii) the language of the saving clauses in amending statutes, where they existed, had to be given effect in order to construe the legislative intent behind such saving clauses. Mr. Mann emphasized that the relevant language in section 159 was that all proceedings instituted prior to the promulgation of the Amendment Act "shall be deemed to proceed and dealt in accordance with provisions" as they existed prior to the Amendment Act. He made three legal submissions to support his arguments that the suit in which the order was passed against which the appellant seeks to maintain his appeal was instituted prior to the promulgation of the Amendment Act and consequently the forum for appeal as prescribed by CPC prior to the promulgation of the Amendment Act would be the competent forum for purposes of his appeal in view of the language in section 159 of CPC. The three submissions of Mr. Mann were as follow:-

i. That the right of appeal and the forum before which such appeal lies are substantive rights. For this proposition he relied on the case law reported as *"Colonial Sugar Refining Company Limited vs. Irving" (1905 AC 369), "H.P.S.E.R. Commission vs. Himachal Pradesh State Electricity Board" (AIR 2014 SC 101), "KASIBAI vs. MAHADU" (AIR 1965 SC 703), "Garikapati vs. Subbiah Choudhary" (AIR 1957 SC 540), Pakistan International Airlines Corporation v.*

Messers Pak Saaf Dry Cleaner (PLD 1981 SC 553), Idrees Ahmed and others v. Hafiz Fida Ahmed Khan (PLD 1985 SC 376), West Pakistan Industrial Corporation v. Rashid Ahmed and another (1988 SCMR 526), Zahid Ullah v. N.W.F.P Public Service Commission (PLD 2010 Peshawar 1). His contention was that prior to the Amendment Act, High Court was the competent appellate forum in view of section 106 of the CPC. And consequently the right to maintain an appeal before the High Court when such appeal emanates from the suit that was filed prior to the promulgation of the Amendment Act, would lie before the High Court as a matter of substantive right of the appellant;

ii. That an appeal is a continuation of the suit. For this settled proposition he relied on Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589) and Kamaluddin and 13 others v. Abdullah and another (2021 CLC 31). On the basis of this principle, he contended that the proceedings in an appeal are not to be treated as fresh proceedings and the relevant time period for determination of what law applies to the proceedings in continuation of the suit, including proceedings in an appeal, is the time for institution of the original suit. And consequently the relevant time for purposes of determining what law would regulate the forum before which the appeal lies is the time of the institution of the original suit, which in the instant

case was prior to the promulgation of the Amendment Act, and consequently the appeal would lie before the High Court and not before the District Court; and

iii. That the right of appeal is governed by the law prevalent at the time of institution of the suit and for this he relied on Abdul Ghani v. Settlement Commissioner and others (1986 CLC 2057), Abdul Ghaffar v. Raees Muhammad Khan and 5 others (1991 CLC 185), Mst. Barkat Bibi v. Mst. Sakina Bibi (1991 CLC 544), Usman A. Ghani and 3 others v. Ghulam Nabi and another (1998 CLC 1557) and Mst. Maqsood Bibi v. Ibad Ali (2010 MLD 1965).

4. I have reviewed the case law relied upon by Mr. Mann. Let us first reproduce relevant excerpts of relevant case law that enumerates the principles to be relied upon in determining the question of competent forum before which an appeal would lie after the promulgation of the Amendment Act.

(I) By virtue of an amendment in section 4 of the Displaced Persons (Compensation and Rehabilitation) Act 1958, the forums of appeal were reduced from two to one. The learned Sindh High Court while considering the matter in Pakistan through Secretary, Ministry of Refugees and Rehabilitation, etc. v. Devachand Muljimal and others (PLD 1968 Karachi 107) held that since this change affected rights of parties, in addition to being procedural,

these amendments would apply prospectively and not retrospectively.

> *"12. Coming now to the important question as to whether the newly-inserted subsections (3) and (4) in section 4 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 are retrospective or prospective, one can at once recognise the proposition of law that an amendment is generally prospective, unless the Legislature has expressly made it otherwise. One of the exceptions to it is that an amendment is generally retrospective if it is procedural. An exception to the latter proposition is that it is prospective if it deals with or affects not only procedure but also vested rights. For example the law of limitation is ordinarily procedural; therefore, its amendment is ordinarily retrospective; but if it were to interfere with or impair or imperil a vested right, it would be prospective. See Bank of India Ltd. v. Muhammad Ashraf. The right to sue is not a procedural matter; therefore, it cannot ordinarily be taken away after it has accrued to a plaintiff. See for instance, Henshall v. Porter.*
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> *13. A provision creating or establishing a forum for getting redress is a procedural matter; therefore, its change is retrospective. See Painda Khan v. Akram and others (P L D 1951 Pesh. 49) and Purshotam Singh v. Narain Singh. But it is not retrospective if such an amendment touches the existing right or deals simultaneously with procedure. In the Colonial Sugar Refining Company Ltd. v. Irving leave to appeal to the Privy Council had been granted in a case from Australia. Subsequently, the law of Australia was amended providing appeals to the High Court of that country only. An application was, therefore, made by the Commonwealth Collector of Customs for Queensland, who was the respondent, that the appeal be dismissed in view of the change of the*

forum. Their Lordships of the Privy Council dismissed that applications as follows:---

"As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal."

In re: Hale's Patent an application was pending before the Treasury under section 29 of the Patents and Designs Act, 1907 for the determination of the question as to whether the Government should be deemed to have used certain patented inventions of the applicant or not; the Treasury was not willing to admit that he had valid patents or that the patents had been infringed; therefore, according to established practice, the application was not dealt with by the Treasury. The applicant had no other remedy with the result that his claim was likely to be lost. In the meantime Patents and Designs Act, 1919 was enacted and came into force on April 23, 1920. Section 8 of it substituted "the Court" for the Treasury as the tribunal. A question

arose as to whether the change was applicable to the user of patented inventions prior to April 23, 1920, or from and after that time. It was found that the alternation of law dealt with both rights and procedure; therefore, the conclusion was:

"No doubt the general law is that, while rights are not statutorily altered retrospectively, procedure is, apart from indications to the contrary, altered retrospectively; but where rights and procedure are dealt with together in the way in which section 8 of the Act of 1919 deals with them, the intention of the Legislature would seem fairly clear-namely, that the old rights are still to be determined by the old tribunal under the Act of 1907, and that only the new rights under the substituted section are to be dealt with by the tribunal thereby substituted for the Treasury."

14. In this case the introduction of subsections (3) and (4) in section 4 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 not only affects a change in the forum but also impairs the vested right of Devachand Muljimal, respondent No. 1 in at least three respects. In the first place, the inquiry that is made in a suit is, by reason of being thorough and attuned to fullest regard for individualistic claims, of a superior quality than that which is made in a departmental reference. Secondly, the remedy afforded by a suit provides at least two appeals whereas the appeal provided by the amendment from the conclusion of the Chief Settlement Commissioner is only one and that too limited by the same difference in its scope as there is difference between a suit and a reference. Thirdly, for the very reason that a departmental inquiry is more suited to the outlook and objects of the department it is less suited to the goal of a private claimant Thus, viewed against the background of the circumstances of this case, the amendment is not purely procedural and does adversely affect vested rights of respondent No. 1.

It follows therefore that it cannot be applied retrospectively so as to defeat the pending suit of respondent No. 1."

(II) Alifdin V Shaukat Ali (P L D 1969 Pesh. 62), the learned Peshawar High Court held the following:

"In this case the application for maintenance which matter is specified in the Schedule, was made on 6th January 1966. The Judges of the Family Courts were empowered to grant maintenance under section 488, Cr. P. C. on 5th April 1966, and the Act was made applicable to entire West Pakistan on 22nd February 1967. On the last mentioned date, the application in the present case was pending before a Magistrate under the Criminal Procedure Code. It has been held in Noor Zaman v. Mst. Saidano (P-L D 1967 Pesh. 343) that section 5 read with section 20 of the Act has ousted the jurisdiction of the Magistrates to deal with applications under section 488, Cr. P. C. I respectfully adopt the reasons given in that authority and do not feel compelled to restate all those reasons. But the question involved in this case is whether the ouster of jurisdiction of Magistrates is also complete in respect of the proceedings pending before them under section 488, Cr. P. C., when the Act was made applicable to a particular area. For resolving that question, it will have to be seen whether section 5 of the Act is retrospective in its application or not. It is true that though express words have not been used so as to indicate that the said provision is retrospective, i.e., it will apply to all the pending proceedings; however, it is not always necessary that retrospective application is found in express words. In the absence of express words, whenever there is clear intendment to the effect that some provision will be retrospective in its application, effect can be given to that intendment. Sub section (4) added to section 1 of the Act provides that nothing in the Act shall apply to any suit, or any application under the

Guardians and Wards Act, 1890, pending in any Court immediately before the coming into force of the Act, and that all such suits and applications shall be heard and disposed of as if this Act were not in force. Subsection (5) of section 1 is a corollary of subsection (4). It is clear from the reading of these provisions that the Legislature intended that only suits and applications under Guardians and Wards Act were to be disposed of by the Courts in which they were pending at the time of coming into force of the Act. In other words, the necessary implication and intendment derivable from these two provision is that all other matters pending at the time of the coming into force of the Act will be taken up and disposed of by the new forums created by the Act. This intendment is further supported by the use of strong language in section 5 of the Act, wherein the words used are: "the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the Schedule." Apart from the stress on the exclusiveness of the jurisdiction the three stages of the proceedings are dealt with separately, i.e. :-

(i) entertaining a matter;

(ii) hearing a matter; and

(ill) adjudicating a matter.

This provides sufficient scope for the proposition that if a matter has been entertained in another forum on the coming in force of the Act if that matter has gone to the exclusive jurisdiction of a forum created by the Act, it shall be heard and adjudicated by the new forum. In addition to this I find that the language used in section 20 is also in line with the proposition that the Legislature intended the application of section 5 to be retrospective, except to the extent indicated in subsections (4) and (5) of section 1 of the Act. Therefore, I hold that section 5 of the Act has retrospective application. As soon as the Act was

made applicable to the district concerned, i.e. on 21st February 1967, the Magistrate ceased to have any jurisdiction in the matter and, therefore, the impugned order passed by him on 8th June 1967, is without jurisdiction. It may be mentioned here that the learned counsel for Alif Din has cited Pakistan etc. v. Devachand Muljimal and others (P L D 1968 Kar. 107), Government of West Pakistan v. Ghulam Sarwar Khan (P L D 1962 Pesh. 115) and Ghazi and others v. The State (P L D 1962 Lah. 662) and some other old Indian cases, in support of the proposition that the change of forum by a law is always retrospective because it is a matter of procedure. I have no dispute with the proposition that a procedural change brought about by a new law is to be treated as retrospective, unless by clear words or necessary intendment it is shown to be prospective. But the question whether or not the change of forum is always a matter or procedure is not free from difficulty. In my view, whenever the change of forum is in addition to dealing with purely procedure and it also affects the existing rights of the parties as to the continuance or culmination of certain proceedings in the existing forums, the change of forum may not be retrospective unless it is made retrospective by clear words used or clear intendment shown in the Amending Act. For example, where the remedies, available in the earlier forum or, against the decisions of the earlier forum, are more substantial or are more in number than the remedies provided in or against the decisions of, the new forum, in my view the change of forum would affect the rights of the parties. Therefore, the change of forum in such a situation, will not only be mere procedural matter but something more than that and thus will not be retrospective. The cases cited by the learned counsel in support of his contention do support him, in so far as they go. But in none of those cases, it has been held that when the change of forum affects the rights of the parties, the change

remains procedural and applies retrospectively. In each one of those cases, the circumstances of the relevant change were taken note of and then a decision was given. In the present case I have already held that we need not fall on any general principles of retrospectively, because there is a necessary intendment contained in the provisions of the Act showing that the change, of forum provided in section 5 thereof, is retrospective. Therefore, in this view of the matter, I hold that the Magistrate had no jurisdiction to decide the application on 8th June 1967."

(III) In Adnan Afzal v.Capt. Sher Afzal (PLD 1969 SC 187), the issue before the august Supreme Court was that the forum for adjudication of certain disputes had been changed from District Magistrate to Family Courts by virtue of the Family Courts Act. It was held that the new forum provided more efficacious and a better remedy, therefore it did not impact vested rights of parties and the change would be applicable retrospectively. However, an observation was made that where the law itself indicated a contrary legislative intent, the change would be prospective. In this regard, a judgment of the Peshawar High Court cited as Alif Din v. Shaukat Ali (PLD 1969 Peshawar 62), was also approved, which laid down the principle that where rights of parties are affected, amendments affecting forums of appeal were prospective in nature. The relevant portion of the said judgment is reproduced is as follows:

> *"Looking at the provisions as a whole we are of the view that all that the Family Courts Act has done is that it has changed the forum, altered the method of the trial and empowered the Court to grant better remedies. It has, thus, in every sense of the term, brought about only procedural changes and not affected any substantive right. According to the general rule of interpretation, therefore, a procedural statute is to be given retroactive effect unless the law contains a contrary indication. There is no such contrary indication in the West Pakistan Family Courts Act. …*
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> *Before we part with these appeals we would also like to point out that the attention of this Court has also been drawn to a decision of a learned Single Judge of the West Pakistan High Court in the case of Alif Din v. Shaukat Ali (P L D 1969 Pesh. 62), where a similar question was considered, and the same view taken. We approve of this decision.*

(VI) In Province of West Pakistan v. P.W.R Stores" Union and another (PLD 1975 Lahore 1072), the learned Lahore High Court observed that when the forum of appeal was changed but did not affect any vested right of the parties, then it would be deemed to be a procedural change and the amendment would be applicable retrospectively. Therefore, whether a change in forum of appeal was retrospective or not would depend on whether substantive rights of the parties were being effected or not.

> *"9. The next question is of competency of appeal before the learned appellate Tribunal. The argument advanced by the learned counsel for the petitioner is that the proceedings before the Industrial Court were commenced when the*

Industrial Disputes Ordinance (LVI of 1959) was in force. It was repealed by the West Pakistan Industrial Disputes Ordinance (IV of 1968) which was made on 29-2-68 but was gazetted on 8-3-68. Under section 12 of the repealed Ordinance, an appeal from the original award was competent only before the High Court but under section 16 of the new Ordinance the appeal is competent only before a Tribunal constituted under section 17 there of. It is provided in subsection (1) (a) of section 16 that the decision of the Tribunal in such appeal shall be final and shall not be called in question in any manner by or before any judicial or other authority, including the High Court. In other words, the appellate power which was earlier conferred on the High Court under the repealed Ordinance has now been conferred upon the Tribunal-a person who is, or has been, or is qualified to be appointed as, a Judge of High Court. The argument of the learned counsel for the petitioner is grounded on the principle that appeal is in continuance of the original proceedings and it being a vested right cannot be taken away by repeal. Thus, according to him, the forum of appeal provided in the repealed Ordinance shall continue if the proceedings were continued under the said Ordinance. It is no doubt true that in some cases change of forum of appeal can be considered in juxtaposition to the question of vested right but in every case the relevant provisions including the repeal and savings have to be kept in view and given due effect. In the present case, the controversy has been set at rest by specific provision contained in section 46 of the new Ordinance which reads as follows:--

"46. Repeal and savings.-(1) The Industrial Disputes Ordinance, 1959 (LVI of 1959), in its application to the Province of West Pakistan, hereinafter referred to as the said Ordinance, is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done, rules, notifications or

orders issued, officers appointed, Courts constituted, notices given, references and applications to Courts made, proceedings commenced or other action taken under the said Ordinance shall, so far as the same are not inconsistent with the provisions of this Ordinance, be continued and be deemed to have been respectively done, issued, appointed, constituted, given, made, commenced or taken under this Ordinance."

Subsection (2) of section 46 clearly provides that proceedings commenced or other action taken under the repealed Ordinance shall, so far as they same are not inconsistent with the provisions of the new Ordinance, be continued and be deemed to have been respectively commenced or taken under the new Ordinance. There is no question of inconsistency involved herein. Thus, the proceedings in the present case which had commenced under the repealed Ordinance, after the 8th of March 1968, would be deemed to have been commenced and continued till the final decision on 22-4-68 under the new Ordinance. That being so, the appeal as provided in the then existing law (section 16 of Ordinance IV of 1968) would lie only before the Tribunal created under section 17 thereof. As the saving provision is specific and clear enough, therefore, it is not necessary to examine in any detail the other argument advanced by the learned counsel. It is, however, observed that the Appellate Tribunal in this case consisted of a retired Chief Justice of the High Court and it cannot be said that the new forum of appeal was, in any way, less effective then the one provided in the repealed Ordinance. The change of forum in the present case did not involve any question of deprivation of vested rights. I, therefore, hold that the appeal before the appellate Tribunal was competent."

(V) In Bashir v. Wazir Ali (1987 SCMR 978), the august Supreme Court held that where the forum of appeal is changed, the same is a procedural amendment in law and would apply retrospectively. The relevant excerpts of the judgment are reproduced below:

> *"7. Before us the learned counsel for the appellant raised the same objection as before the High Court. It was, however, pointed out to him that the relevant provision of the amending Act V of 1986 had merely changed the forum in which the appeal was to be heard and did not affect any vested right of appeal and that, as held by this Court in Adnan Afzal v. Capt. Sher Afzal PLD 1969 SC 187, such amendments are merely procedural in nature and are, therefore, operative retrospectively*.
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> *It was pointed out by the learned Assistant Advocate-General that the same contention had been raised before the Lahore High Court in the case of Daraz Ali and others v. Nathu Khan 1982 CLC 2399 when a first appeal was returned for disposal to the relevant District Judges after the pecuniary jurisdiction of the District Judges was raised from rupees twenty-five to rupees fifty thousand by an amendment in section 18 of the Punjab Civil Courts Ordinance (II) of 1962 by Ordinance (XX) of 1978. The plea was rejected by the High Court for the same reason stated above, relying inter alia on this Court's judgment in Adnan Afzal's case (supra).*
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> *8. On coming to know of the above-noted case-law, the learned counsel for the appellant had nothing to add.*
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> *As such for the foregoing reasons this appeal is dismissed a, having no merits, with costs throughout."*

(VI) The august Supreme Court held in Muhammad Bashir and 2 others V Muhammad Firdaus and another (PLD 1988 SC 232) that the change in forum of appeal was a procedural matter and that the general principle was that amendments in statutes would have prospective effect only if substantive rights were affected. However, the Court held that amendment in Cantonments Rent Restriction (Amendment) Ordinance 1985 (that changed forum of appeal from High Court to District Court) would not render pending appeals incompetent. The relevant excerpts of the judgment are reproduced hereunder:

> *8. The case of Bashir heavily relied upon by the learned counsel for the appellants, in so far as the head note given in the law report is concerned, only on face tends to support him. But on proper analysis, it is of no help to him; nor, it has the effect of changing the law declared by this Court in its other decisions. All are to be read together. In Adnan Afzal's case the Court observed as follows:--*
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> *"The general principle with regard to the interpretation of statutes as laid down in the well-known case of the Colonial Sugar Refining Company Limited v. Irving 1905 A C 369 is that 'if the matter in question be a matter of procedure only', the provisions would be retrospective. "On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act", then "in accordance with a long line of authorities extending from the time of Lord Coke to the present day", the legislation would not operate retrospectively, unless the legislature had either "by express enactment or by necessary intendment given the legislation retroactive effect."*

9. No doubt while dealing with what are matters of procedure, the Court observed that "a statute purporting to transfer jurisdiction over certain causes of action may operate retroactively. This is what is meant by saying that a change of forum by a law is retrospective being a matter of procedure only". But a very important exception regarding both the above-noted rules was also spelled out as follows:--

"Nevertheless, it must be pointed out that if in this process any existing rights are affected or the giving of retroactive operation cause inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favour an interpretation giving retrospective effect to the statute."

10. The controversy in Adnan Afzal's case did not relate to the change of forum of "appeal". Had it been so the question of "existing rights" would have been the deciding factor. Instead the relevant provisions of the Family Courts Act particularly those relating to exclusive jurisdiction of the Family Court, were noted in addition to the procedural nature of the law, for giving retrospective effect to them. The question regarding change of "forum of appeal", on the other hand stood resolved in the Colonial Sugar Refining Company's case as follows:--

"It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal" to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

> *11. This view has been adopted in a large number of cases. In this case there are further two elements. One, that the right of appeal before the District Court remaining intact, it would still leave a scope for approach in the High Court through writ jurisdiction. But it is to be emphasized that it is not the determining factor.*
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> *Secondly, there is nothing in the amended section 24 of the Cantonments Rent Restriction Act to indicate that the pending appeals were to be affected by the amendment regarding change of forum of appeal. Had it been so, the position would have become different. In the light of the foregoing discussion, this appeal merits to be dismissed.*

5. The principles that can be deciphered are the following:-

i. As a general matter substantive law is to be given prospective effect and procedural law is to be given retrospective effect, except where the language used by the legislature within the amending law manifests a different legislative intent;

ii. Any amendment in law that affects the substantive right of citizens is to be given prospective effect and whether or not the law affects substantive rights is not to be determined as a matter of form but in view of whether a vested right of a party is being extinguished or diluted.

iii. Even in cases where change in procedural law, such as change of adjudicatory forum might prejudice the substantive rights of a party such procedural law is not to be given retrospective effect in the absence of clear legislative intent to the contrary;

iv. The change of forum for adjudication of a dispute cannot itself be treated as a matter

impinging on the substantive rights of a party, unless the change of forum makes the remedy afforded less efficacious;

v. The language used by the legislature in the statute including, *inter alia,* the savings clause of an amending statute will trump the general principle that change in substantive law is to be given prospective effect and change in procedural law is to be given retrospective effect.

6. In view of the law laid down by the august Supreme Court in Bashir v. Wazir Ali (1987 SCMR 978) and Muhammad Bashir and 2 others V Muhammad Firdaus and another (PLD 1988 SC 232) change in the forum (i.e. to adjudicate the appeal of a party) does not effect the substantive right of the party aggrieved by the order to be appealed, unless of course the amending statute excludes a forum of appeal or fetters the right of the party aggrieved to file an appeal. In the instant case the Amendment Act neither reduces the forums of appeals available to the appellant nor fetters the appellant's right to appeal aggrieved by an order passed by the trial Court. The amendment in section 106 of CPC changes the forum of appeal from the High Court to the District Court. However, in view of section 115 of CPC, as amended, a party aggrieved by an order passed by the District Judge in an appeal against an interlocutory order passed by a Civil Judge would have a right to file a revision before the High Court. Thus, cumulatively speaking, the effect of the amending Act is not to reduce a number of remedial forums that existed prior to the promulgation of the Amendment Act or to exclude a remedy before the High Court

all together. If anything, the amending Act has now provided for an additional remedy of filing a revision before the High Court, which was not available previously in cases where the first appeal against order was to be decided by the High Court itself. It can, therefore, not be said that the amending Act by amending section 106 of the CPC has affected the substantive rights of an appellant. In view of the case law and the reasoning above, I hold that the amendment to section 106 of CPC is of a procedural nature that would apply retrospectively in view of the principles laid down by the august Supreme Court as discussed above except to such extent that pending proceedings are protected under section 159 of CPC.

7. The language used by the legislature in section 159 of CPC inserted though the Amendment Act does not portray an intent that the change in the forum competent to adjudicate appeals in view of the amended section 106 of CPC is to be given prospective effect. In this regard the language used in the explanation provided under section 159 is helpful. The explanation for the word "proceedings" specifically identifies a "suit", an "appeal", a "review", a "revision", "execution applications" and "other proceedings". In the event that the legislature meant what Mr. Mann suggests it meant and wished to treat an appeal as an extension of the suit, it would not have independently identified "appeal" as being separate from a "suit" as has been done in the explanation to section 159. If proceedings in an appeal for purposes of the present discussion are to be treated as an extension of proceedings in the suit, as contended by Mr. Mann, the use of

the word "appeal" in the explanation would become redundant. It is a settled principle of statutory interpretation that no redundancy can be attributed to any word used by the legislature in a statute and it is to be assumed that each word used was used deliberately by the legislature and is to be given meaning. In view of the principle of statutory interpretation and the language used by the legislature in section 159 and its explanation it is obvious that what was to be protected by section 159 were the proceedings in relation to a suit or an appeal or a review or execution applications etc. that were pending before a competent forum at the time of promulgation of the Amendment Act. In other words if the first appeal against an order was pending before the High Court at the time of promulgation of the Amendment Act, such appeal would not be remitted to the District Court by virtue of the change in section 106 of CPC in view of the fact that the amendment was procedural, and would continue to be heard and decided by High Court. However, in relation to appeals that emanated from decisions rendered in matters that were decided after the promulgation of the Amendment Act, the entire chain of remedies up until such time that the matter attains finality has not been protected by section 159. Had that being the intent the legislature would have expressed it in clear and unambiguous language stating that the remedies of an appeal, a review and a revision that existed at the time of institution of a suit would remain unaffected by changes introduced to CPC by the Amendment Act. The legislature has, however, not done so.

8. Given the language of section 159 of CPC together with the fact that the change in the forum now competent to hear the appeals does not affect substantive rights of parties, the amendment introduced in section 106 is a procedural amendment. The amendment in section 106 would apply such that a forum competent to hear an appeal emanating from an order passed after the promulgation of the Amendment Act would be the forum as provided under section 106 of CPC, as amended.

9. In view of the above, the objection raised by the office on the instant appeal is **sustained**.

(BABAR SATTAR)
JUDGE

A. Rahman Abbasi