

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT:

HON.MR.JUSTICE DR.TANZIL-UR-RAHMAN - CHIEF JUSTICE
HON.MR.JUSTICE DR.FIDA MUHAMMAD KHAN
HON.MR.JUSTICE NAZIR AHMAD BHATTI

1. SHARIAT PETITION NO.104/L OF 1991

M/s. Mumtaz Industries ... Petitioner
through its Manager

Versus

Industrial Development ... Respondents
Bank of Pakistan etc.

Counsel for the petitioner ... Mr.Khadim Nadeem Malik, Advocate.

Date of Institution ... 7-10-1991

2. SHARIAT PETITION NO.105/L OF 1991

M/s.Mumtaz Industries ... Petitioner

Versus

Allied Bank of Pakistan ... Respondents
etc.

Counsel for the petitioner ... Mr.Khadim Nadeem Malik, Advocate.

Date of Institution ... 7-10-1991

Date of hearing ... 2-2-1992

Date of decision ... 2-2-1992

JUDGMENT:

DR.TANZIL-UR-RAHMAN, CHIEF JUSTICE.- This

Petition was admitted on 16-12-1991 to regular hearing to examine provision of section 35 of Civil Procedure Code, 1908, whether or not the said provision is repugnant to the Injunctions of Islam.

A notice to the respondent Government was issued on 24-12-1991 which appears to have been received on 26-12-1991 but neither any written statement has been filed nor anyone is present on behalf of the respondent Government. Perhaps in view of our detailed judgment dated 14-11-1991 in Shariat Petition No.30/I of 1990 (Dr.Mehmoodur Rahman Faisal Vs. Federation of Pakistan and others), on various laws including various provisions of Civil Procedure Code, 1908, it appears that the concerned Government might not have liked to contest the matter.

2. Learned counsel for the petitioner has invited our attention to section 35(3) of Civil Procedure Code, 1908, which envisages the awarding of cost with interest at a rate not exceeding 6% per annum. It seems advantageous to reproduce the said provision of law which reads as under :-

"35(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such".

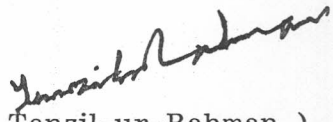
3. For the detailed reasons stated in our aforesaid

judgment dated 14-11-1991, we declare that the above provision of section 35(3) of Civil Procedure Code, 1908, is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (صلى الله عليه وسلم). The Petition is accepted to the extent of repugnancy of interest on costs.

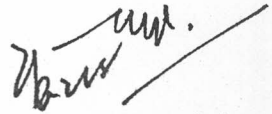
4. The above judgment will take effect after six months from today and unless the provision relating to interest is deleted, it will cease to be effective on the expiry of the aforesaid period of six months.



(Dr.Fida Muhammad Khan)
Judge



(Dr. Tanzil-ur-Rahman)
Chief Justice



(Nazir Ahmad Bhatti)
Judge

Approved for reporting.



CHIEF JUSTICE

Islamabad, the
2nd February, 1992.
Naseer.