

under section 17 of the Registration Act in case of a lease for one year, or more such documents require compulsory registration. An unregistered document does not create any rights, title or interest and cannot be pressed into service for proving such rights etc. for a period exceeding 11 months by virtue of the mandatory provisions of section 49 of the Registration Act. The document is to be regarded as having expired before the expiry of one year of its execution. After the said expiry the tenancy is to continue by virtue of the provisions of the West Pakistan Urban Rent Restriction Ordinance, 1959 and not on the basis of the expired agreement.

11. Viewed in its true prospective the agreement relied upon by the petitioner came to an end in year 1972 on the expiry of its term according to which it was to enure only for 11 months because there was no further renewal. So after the expiry of the agreement the rights and liabilities of the tenant fell to be governed by the provisions of the West Pakistan Urban Rent Restriction Ordinance, 1959 which regulate the terms as the ejectionment.

12. The last contention of the learned counsel for the petitioner is that the finding regarding personal need recorded by both the Tribunals is based upon gross misreading of the evidence.

13. Nothing of the sort has been shown from the record. The matter stands concluded by a finding of fact concurrently held by both the Tribunals which appears to be justified on the record. No interference can be afforded within the scope of the Constitutional jurisdiction with that.

14. For the foregoing reasons this petition is dismissed with costs.

M. B. A.

Petition dismissed.

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Before Abdul Shakurul Salam and Muhammad Aslam Mian, JJ

Syed MUJTABA AHMAD AND 3 OTHERS—Appellants

versus

CHIEF SETTLEMENT COMMISSIONER, PUNJAB BOARD
OF REVENUE AND ANOTHER—Respondents

Intra-Court Appeal No. 117 of 1983, heard on 8th December, 1984.

(a) Registration of Claims (Displaced Persons) Act (III of 1956)—

— Schedules I & VI—Scrutiny of Claims (Evacuee Property) Regulation, 1961 (M. L. R. No. 84), para. 3(3)—Constitution of Pakistan (1973), Art. 199 — Constitutional petition—Petitioner coming to High Court asking for issuance of entitlement certificate in respect of Sched. V - High Court, not only rejected such petition but also order of verification of his claim which pertained to Schedules I & VI was also declared to be without lawful authority holding that claim was "cancelled by virtue of para. 3(3) of Martial Law Regulation No. 84—Nobody had challenged verification of claims of petitioner or competency of verifying Authority—High Court, held, fell in error in holding claim of petitioner as cancelled in circumstances. [p. 187]4

(b) Law Reforms Ordinance (XII of 1972)—

— S. 3—Registration of Claims (Displaced Persons) Act (III of 1956),

Scheds. I, VI & V—Constitutional petition—Petitioner coming to High Court asking for issuance of entitlement certificate in respect of claim under Sched. V—Single Judge in constitutional petition not only rejecting petition for issuance of entitlement certificate in respect of Sched. V but also held order of verification of claim to be without lawful authority—Such order was not only in respect of verification of claim under Sched. V but also under Scheds. I & VI—Nobody had challenged verification of such claims or competence of verifying Authority—Order of Single Judge, held, was appealable under S. 3, Law Reforms Ordinance, 1972 in circumstances.

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(c) Interpretation of statutes—

— When a law is reconstituted, previous law goes off of the Statute book and it is the new reconstituted law which shall operate.

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Abdul Waheed Khan for Appellants.

Ch. Muhammad Nazir Ahmad Khan for Respondent.

Date of hearing : 8th December, 1984.

JUDGMENT

ABDUL SHAKURUL SALAM, J.—Appellants' claim for properties abandoned in India was not being verified by the Claims Authorities when they approached this Court in Writ Petition No. 819/67 in which *vide* order dated 9-11-1967, it was directed that "The Claims Commissioner shall proceed to reconstruct the record on the basis of these duplicates and dispose of the petition in accordance with law." In due course, the claim of the appellants was verified by the Deputy Claims Commissioner in Schedules I, VI and V of the Claims Registration Act, 1956, *vide* order dated 19-5-1979. On 11-10-1979, the appellants submitted an application for issuance of entitlement certificate in respect of the claim verified under Schedule V, to the Chief Settlement Commissioner. This was refused on the ground that the appellants had not complied with the provisions of Martial Law Regulation No. 84 which required submission of M. R. I. on or before 20th February, 1961. They filed Writ Petition No. 48-R-82 in which it was contended that the claim of the petitioners was not verified prior to 1-9-1961, therefore, the entitlement certificate should have been issued on the basis of the claim verified by the Deputy Claims Commissioner under para. 4 read with para. 6(3) of Martial Law Regulation No. 89." The plea was rejected on the ground that "The petitioners admittedly failed to file statement of true facts relating to their claim within the stipulated period, as such their original claim stood cancelled by virtue of sub-paragraph (3) of paragraph 3 of Martial Law Regulation No. 84 and therefore, it cannot be said that any claim was legally pending within the ambit of paragraph 4 of Martial Law Regulation No. 89, merely because the Deputy Claims Commissioner verified the claim of the petitioners subsequent to the enforcement of Martial Law Regulation No. 89. The claim of the petitioners stood cancelled by operation of law under the aforesaid provisions of Martial Law Regulation No. 84. This was a transaction past and closed. The Deputy Claims Commissioner, had, therefore, no jurisdiction in law to verify the claims of the petitioners notwithstanding the failure of the petitioners to comply with the mandatory provisions of paragraph 3(3) of Martial Law Regulation No. 84. The order of verification of claim is

ex facie without lawful authority and therefore, the petitioners cannot be permitted to claim advantage under it in the exercise of writ jurisdiction, which is meant to foster justice and not to perpetuate an illegality." This is *vide* order dated 20-3-1983. The appellants filed appeal on 30-4-1980. Office noted that it was out of time. Learned counsel for the appellants submitted that deducting the period spent until delivery of copy, no intimation having been given earlier, it is within time. In the application under section 5 of the Limitation Act, it is stated that the appellant No. 1 who was prosecuting the appeal had gone to Karachi where he fell sick due to gastric trouble. No rebuttal has been furnished. In the circumstances, the appeal is held within time and delay, if any, is condoned.

2. The case on merits is classical example of the story asking for waiver of saying prayers and being imposed with an application to keep fast as well. The appellants had come to the High Court asking for issuance of entitlement certificate in respect of Schedule V on the basis of the verification of their claim by the Deputy Claims Commissioner. Not only their petition was rejected but also the order of verification of claim which pertained to Schedules I and VI as well, by the Deputy Claims Commissioner was held to be without lawful authority. Nobody had challenged the verification of the claim by the Deputy Claims Commissioner. The learned Single Judge also fell in error in holding that the claim of the appellants is "cancelled by virtue of sub-paragraph (3) of paragraph 3 of Martial Law Regulation No. 89," because this Martial Law Regulation itself had been superseded and was re-constructed by the Martial Law Regulation No. 89 which itself in para. 4 provided that "Any claim pending for verification at the time of the commencement of this Regulation shall be verified by such officer not below the rank of an Additional Settlement Commissioner as may be appointed by the Chief Settlement Commissioner in that behalf." It is nobody's case that the Deputy Claims Commissioner who verified the claim of the appellants was not a competent Officer to verify the claim. He verified the claim of the appellants on 19-5-1979. Copy was delivered on 18-9-1979. The appellants on their application dated 11-10-1979 were clearly entitled to the issuance of entitlement certificate.

3. Learned counsel for the Settlement Department has submitted; firstly that the appeal is not competent in view of section 3 of the Law Reforms Ordinance, 1972. Secondly, that the appellants were under legal obligation to have filed their statement of true facts under sub-paragraph (3) of paragraph 3 of Martial Law Regulation No. 84. It is thirdly contended that the Chief Settlement Commissioner was competent to fix a date on which the statement of true facts was to be filed. It is fourthly submitted that the Martial Law Regulation No. 89 did not repeal Martial Law Regulation No. 84 and paragraph 4 of the Martial Law Regulation No. 89 only saved those claims wherein statements of true facts had been filed by the claimants under Martial Law Regulation No. 84.

4. The contentions have no force whatsoever. The contention regarding the competency of the appeal is without force for the reason that learned Single Judge has not only rejected the petition for issuance of entitlement certificate in respect of Schedule V but has held the order of verification of claim to be without lawful authority. The order was not only in respect of verification of claim under Schedule V but also under Schedules I and VI. Therefore, the order of the learned Single Judge is clearly appealable. As regards the contention that Martial Law Regulation

No. 89 did not repeal Martial Law Regulation No. 84, it means that when a law is re-constituted, it obviously means that the previous law has gone off of the Statute Book and it is the reconstituted law which shall operate. The claim of the appellants for the land abandoned during the disturbances on account of the creation of the country has been verified by the Authorities appointed by the State. It is unreasonable to urge that entitlement certificate should or cannot be issued. What is entitlement certificate? It is only that when a claim is verified by a competent Officer in Bighas and Biswas, it may be transformed and calculated in terms of Produce Index Units. Now this little arithmetic exercise cannot be said to have the effect of taking away substantial rights of the citizens and nobody can say that he is not going to perform the functions of calculation entrusted to him by law. Refusal to issue entitlement certificate, in the circumstances, was clearly callous and arbitrary exercise of power.

5. In view of what has been stated above, the appeal is allowed with costs and the respondent No. 1 is directed to issue the requisite entitlement certificate to the appellants within the shortest possible time but not later than three months as much time has been wasted wantonly.

M. Z. M.

Appeal allowed.

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Before Mahboob Ahmad, J

ALLIED BANK OF PAKISTAN—Petitioner

versus

MESSRS FAIZ AHMAD-MANZOOR AHMAD AND OTHERS—
Respondents

C. O. S. No. 9 of 1984, heard on 4th July, 1984.

(a) Banking Companies (Recovery of Loans) Ordinance (XIX of 1979)—

— S. 7—Civil Procedure Code (V of 1908), O. XXXVII—Nature of proceedings in suits under O. XXXVII, C. P. C. in relation to matter arising under Banking Companies (Recovery of Loans) Ordinance, 1979, examined. [p. 195] *A et seq*

(b) Banking Companies (Recovery of Loans) Ordinance (XIX of 1979)—

— S. 7—Civil Procedure Code (V of 1908), O. XXXVII—Grant of leave to defend a suit filed under O. XXXVII, C. P. C. not a matter of course or of right—Guidelines in light of statutory provisions and judgment of superior Courts brought out.

The grant of leave to defend a suit filed under Order XXXVII, C. P. C. is not a matter of course or a matter of right. In order to be eligible for this benefit the defendant will have to show such facts which may warrant the proving of the consideration by the plaintiff or disclose a plausible defence which may give rise to triable issues. This necessarily implies that granting of permission to defend the suit or refusal thereof shall be dependent on the attendant circumstances of each case and as such no hard and fast rule could be laid for the purpose. However, some broad principles which could be a guideline for the Courts while considering an application for leave to defend can be and have, in fact, been laid down in judicial precedents and lie scattered therein. [p. 175] *B*

The following broad principles may be enunciated for determining the controversy regarding grant or refusal of leave to defend suits under Order