

IN THE FEDERAL SHARIAT COURT

(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE DR. SYED MUHAMMAD ANWER, ACTING CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

SHARIAT PETITION NO. 10/I OF 2013

Nadeem Siddiqui Advocate Supreme Court of Pakistan, 4-Mozang Road,
Lahore.

PETITIONER

VERSUS

Islamic Republic of Pakistan through Secretary Law & Justice, Government
of Pakistan, Islamabad.

RESPONDENT

For the Petitioner:

Nemo

For the respondent:

Raja Muhammad Jawad Arsalan, Assistant
Attorney General

Ms. Amna Ali, Assistant A.G. Punjab

Mr. Ahsan Hameed Dogar, Assistant A.G. Sindh

Mr. Mubashir Manzoor, Assistant A.G., KP.

Mr. Fareed Ahmad Dogar, Assistant A.G.
Balochistan

Date of Institution:

20.05.2013

Date of Hearing:

14.11.2022

Date of Order:

21.11.2022

ORDER

DR. SYED MUHAMMAD ANWER, ACJ: Through this Shariat
Petition, the petitioner has challenged Sections 28, 29 and 30 of the House
Building Finance Corporation Act, 1952 (XVIII of 1952) for being
repugnant to the injunctions of Islam.

2. Perusal of the instant petition reveals that Section 28 of the House
Building Finance Corporation Act, 1952 (XVIII of 1952) (*hereinafter referred
to as "Act of 1952"*) gives unfettered power to the House Building Finance
Corporation (*hereinafter referred to as "Corporation"*) to sell out the house of
a borrower in case of default in repayment of the loan amount, which

renders the Corporation into a money lender engaged in usury, which is forbidden by the express command of the Holy Quran. Similarly, Section 29 of the Act of 1952 has been challenged on account of being un-Islamic as it gives absolute right to the Corporation to direct the borrower to repay the whole loan amount, in case the borrower fails to pay even one installment. Likewise, Section 30 of the Act of 1952 has been challenged being repugnant to the injunctions of Islam as it restricts the borrower's rights towards his mortgaged property.

3. In response to the instant petition, the learned Assistant Attorney General submitted that the Act of 1952 has already been repealed vide the House Building Finance Corporation (Repeal) Act, 2018 (Act No.XXV of 2018) (*hereinafter referred to as "Act of 2018"*), dated 24.05.2018. However, perusal of the repealing law revealed that the nomenclature of the law, which was to be repealed, was wrongly mentioned as "*The House Building Finance Corporation (Repeal) Act, 1952 (XVIII of 1952)*" instead of "*The House Building Finance Corporation Act, 1952 (XVIII of 1952)*". Upon pointing out, the respondent filed a corrigenda, which reads as under:

SENATE SECRETARIAT
CORRIGENDA
Islamabad, the 1st November, 2022

[to the Gazette of Pakistan, Extraordinary, Part-I, dated the 24th May, 2018, containing the House Building Finance Corporation (Repeal) Act, 2018 (Act No.XXV of 2018)]

*In the House Building Finance Corporation (Repeal) Act, 2018, at page 388 of the Gazette, in first line of Section 2, the expression "**(Repeal)**" shall be **omitted**.*

In view of the above, the learned Assistant Attorney General stated that the mistake has been rectified, the expression "(Repeal)" in Section 2 of the House Building Finance Corporation (Repeal) Act, 2018 is omitted.

4. Since the impugned law has already been repealed, therefore, the petition in hand becomes infructuous and is accordingly **DISMISSED**.

5. However, it is noted with dismay that law under discussion i.e. the Act of 2018 (Act No.XXV of 2018) was virtually a one-liner law, yet it suffered from a serious mistake of legislative drafting, which needless to say practically defeated the very cause of its promulgation. The State cannot afford even a slightest error in drafting of laws, as it may cause serious legal complications. Therefore, the Secretary Law & Justice is directed to ensure special care in legislative drafting, keeping in view the sensitivity attached thereto, as a mistake of only one word, as happened in the subject legislation, may defeat its very purpose. A copy of this order be sent to Secretary Law & Justice for compliance.

**MR. JUSTICE DR. SYED MUHAMMAD ANWER
ACTING CHIEF JUSTICE**

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

Announced in Open Court
on 21.11.2022, at Islamabad.

*Khalid/**