ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

RFA No.660-2021
Mst. Nasreen Bibi etc.
Vs.
Arbab Agro Farms Pvt. Ltd. through its Chairman and MD, Lahore etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.09.2023	Mr. Wajid Hussain Mughal and M. Izzat Khan, Advocates for appellants. Mr. Ahmed Shahzad Awan, Advocate for respondent No.1. Ch. Abdur Rehman Hur Bajwa & Atif Shafique, Advocates for respondents Nos. 7 to 16. This appeal arises out of judgment and decree dated 18.10.2021 passed by Civil Judge, 1st Class, Islamabad-East. 2. The instant appeal was instituted on 27.10.2021 and at the relevant time, under section 96 of Code of Civil Procedure, 1908 as amended by Code of Civil Procedure (Amendment) Act, 2020, this Court was the exclusive forum for appeal against such decrees, however, during course of proceeding in the instant appeal, law stood changed and Code of Civil Procedure (Amendment) Act, 2023 was passed, by virtue of which, section 96 ibid was amended and the District Court was again granted jurisdiction to hear the appeals in accordance with section 18 of the Civil Courts Ordinance, 1962). 3. In the above backdrop, learned counsel for the appellants *inter alia* contended that instant appeal be transmitted to the District Court for

hearing of the same. Upon this, learned counsel for the appellants was confronted with section 16 of the Act of 2023, which amended section 159 of the Code of Civil Procedure with respect to saving of the proceedings. Learned counsel contended that though the amendment saves the proceedings wherever they are, yet propriety demands that since District Court has the jurisdiction in the matter, appeal be heard by the referred forum. He drew attention of the Court towards section 24 of the Code of Civil Procedure, 1908, which provides jurisdiction to this Court to generally pass orders for transfer of the case to any court subordinate to it, which has the jurisdiction to decide the matter.

4. Learned counsel for the respondents, present in the Court, conceded that the matter be transmitted to the District Court.

5. Submissions made on the issue of transfer/transmission of the appeal to the District Court, have been heard.

6. The background, which leads to passing of this order, has already been mentioned hereinabove.

7. Section 96 ibid was amended by the Act of 2023 on 03.05.2023 and the District Courts were granted jurisdiction again under section 18 of the Civil Courts Ordinance, 1962 to the extent of pecuniary matters not exceeding Rs.25,00,000/-, however, when the instant appeal was preferred, section 96, as it then stood, provided that this Court is the exclusive forum for hearing and deciding appeals against judgment and decree

passed by the courts of plenary jurisdiction. Admittedly, the pecuniary jurisdiction, in the instant matter, is less than Rs.25,00,000/- and if such claim/appeal was to be preferred today, the matter would be agitated in the relevant District Courts of Islamabad. Section 16 of the Act of 2023 amends section 159 of the Code of Civil Procedure and in its amended form, the referred provision of law reads as follows:-

> "***16. Amendment of section 159, Act No.V of 1908- In the said Act, for section 159, the following shall be substituted, namely:-***
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> ***"159. Savings of proceedings.- All proceedings instituted prior to the commencement of the Code of Civil Procedure (Amendment) Act, 2023 (Act of 2023) shall be deemed to be the proceedings of, and dealt in accordance with, the provisions of this Code which existed prior to the aforesaid commencement.***
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> ***Explanation.- In this section, the expression 'proceedings' includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto".***

The bare reading of the Section shows that all proceedings commenced before the Act of 2023 are considered to be the proceedings of, and dealt in accordance with, the provisions of this Code which existed prior to the commencement of the Act of 2023. In the explanation to the referred Section, it is provided that proceedings include appeal, review, revision, execution applications and/or all incidental matters thereto. The outcome of the amended section 159 CPC is that appeals or a suit filed prior to the Act of 2023 shall continue to be treated as matters agitated

under amended section 96 CPC or other similar provisions pursuant to the amendments made through Code of Civil Procedure (Amendment) Act, 2020. In other words, the amendment made in Act of 2023 shall not disturb the appeals/suits etc. by virtue of change in law. In view of referred provision of law, this Court continues to have jurisdiction to decide the instant appeal, however, since a specific request has been made by all the parties present in the Court, to transmit the matter to the District Court so that another forum of appeal/revision remains available to the aggrieved party, the order be passed under section 24 CPC. For ease of convenience, section 24 CPC is reproduced below and reads as follows:-

***"24. General power of transfer and withdrawal**. (l) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-*

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) Withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) Try or dispose of the same; or

(ii) Transfer the same for trial or subordinate or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) Retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the court which thereafter tries such suit may subject to any special direction in the case of an order of transfer,

either retry it or proceed from the point at which it was transpired or withdrawn.

(3) For the purposes of' this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The court trying any suit transferred or withdrawn

under this section from a Court of Small Causes shall, for the purposes of' such suit, be deemed to be a Court of Small Causes".

The reading of section 24 ibid shows that this Court has the jurisdiction to transfer any proceedings including appeals pending before it for trial or disposal to any court subordinate to it and competent to try and dispose of the same. Under the referred provision, as the instant appeal is pending before this Court, it does have jurisdiction to transfer the same to the court of competent jurisdiction which, as noted above, is District Court as well.

8. A counter argument with respect to transfer of the appeal from this Court to the court of District Court could be that the legislature did not want the proceedings to be disturbed, hence amendment in section 159 CPC, was made, however, that argument has little or no substance, as if this was to prevail, section 24 CPC shall become redundant with respect to all proceedings including appeals and suits filed between 2020 to 03.05.2023. It is reiterated that at present, District Court, Islamabad-East does have jurisdiction to hear the instant appeal pursuant to amendment made in section 96 by Act of 2023.

9. In view of foregoing, instant appeal is transferred/transmitted to the District Court Islamabad-East. The parties shall appear before District Judge, Islamabad-East on 27.11.2023, who may hear the matter himself or may mark to any Additional District Judge competent to hear the appeal.

(CHIEF JUSTICE)

Approved for reporting

Zawar