

Shariat Petition No1/I of 2002

(Zahida Haq Versus State)

Under 203-D of the Constitution of Pakistan, the Petitioner has challenged Section 10 of the Financial Institution(Recovery of Finances) Ordinance 2001 for being repugnant to the injunctions of Islam,as appeared in the holy Quran and Sunnah of the Holy Prophet. The main bone of contention between the parties was a recovery of Loan taken from the City Bank of Pakistan. Under 203-D of the constitution, Personnel matters cannot be taken into consideration and redressed by this Court. However, a perusal of written statement submitted by the City Bank, Respondent of the case, it reveals that the issue has been resolved between the parties through compromise.

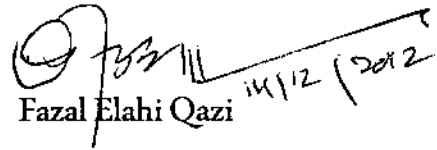
A legal issue has also been raised by the petitioner by referring a particular provision of law,i.e (Section 10 of the Financial Institution(Recovery of Finances) Ordinance 2001)as referred above,under which the defendant is not allowed to defend the suit/claim unless permission is granted by the Banking Court or Tribunal.In default of doing so, the allegations of the fact in the plaint stand proved/admitted. According to petitioner, this piece of law is not in line with the Islamic injunctions. When we examine this issue in the light of Islamic injunctions, it reveals that It is established principle of the Islamic justice system that both the parties will be provided full opportunity to prove the claim and to defend it, otherwise it would be against the norms of Islamic principles of dispensation of Justice: The legal maxim as well as the tradition of the Holy Prophet is that: "لويعطى الناس بدعواهم، لادعى رجال اموال قوم ودماء هم لكن البينة على المدعى " واليمين على من انكر

(If the people were given what they claimed, some would have claimed the lives and property of men. But the one who claim is bound to prove his claim and the one against whom claim made is obliged to swear an oath.)(Sunan Ibn Maja ,(English translation,Vol.3,page 326)It is also basic principle of the legal system of the man made law that: " Audi Alteram Partem"Nobody can be condemned unheard". This Court has held while examining Civil Servant Act and other related laws that "No Civil Servant can be dismissed without giving a chance of being heard". Allah almighty provided a chance of being heard to Satan also when he refused to comply the order of Allah almighty.Likewise,Hazrat Suleiman also provided a chance being heard to bird(Hud Hud)when it remained absent for a long time. In this respect, it is appeared in the holy Quran that:

وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لَا أَرَى الْهُدُودَ أَمْ كَانَتْ مِنَ الْغَائِبِينَ لَأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لَأَذْبَحَنَّهُ أَوْ لِيَأْتِنِي يُسْلُطًا مُبِينٍ

And (once) he (Sulaiman) checked the birds and said,How is it with me that I do not see the Hudhud (hoopoe)? Rather he has disappeared. I will punish him with a severe punishment or slaughter him unless he brings to me a clear plea. (27:20-21)-

In the light of above, this particular provision of law requires examination in the light of Islamic injunctions as appeared in the holy Quran and Sunnah of the Holy Prophet to bring it in conformity with the injunctions of Islam.


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