JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 02/2023

The State of Libya through its Head of Mission in Pakistan

Vs.

Civil Judge (West), Islamabad & 02 others

PETITIONER BY:	Mr. Aftab Rashid and Mr. Haroon ur Rashid, Advocates.
RESPONDENTS:	Mr. Aqeel Akhtar Raja, Assistant Attorney General. Barrister Waqas Aziz Qureshi, Advocate for respondent No.2.
DATE OF HEARING:	16.04.2024

==========

BABAR SATTAR, J.- The petitioner has impugned order dated 03.12.2022, pursuant to which the Civil Court dismissed the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 **("CPC")**.

2. The learned counsel for the petitioner submitted that the State of Libya entered into a tenancy agreement dated 20.02.2014 with respondent No.2 **("Agreement")** for a period of five years expiring on 19.02.2019. The Agreement was entered into in order to lease property owned by respondent No.2 for purposes of operating the Diplomatic Mission of the State of Libya in Islamabad. The State of Libya was the lessee and its Head of Mission had executed the Agreement on its behalf. Clause 2.6 of the Agreement provided that it could be terminated prior to the five-year period of tenancy on mutually agreed terms and conditions. The petitioner sought to terminate

the Agreement one year prior to its expiry. A meeting was convened between the Ambassador of Libya with respondent No.2. It was agreed that the Embassy premises would be inspected to prepare a list of any items to be repaired. The Embassy would complete the repair work by 20.02.2018 and hand over keys to respondent No.2. Respondent No.2, after inspection, prepared a repair list with a projected expense of Rs.1.645 million to be incurred on paint and polish work, along with some masonry work that would cost Rs.45,000/-. As paint and polish work was the lessor's responsibility and there was no damage to the property beyond ordinary wear and tear, the Embassy of Libya vacated the property and sought to hand over the keys to respondent No.2 on 15.02.2018. Respondent No.2, however, refused to accept the keys and demanded that an amount of Rs.1.645 million be paid for paint and polish of the property. Subsequently, respondent No.2 filed a suit for recovery alleging breach of the Agreement and sought an amount of Rs.1.645 million for repairs and USD 9800 per month for the period to be consumed to undertake the paint and polish work.

3. The learned counsel for the petitioner submitted that respondent No.2 was seeking to blackmail the petitioner by demanding that the petitioner pay for paint and polish work at the property. Clause 2.7 of the Agreement provided that at the time of inspection of the property at the end of the tenancy period an assessment of any damages would be made, excluding normal wear and tear. Further, Clauses 3.1, 4.3 and 5.3 of the Agreement, when read together, provided that respondent No.2 would remain responsible for paint and polish of the property. Clause 8.3 of the Agreement provided that the petitioner would

waive its sovereign immunity *"in respect of jurisdiction and enforceability, in relation to any rent and possession of the demised premises."* He submitted that under the First Schedule of the Diplomatic and Consular Privileges Act, 1972 **("Diplomatic and Consular Privileges Act")**, the petitioner was exempt from the civil and administrative jurisdiction of the courts in Pakistan. He further submitted that diplomatic agents enjoyed immunity from jurisdiction of the host state and any waiver from such immunity had to be express. Further, such waiver in respect of judicial proceedings did not imply a waiver from execution of any judgment. He submitted that pursuant to Clause 8.3 of the Agreement, the State of Libya had waived its immunity only in relation to rent and possession of the property. As the claim of respondent No.2 in the suit brought against the petitioner did not relate either to recovery of rent or possession of the property (which possession had been handed over by the petitioner despite respondent No.2's reluctance to accept it), a suit for damages could not be brought against the State of Libya in the courts of Pakistan by respondent No.2 in view of the provisions of the Diplomatic and Consular Privileges Act. He submitted that the Civil Court had misapplied the law laid down by the Supreme Court in ***A.M. Qureshi v. Union of Soviet Socialist Republics and another*** ***(PLD 1981 SC 377)*** while holding that the Agreement between the petitioner and respondent No.2 in relation to leasing property for setting up the State of Libya's Diplomatic Mission in Islamabad was a commercial transaction. He submitted that the petitioner had brought a frivolous case in order to blackmail and embarrass the State of Libya, and the Civil Court, while dismissing the

application under Order VII Rule 11 of CPC, had not appreciated that the civil suit was barred in terms of Section 86A of CPC read together with provisions of the Diplomatic and Consular Privileges Act.

4. The learned counsel for respondent No.2 supported the impugned judgment. He submitted that Section 86A of CPC excluded from the limit of immunity afforded to diplomatic agents in relation to commercial activity. The execution of the Agreement for purpose of leasing respondent No.2's property was a commercial act as correctly held by the Civil Court while applying the law laid down by the Supreme Court in ***A. M. Qureshi***. The petitioner was under an obligation to pay for repair work at the time of handing over the property upon expiry or termination of the lease Agreement, which amount respondent No.2 had requested the petitioner to pay in accordance with provisions of the Agreement and the petitioner refused to do so. The petitioner had already waived its immunity under the Diplomatic and Consular Privileges Act in terms of Clause 8.3 of the Agreement. And after having issued a contractual waiver from immunity, it could not claim immunity by filing an application under Order VII Rule 11 of CPC. He submitted that the impugned order suffered from no infirmity.

5. The learned Assistant Attorney General relied on the report filed on behalf of the Ministry of Foreign Affairs, which stated that Diplomatic Missions are immune from jurisdiction and execution of court orders in Pakistan and the suit filed against the Diplomatic Mission of the State of Libya was barred by law in terms of Section 86A of CPC. The report further provided that the Ministry had sought a clarification from the Diplomatic

Mission of the State of Libya in Islamabad and had been informed that the State of Libya was not willing to waive its immunity. Consequently, it was the position of the Federal Government that the State of Libya enjoyed immunity against the suit filed by respondent No.2, which ought to be dismissed by setting aside the order of the Civil Court.

6. There are three sets of statutory provisions that require to be considered to determine the controversy before the Court as to whether the State of Libya enjoys diplomatic immunity in relation to the suit for damages brought against it by respondent No.2. The first is Section 86A of CPC. The second is the Diplomatic and Consular Privileges Act. And the third is the State Immunity Ordinance, 1981 **("State Immunity Ordinance")**.

7. Section 86A of CPC states the following:

> *Suits against diplomatic agents.– (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to–*
>
> *(a) any private immoveable property situated in Pakistan held by him in his private capacity and not on behalf of the sending State for the purpose of the mission;*
>
> *(b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;*
>
> *(c) any professional or commercial activity exercised by the diplomatic agent in Pakistan outside his official functions.*
>
> *(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of sub-section (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.*
>
> *(3) The initiation of any proceedings in a Court by a diplomatic agent shall preclude him from invoking immunity*

from jurisdiction under this section in respect of any counter-claim directly connected with the principal claim.

(4) The immunity of a diplomatic agent under sub-section (1) or sub-section (2) may be waived by the sending State; and any such waiver shall be express.

(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver shall be necessary.

(6) In this section, "diplomatic agent" in relation to a State means the head of the mission in Pakistan of that State and includes a member of the staff of that mission having diplomatic rank.

The property that forms the subject-matter of the instant case is not immovable property held by a diplomatic agent in his/her private capacity and doesn't fall within the exclusion described in section 86A(1)(a) of CPC. The scope of Section 86A of CPC was however clarified by the Supreme Court in ***A.M. Qureshi*** and it was held that the immunity discussed within the said provision relates to the person of the diplomatic agent and not the foreign state of which he/she is an agent. It is therefore arguable in view of the distinction between the immunity afforded to a diplomatic agent versus the immunity afforded to a foreign state, a suit can be brought against a foreign state to the extent that it relates to immovable property not held for state purpose and such suit is not barred by provisions of the Diplomatic and Consular Privileges Act and the State Immunity Ordinance.

8. Section 86A(1)(c) of CPC provides an exception in relation to professional or commercial activity exercised by a diplomatic agent in Pakistan outside his official functions. While this sub-section has been read by the learned counsel for the

petitioner as well as respondent No.2 in support of their contentions, and has also been relied upon by the Civil Court in the impugned order, this Court finds that the reliance on the said provision is misconceived. It is nobody's case that the Head of Mission for Libya entered into any commercial activity on behalf of the petitioner with respondent No.2 outside his official functions for which the Head of Mission was being sued in his personal capacity. The Head of Mission entered into the Agreement on behalf of the State of Libya to lease property for purposes of establishing the Diplomatic Mission of the State of Libya in Islamabad. Thus, to the extent that the act of executing the Agreement can be regarded as an activity, such activity cannot be classified as commercial activity outside the official functions of the Head of Mission for the State of Libya. This Court therefore finds that by relying on the said provision, the learned Civil Court misdirected itself both in terms of classifying the execution of the Agreement as commercial activity as well as by concluding that the execution of the Agreement fell beyond the scope of the official functions of the Head of Mission for the State of Libya.

9. Let us now consider the provisions of the Diplomatic and Consular Privileges Act. This Act was promulgated to give effect within Pakistan to the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Counselor Relations, 1963 **(**each a **"Treaty")**. Section 2 of the Diplomatic and Consular Privileges Act gives overriding effect to provisions of the Treaties that are set out in the Schedules to the Diplomatic and Consular Privileges Act. Section 3 of the Diplomatic and Consular Privileges Act vests in the Federal

Government the power to withdraw the privileges and immunities conferred on the mission of a foreign state to the extent that the privileges and immunities afforded to the Pakistani mission in such state are less than those conferred by Pakistan on such foreign state. This provision highlights the reciprocal nature of the privileges and immunities that are afforded by Nation States to one another.

10. Section 4 of the Diplomatic and Consular Privileges Act then provides that, *"if any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Federal Government stating any fact relating to that question shall be conclusive evidence of that fact."* Article 22 of the Treaty, as provided under the First Schedule to the Diplomatic and Consular Privileges Act, provides that the premises of the mission shall be inviolable. Article 31 of the Treaty provides that, *"a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. He shall also enjoy immunity from its civil and administrative jurisdiction…"* The said Article then creates carve-outs from such immunity under sub-clauses (a), (b) and (c) of Article 31 of Treaty. Sub-clause (a) of Article 31(1) of the Treaty provides that, *"a real action relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending state for the purposes of the mission."* Article 32 of the Treaty provides for waiver from immunity and Article 32(2) of the Treaty states that the waiver must always be express. Article 32(4) of the Treaty then provides that, *"waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply*

waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary." Provisions of the Treaties provide for similar overarching immunity in relation to consular posts.

11. The third piece of legislation that is relevant for our purposes is the State Immunity Ordinance. Section 3(1) of the Immunity Ordinance provides that, *"the state is immune from the jurisdiction of the courts of Pakistan except as herein under-provided."* Section 4 of the State Immunity Ordinance then provides for exceptions from immunity: in cases where the State has submitted to the jurisdiction of courts by instituting proceedings or by taking any steps in the proceedings except for purposes of claiming immunity, etc. Section 5 of the State Immunity Ordinance identifies certain transactions that fall beyond the scope of immunity and states the following:

> *5. Commercial transactions and contracts to be performed in Pakistan. (1) A State is not immune as respects proceedings relating to-*
>
> *(a) a commercial transaction entered into by the State; or*
>
> *(b) an obligation of the State which by virtue of a contract, which may or may not be a commercial transaction, falls to be performed wholly or partly in Pakistan.*
>
> *(2) Sub-section (1) does not apply to a contract of employment between a State and an individual or if the parties to the dispute are States or have otherwise agreed in writing; and clause (b) of that sub-section does not apply if the contract, not being a commercial transaction, was made in the territory of the State concerned and the obligation in question is governed by its administrative law.*
>
> *(3) In this section "commercial transaction" means-*
>
> *(a) any contract for the supply of goods or services;*

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

(c) any other transaction or activity, whether of a commercial, industrial, financial, professional or other similar character, into which a State enters or in which it engages otherwise than in the exercise of its sovereign authority.

12. Section 7 of the State Immunity Ordinance dilates upon the immunity of a State in respect of property and states the following:

7. Ownership, possession and use of property*. (1) A State is not immune as respects proceedings relating to-*

(a) any interest of the State in, or its possession or use of, immovable property in Pakistan; or

(b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects proceedings relating to any interest of the State in movable or immovable property, being an interest arising by way of succession, gift or bona vacantia.

(3) The fact that a State has or claims an interest in any property shall not preclude any Court from exercising in respect of such property any Jurisdiction relating to the estates of deceased persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A Court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property,-

(a) which is in the possession of a State; or

(b) in which a State claims an interest, if the State would not have been immune had the proceedings been brought against it or, in a case referred to in clause (b),

> *if the claim is neither admitted nor supported by prima facie evidence*.

Section 16 of the State Immunity Ordinance emphasizes the reciprocal nature of immunities and privileges afforded by Pakistan and by foreign States. Most relevant for our present purposes is Section 17(1) of the State Immunity Ordinance that provides the following:

> *17. Savings, etc. (1) This Ordinance does not affect any immunity or privilege conferred by the Diplomatic and Consular Privileges Act, 1972 (1X of 1972); and*
>
> > *(a) Section 6 does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention set out in the First Schedule to the said Act of 1972 or of the members of a consular post within the meaning of the Convention set out in the Second Schedule to that Act;*
> >
> > *(b) sub-section (1) of section 7 does not apply to proceedings concerning a State's title to, or its possession of, property used for the purposes of a diplomatic mission.*

13. The scheme of the statutory framework discussed above starts with the assumption that foreign states, their missions and consular posts, and their diplomats and agents are immune from the jurisdiction of courts in Pakistan, in terms of immunities and privileges recognized under the Treaties, subject to the carveouts provided in statutes enacted and in force in Pakistan regulating such privileges and immunities within Pakistani territory. The Diplomatic and Consular Privileges Act unambiguously provides that the diplomatic missions of foreign states are inviolable, while also providing that the residences of diplomats also fall beyond the administrative and civil jurisdiction of courts. Thus, the Diplomatic and Consular Privileges Act not

only endows foreign states with immunity, but also the diplomatic agents of foreign states.

14. The State Immunity Ordinance deals with the immunity extended to states more particularly. The exclusions in Section 5 of the State Immunity Ordinance mentioned above are relevant here. Section 5(1)(b) of the State Immunity Ordinance provides that a contractual obligation assumed by a foreign state to be performed wholly or partly in Pakistan is not immune from judicial proceedings, apart from commercial transactions, which also do not enjoy immunity. The general provision with regard to contractual obligations including, *inter alia,* commercial transactions, referred to in Section 5 of the State Immunity Ordinance is then followed with a special provision with regard to the ownership, possession and use of property dealt with in Section 7 of the State Immunity Ordinance. This provides that a foreign state is not immune from proceedings in relation to possession or use of immovable property or any obligation arising out of its possession or use of such property.

15. Section 7 of the State Immunity Ordinance is therefore a permissive provision that creates a carve out from the scope of immunity that a foreign state enjoys under provisions of the Diplomatic and Consular Privileges Act when it comes to possession and use of immovable property or obligations in relation thereto. This permission under Section 7 of the State Immunity Ordinance is then qualified by Section 17(1)(b) of the said Ordinance, which provides that the permission granted under Section 7(1) of the State Immunity Ordinance, ousting immunity for a foreign state in relation to obligations in connection with immovable property, will not apply where the

controversy relates to the possession of property used for purposes of a diplomatic mission. Section 17(1) of the State Immunity Ordinance also clarifies that provisions of the Diplomatic and Consular Privileges Act would trump provisions of the State Immunity Ordinance.

16. In the instant matter, the Agreement was entered into by the State of Libya and executed by the Head of Mission in Islamabad. The property leased pursuant to the Agreement was for lodging the State of Libya's diplomatic mission in Islamabad. That the property was being used as the diplomatic mission of the State of Libya in Islamabad is not disputed. Consequently, the exclusion of immunity in relation to contracts to be wholly or partly performed in Pakistan as provided under Section 7 of the State Immunity Ordinance stood excluded by virtue of Section 17(1)(b) of the State Immunity Ordinance in view of the fact that the property in relation to which the dispute arose between respondent No.2 and the petitioner was being used for purposes of the diplomatic mission of the State of Libya.

17. The impugned order is completely misconceived to the extent that it characterizes the Agreement as a commercial transaction. The term ‘commercial transaction’ has been defined under Section 5(3) of the State Immunity Ordinance (as reproduced above). The Agreement was not a contract for supply of goods or services, or a loan or a financial agreement or a transaction or activity that the State of Libya indulged in otherwise than in the exercise of its sovereign authority. Consequently, the Agreement could not be classified as a commercial transaction in view of the definition of commercial transaction under Section 5 of the State Immunities Ordinance.

Respondent No.2's only argument could be that the Agreement constituted an obligation in terms of Section 5(1)(b) of the State Immunity Ordinance that was to be performed wholly in Pakistan and the State of Libya was thus not immune from judicial proceedings in relation to it. The argument, however, doesn't wash as Section 17(1)(b) of the State Immunity Ordinance clarifies that the exclusion from immunity in relation to immovable property under Section 7(1) of the State Immunity Ordinance does not apply to proceedings in relation to immovable property being used for purposes of a diplomatic mission, as was the case in point.

18. The international nation-state system rests on the agreed principles of sovereign equality and reciprocity. As all states are sovereign and no sovereign submits itself to the jurisdiction of another sovereign, the limitations in relation to exercise of sovereignty by a host state against the missions and diplomats of a foreign state within its own territory have been codified by the Treaties. The approach to the question of immunity has evolved over time and the concept of absolute immunity has given way to the restrictive approach to immunity, as also explained by the Supreme Court in the case of ***A. M. Qureshi***. This restrictive approach to immunity has been adopted by common law jurisdictions, such as the United Kingdom and the United States, and is manifest in the provisions of the Diplomatic and Consular Privileges Act and the State Immunity Ordinance already discussed above.

19. There is a plethora of international case law addressing how commercial transactions entered into by states or their agents are not immune from the exercise of jurisdiction by

States within which such transactions are to take effect. The International Law Commission proposed a two-part 'nature test' to determine whether or not a transaction could be classified as a commercial transaction (See Article 2 of the I.L.C. draft that forms part of the report of the International Law Commission, 1991). The first question in this two-part test is with regard to determining whether or not the nature of the contract or transaction is non-commercial or governmental. If the answer to this question is in the affirmative, the contract or transaction is not treated as commercial. However, if the contract is deemed to be commercial, the second prong of the test kicks in, and it needs to be determined whether the purpose of the contract or transaction was sovereign or not. Various doctrines and theories with regard to classification of commercial transactions that do not enjoy sovereign immunity were considered and enumerated by the Supreme Court in ***A. M. Qureshi***. The definition or scope of commercial transactions, however, need not detain us any further in the present matter as it has already been discussed and held above that the Agreement entered into by the State of Libya for purposes of leasing property to house the diplomatic mission of the State of Libya in Islamabad cannot be regarded as a commercial transaction as defined in Section 5 of the State Immunity Ordinance. It has also been discussed above that the premises of a diplomatic mission are inviolable as provided under provisions of the Diplomatic and Consular Privileges Act. And, further, the exclusion with regard to enforcing obligations in relation to immovable property under section 7 of the State Immunity Ordinance do not apply when the obligations are in

relation to property being used as a diplomatic mission, as provided under Section 17 of the State Immunity Ordinance.

20. As also discussed above, in view of Section 3 of the State Immunity Ordinance under the Diplomatic and Consular Privileges Act read with Section 16 of the State Immunity Ordinance, it is self-evident that state immunity is rooted in the notion of reciprocity. Pakistan extends diplomatic immunities and privileges to foreign states and their agents on a reciprocal basis and the aforementioned statutory provisions clarify that the State of Pakistan reserves the right to recall immunity and privileges afforded to a foreign state to the extent that such immunity and privileges are not extended to Pakistani Missions and agents in such foreign state. It is in such context that Section 4 of the Diplomatic and Consular Privileges Act needs to be borne in mind, which provides that, *"where whether or not any person is entitled to any privilege or immunity under this act, a certificate issued by or under the authority of the Federal Government… shall be conclusive."*

21. It is settled law that when it comes to foreign affairs and interstate relations, the courts exercise their powers cautiously and while exhibiting deference to the position of the Federal Government. Exercise of judicial power in relation to foreign states may have consequences for interstate relationships. It is the Federal Government aided by the Foreign Office and not municipal courts that best placed to comprehend the consequences that assumption of jurisdiction in relation to foreign states may have on interstate relations. Given the principle of reciprocity, to the extent that municipal courts assume jurisdiction in relation to missions of foreign states

and/or diplomatic agents, such actions could have consequences for the manner in which other states treat Pakistani missions and diplomatic agents abroad.

22. It is thus that Section 4 of the Diplomatic and Consular Privileges Act provides that the final determination of whether or not a person is entitled to any privilege or immunity is to be determined by the Federal Government by issuing a certificate in such regard. While it is for the person claiming immunity to establish that it falls beyond the jurisdiction of courts in Pakistan, it is a settled principle of international law that any waiver of immunity is to be strictly construed. The provisions of the Diplomatic and Consular Privileges Act read together with provisions of the Treaties clarify that even where a state waives immunity, the execution of a judicial verdict requires a separate and express waiver. Thus, where a foreign state or a foreign mission has been made party to a judicial proceeding and such state or state agent makes a claim for immunity, the court seized of the matter must issue a notice to the Federal Government for purposes of Section 4 of the Diplomatic and Consular Privileges Act in order to determine whether or not the foreign state or state agent is entitled to the privilege or immunity being claimed.

23. In the present matter, the Federal Government has filed a report, which states that under the Diplomatic and Consular Privileges Act, *"diplomatic missions and their officers in Pakistan are immune from jurisdiction and execution of courts in Pakistan (Article 31). Additionally under Section 86A of CPC suits filed against diplomatic missions and their officers are barred by law and liable to be rejected under Order VII Rule 11 of CPC. The*

Embassy of the State of Libya in Islamabad has informed that it is not willing to waive its immunity." The report further states that, *"the Ministry of Foreign Affairs is responsible to preserve and uphold the immunity of diplomatic missions under the Rules of Business, 1973, and the preservation of immunity is also directly reflected in Pakistan's foreign relations with the concerned state."* The Federal Government has prayed that the petition be allowed and the impugned order be set-aside.

24. In terms of the facts of the instant case, it is evident that the Federal Government has determined, for purposes of Section 4 of the Diplomatic and Consular Privileges Act, that the petitioner enjoys immunity from judicial proceedings. The judicial proceedings have been initiated to adjudicate a claim for damages brought forth by respondent No.2 in relation to the alleged wear and tear caused to the property leased by the petitioner for purposes of its diplomatic mission in Islamabad. The petitioner has submitted that the cost for wear and tear being claimed by respondent No.2 relates almost exclusively to the expense that will be incurred to undertake paint and polish at the property, which was a liability that rested with respondent No.2 in his capacity as lessor. But this relates to the merits of the case, that are not germane for our present purposes.

25. It is undisputed that the property was being used as the diplomatic mission of the State of Libya in Islamabad. And the claim made by respondent No. 2 was not in relation to recovering rent or possession of the property, but to recover the claimed cost of repairs upon vacation of the property that was being used as the diplomatic mission of Libya in Islamabad. Such

claim therefore does not fall within the exclusion from immunity in terms of Section 17 of the State Immunity Ordinance.

26. For the aforementioned reasons, the petition is ***allowed***. The impugned order is ***set-aside*** for wrongly finding that the Agreement constituted a commercial transaction and for failing to appreciate that the State of Libya enjoys immunity from judicial proceedings in relation to the claim under provisions of the Diplomatic and Consular Privileges Act and the State Immunity Ordinance. The suit filed by respondent No.2 is barred by law and is therefore dismissed subject to a cost of Rs.100,000/- payable by respondent No.2 to the petitioner within a period of two weeks.

27. Let a copy of this judgment be sent by the Member Inspection Team of this Court to the District and Sessions Judges (East) and (West), Islamabad, to bring to the attention of Civil Judges in Islamabad the requirements of Section 4 of the State Immunity Ordinance and enable Civil Courts to solicit a certificate from the Federal Government in cases where a diplomatic agent or mission claims a privilege or immunity.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **27.09.2024**.

JUDGE

Approved for reporting.

A. Rahman Abbasi